Federal Financial Management NEWS

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Agency FY 2000 financial statements still don't cut it

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Senators challenge OMB to tackle high-risk problems

Two Senators have recently requested that the Bush administration develop performance goals to resolve the 22 areas that have been designated as "high risk" by the General Accounting Office (GAO). *See the* Federal Financial Management News*, February 15, 2001, page 1.*

Senators Fred Thompson (R-Tn) and George Voinovich (R-Oh) late last month sent a letter to Mitch Daniels, Director of the Office of Management and Budget (OMB) recommending that he

- work with agencies to develop the performance goals; and
- include the goals in the annual governmentwide performance plans required by the Government Performance and Results Act (GPRA).

According to the letter, the high-risk list was first published in 1990, with 14 problems. Eight of this year's 22 problems remain from that original list. "Unfortunately, the prior Administration refused to develop goals to solve the high-risk problems," the Senators noted. "As a result, we have made little progress. We think the Bush Administration must take this on."

"As the problems worsen, they waste billions more tax dollars and further erode the federal government's capacity to serve its citizens," stated the letter, explaining the threat that the risks pose. "We believe that systematically attacking the high-risk problems will leave no doubt that the Bush Administration is committed to exercising the essential top-level leadership that has been missing until now," said the Senators.

The letter calls for performance goals that include a measurable definition of success and a deadline for achieving it. OMB should also establish annual intermediate performance goals to track the progress of problems that take longer than a year to resolve, according to Thompson and Voinovich.

"We believe that developing goals for the high-risk problems would be another important step toward improving performance management in the federal government," the Senators concluded.

At the time of press, OMB had not yet responded to the Senators' letter.

New bill calls for splitting up OMB

Congressman Stephen Horn (R-Ca) has recently introduced a bill that would divide the Office of Management and Budget (OMB) into 2 separate entities.

The bill, H.R. 616, would create 2 new offices within the Executive Office of the President. The Office of Management would be responsible for individual agency management practices as well as governmentwide management, and the Office of Budget would concentrate entirely on the budget process.

Horn cited high costs to taxpayers as the reason for this reform. "The American taxpayer deserves a lot more from the executive branch than it has received. Good management can and should save the taxpayers billions of dollars each year," said Horn.

If passed, the bill would abolish the

- Office of Federal Procurement Policy;
- Office of Information and Regulatory Affairs;
- Office of Federal Financial Management;
- Office of the Deputy Director for Management; and
- Office of the Chief Financial Officer.

The functions and authorities of the heads of those offices would be transferred to the Director of the Office of Management, according to the bill. "Congress must create a corps of management experts who not only have the ability and skill to address watchful administration and program failures, but who also have the power and mandate to force action and produce results," Horn commented.

"The pressures and dynamics of the annual budget process have simply overwhelmed nearly every initiative aimed at improving the government's outdated management practices," he explained. "If we are going to create governmentwide accountability, an Office of Management is essential."

H.R. 616 has been referred to the House Committee on Government Reform, and is currently awaiting a hearing.

GAO drafts internal control evaluation tool

The General Accounting Office (GAO) has recently published an exposure draft, the *Internal Control Management and Evaluation Tool*, aimed at helping federal managers determine how well an agency's internal control is designed and functioning, and whether any improvements are needed – *GAO-01-131G*.

GAO used the guidance in the report, *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1) as a basis for the tool. Before implementing the tool, users should be familiar with the contents of that document, as well as internal control terminology, the use of control activities and techniques, and the general application of internal control requirements.

The tool consists of 5 sections, corresponding to the standards for internal control, which include:

- control environment;
- risk assessment;

Events Calendar

Federal Financial Management Systems Conference: *Financial Systems in Transition – Improving the Chances for Success*

When: May 22-23, 2001

Where: Washington, DC

Contact: 703.633.4923

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- control activities;
- information and communications; and
- monitoring.

Each section contains a list of factors to be considered when reviewing internal control, which the users apply to determine

- the applicability of the point to the circumstances;
- whether the agency has actually been able to implement, perform, or apply the point;
- any control weaknesses that may result; and
- the extent to which the point impacts on the agency's ability to achieve its mission and goals.

Beside each factor, space is provided for users to respond with comments and descriptions pertaining to the agency. In addition, at the end of each section there is an area for users to write a conclusion about the particular standard. Users also have the option to write an overall conclusion at the end of the guide.

GAO is reminding agencies that use of the tool is not required, as it is meant only to be a supplemental guide for assessing the effectiveness of internal control. GAO will be accepting comments on the exposure draft until May 15, 2001. Comments should be sent to

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Decisions

Agencies can pay for eye examinations but not eyeglasses

RULE: *(1) Agencies cannot use their appropriations, absent explicit statutory authority, to purchase prescription eyeglasses for their employees even if 20/20 vision is beneficial to perform their official duties. (2) Agencies may use their appropriations to pay for annual eye examinations.*

B-286137

Federal law and various General Accounting Office (GAO) decisions have authorized agencies to use federal funds to pay for physical examinations and materials related to employees' official duties. Recently, GAO was confronted with a proposal to use agency funds to provide annual eye examinations and prescription eyeglasses to federal employees. GAO was split in its decision whether funds could be used for such purposes.

The United States Geological Survey (USGS) requested the Public Health Service (PHS) to evaluate the need for a vision certification program for the operators of the National Aerial Photography Program (NAPP) and the Optical Science Laboratory (OSL). PHS recommended that USGS establish an eyecare program.

PHS' recommendation was based on the operators' needs to perform tasks requiring the ability to distinguish details and shapes of objects for 6 separate daily tasks. Specifically, each day, NAPP operators perform film and coverage inspection. Film inspection involves rapidly scanning each frame of contract-supplied photography over a specialized light table with a custom lamp to search for anomalies or defects that are often subtle and extremely small. These tasks comprise 80 percent of a normal workday. NAPP operators spend the remaining portion of their day conducting coverage inspection. This task consists of identifying and studying films and corresponding overlays of landmarks.

OSP operators perform equally challenging visual inspections. They are responsible for appraising the quality of lenses used by contractors and other agencies in aerial photography flights. To do this, they perform reading resolution and calibration test tasks that require visual acuity for near vision and searching for fine detail. Specifically, operators view a film's test pattern through a microscope to locate the fine detail of the pattern, and compare it to the pattern on the wall chart. This study leads to the designation of the film's test pattern. Operators also use a binocular microscope to identify fine detail on a target.

Based on the need of its operators and the recommendation of PHS, USGS proposed to establish a vision care program for the employees funded with its appropriations. The program's objective would be to ensure a uniform quality of work among operators by maintaining a standard of 20/20 vision with an emphasis on 20/20 visual acuity for near vision. Under the program, employees would be entitled to a basic complete eye exam and prescription eyeglasses as necessary to correct their vision to 20/20.

USGS asked GAO for an opinion on whether its proposal was permissible.

GAO found that the agency's appropriations could be used to pay for eye examinations but not for prescription eyeglasses.

GAO noted that section 7901 of Title 5 of the U.S. Code permits agencies to use their appropriations to pay for employee physical examinations. Specifically, the section provides that agencies may establish, by contract or otherwise, a health service program for treatment of on-the-job illness and dental conditions requiring emergency attention, pre-employment and other examinations, referral of employees to private physicians and dentists, and preventive programs related to health. Although the statute does not explicitly refer to eye examinations, GAO emphasized that it had previously ruled that agencies could use official funds for diverse physical examinations that were needed to verify or maintain employees' physical health as related to their official duties. *See B-256092, July 6, 1994 – National Transportation Safety Board could reimburse investigators for the costs of physical examinations for a Federal Aviation Administration medical certificate; and 64 Comp. Gen. 835 (1985) – National Park Service could include health hazard appraisals, physical fitness evaluations and blood tests as examinations*. USGS' use of its appropriations to pay for eye examinations was consistent with such cases.

In comparison to the statutory authority permitting physical examinations, GAO emphasized that no statute, including USGS' appropriations act, explicitly permitted the expenditure of funds for the provision of prescription eyeglasses. The purchase of ordinary prescription glasses was distinguished by GAO from buying safety and protective equipment, which is authorized by section 668 of Title 29 of the U.S. Code. GAO also found that the expense could not be justified under the "necessary expense" rule since it considered the items a "personal" rather than an "official" expense.

The "necessary expense" rule permits agencies to use their funds for official expenses beyond those specified in their appropriations if the expenditure: (1) bears a logical relationship to the appropriation that will be charged; (2) is not otherwise prohibited by law; and (3) does not fall within the scope of another appropriations or statutory scheme. For the rule to apply, however, the expense must be for an official purpose.

To qualify as an "official" expense, the proposed purchase must pass a 2-part test. First, an agency must not be able to accomplish the proposed purpose as expeditiously and satisfactorily without the item. An agency may satisfy the test by demonstrating that the item will materially increase an employee's work output. *See 45 Comp. Gen. 217*. Here, USGS' proposal fulfilled this requirement. Its employees would be better able to perform the tasks of reviewing fine detail in visual images with 20/20 vision.

The second part of the test requires agencies to prove that the item is one that an employee would not reasonably be expected to furnish as part of the personal equipment necessary to enable him to perform his/her regular duties. *See 63 Comp. Gen. 281*. In making this determination, GAO looks to whether the item will be used by an employee in his/her regular duties or only in emergencies and whether the item or service is assigned to an employee for individual use or can be used by different employees.

USGS' proposal failed to satisfy this requirement. As ordinary corrective lenses, prescription glasses would only be useful to the employee for which they were prescribed. In addition, the employee would receive benefit from the glasses outside of his/her official duties.

In a concluding note, GAO recognized that it had previously ruled that USGS could use its appropriations for a vision program in which it provided special filter glasses for employees with normal visions and special prescription glasses for employees whose vision needed to be corrected. *See 45 Comp. Gen. 215 (1965)*. According to USGS, its current request was similar to the purpose approved by GAO over 35 years earlier.

GAO disagreed. It emphasized that in the earlier decision, the special filter glasses, with or without the prescription, were only useful for operating the precision stereoscopic map plotting instruments. Therefore, they were of no personal use to the employees.

United States Geological Survey – Use of Appropriated Funds to Pay for Annual Eye Examinations and Prescription Eyeglasses, February 21, 2001.

Spending the money is no defense to repaying an erroneous payment

RULE: *Employees cannot keep erroneous payments even if they spent the money in good faith.*

Claims Case No. 01010801

Clerical errors are occasionally made by agencies when issuing payments to employees. Any excess pay must be returned unless the employee qualifies for a waiver. Employees cannot avoid repaying the money simply by spending it before the agency realizes a mistake has been made, as is demonstrated by the following case.

An employee of the Air Force was contacted by his supervisor and asked to develop a computer program to track employee overtime. He developed a program on his own time.

He submitted a "beta" version of his spreadsheet to the base Innovative Development Through Employee Awareness (IDEA) Program Office as an "employee suggestion." He also submitted a software licensing agreement.

The IDEA Office hesitated in accepting the suggestion due to the licensing requirements; however, it accepted it after the employee attached a note that the licensing agreement would only be effective if he was given a "suggestion award" under the IDEA Program.

An award was approved several months later. The employee was notified that he had been authorized a cash award, but he was not informed of the amount. An award of $200 had been authorized. Unfortunately, a clerk at the Defense Finance and Accounting Service (DFAS) failed to properly insert a decimal point in the amount. As a result, the employee received $20,000.

The employee first learned of the amount after reviewing his leave and earnings statements (LES) several weeks later. Several days later, he received an official certificate for the award which indicated that the amount of the award was $200. The employee, however, had already used the money to pay bills.

The employee eventually reached an agreement with the base Inspector General in which the base agreed to stop using the employee's computer program and return it. At that point, the employee would make arrangements to repay the $20,000.

More than a year passed, and according to the employee, the Air Force continued to use his program. Nonetheless, the Air Force started collection proceedings.

The employee appealed to the Defense Office of Hearings and Appeals (DOHA). He argued that he should not be made to repay the award since the Air Force was continuing to use his suggestion. Moreover, the error was administrative in nature and completely out of his control. Finally, he emphasized that the $20,000 award was proportional to the amount of time he spent developing the program and the tangible savings the base realized.

DOHA was not persuaded. It noted that it did not have jurisdiction to review the merits of the employee's argument that the Air Force failed to adhere to the terms of the repayment agreement the parties had reached a year earlier. Rather, it reviewed whether the debt should be waived under Title 5 of the U.S. Code. Under that title, it could waive the repayment of erroneous allowances to employees if collection "would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fault on the part of the employee."

Here, it explained that requiring the employee to repay the award was not inequitable since the employee had no reasonable basis to expect a $20,000 award. It emphasized that the base only found his software to be an optional solution for its tracking of overtime hours. It preferred to keep its existing system.

DOHA recognized that other Air Force employees had received awards up to $25,000 after their suggestions resulted in savings of millions of dollars. However, the vast majority of awards were significantly smaller. The Board emphasized that an employee cannot reasonably expect to receive a large award simply because he/she believes their suggestion to be worthy. Rather, there must be an objective basis for such a belief. Here, there was none.

Finally, DOHA rejected the employee's argument he should not be made to repay the money since it he had already spent it based on a good-faith belief it was his to keep. To waive the debt under such circumstances would reward an employee for acting fortuitously in spending the money before his/her agency realized a mistake had been made.

February 2, 2001. 🗁

Agencies cannot interpret divorce decrees in making retirement payments

RULE: *In making retirement payments to a former spouse of a retired employee, agencies need only implement a reasonable calculation of the entitlement required by a divorce decree.*

Paying retirement benefits can be complicated. The degree of complexity and difficulty of the tasks is substantially increased, however, when the benefits must be split between a retired employee and a former spouse. The proper calculation of payments each should receive is not always clear. As a result, only a reasonable formula has to be adopted by the federal government, as is demonstrated by the following case.

William Perry, an airline pilot for the Customs Service, married Linda Perry in May 1974. They were divorced 12 years later in Florida. William Perry remarried in February 1997 and retired from government service in January 1998.

On his retirement application, he elected a reduced annuity with "maximum survivor annuity" for his second wife. His divorce decree from Linda Perry, however, stated that she was entitled to one-half the value of William Perry's pension between May 17, 1974 through February 1996. In addition, the decree provided that the administrator of William Perry's pension must treat Linda Perry as the surviving spouse. Finally, the decree awarded Linda Perry pension payments upon William Perry's retirement.

In 1987, Linda Perry forwarded a copy of the divorce decree to the Office of Personnel Management (OPM).

Shortly before his retirement, William Perry learned that OPM intended to pay Linda Perry 23.51 percent of his retirement annuity. OPM explained that the total was calculated by dividing the number of months they were married while William Perry was employed by the Customs Service (150 months) by the total months he was in government service (319) and finally reducing that number by half. In addition, OPM determined that Linda Perry was entitled to maximum survivor annuity.

William Perry appealed to OPM's internal administrative appeals board. He argued that his first wife was not eligible for any of his retirement annuity, or at least should receive a much smaller percentage than that calculated by the agency.

The Board upheld the agency's original determination. William Perry appealed to the Court of Appeals for the Federal Circuit (CAFC). He argued that the divorce decree should not be considered a "qualifying" court order which OPM must follow, because it awarded his wife half of the value of his pension without specifying what that value was. To simply award his former wife half of his final pension total would be to award her additional money to which she was not entitled since the amount of his annuity reflected contributions he made in the years following his divorce at a higher pay grade. Perry emphasized that to include amounts in the division of a pension as a result of divorce violated Florida state law. As a result, OPM should not interpret the divorce decree to conflict with the law of the state in which it was issued.

The court denied his appeal. It emphasized that section 838.101(a)(1) of Title 5 of the Code of Federal Regulations (CFR) provides that "generally,

Tom's Corner

Every year the Treasury and General Government Appropriations Act contains items that apply to all departments and agencies. Here are some items of possible interest that appear in the fiscal year 2001 appropriations act (P.L. 106-554, December 21, 2000).

Interagency organizations. The long-time ban of Section 610 continues to prohibit interagency financing of boards, commissions, and such. Exceptions include Federal Executive Boards, the Joint Financial Management Improvement Program (see Section 631), and organizations with specific legal authority for such financing.

Training. Section 621 continues the ban on "new age" training. Remember the stories of groping other students in class, sniffing others' clothes, and explanations of situational truth?

Childcare. Section 633 continues into a second year permission for agencies to use funds to help lower-income federal employees afford childcare services. Section 634 also approves breastfeeding at any location in a federal building or on federal property as long as the woman and child are otherwise authorized to be at the location.

Publicity and Propaganda. These long-time restrictions continue in Sections 623 and 628.

Office redecoration. Section 614 limits heads of agencies and other presidential appointees to $5,000 unless the Appropriations Committees approve a higher amount.

Recycling money. As in the past few years, Congress allows agencies to keep money received from recycling programs, with restrictions described in Section 607.

Carryover of funds. This provision applies only to agencies with Salaries & Expenses Appropriations in the Treasury and General Government Appropriations Act. They may carry over into 2002 up to half of unobligated 2001 funds. Restrictions apply; see Section 511. Among agencies that this would apply to are Treasury, the Executive Office of the President, and the Office of Personnel Management.

OPM must comply with court orders, decrees in connection with divorces of employees." In executing court orders, however, OPM serves only a ministerial function. It is not required to clarify the court's intent by researching individual state laws.

Here, OPM's calculation of Linda Perry's share of her ex-husband's retirement annuity complied with the Florida court's decree. That decree simply required OPM to award one-half of William Perry's pension for the period of the marriage to his first wife. OPM's calculation was a reasonable method of implementing that order. Therefore, for the current distribution of his pension to be amended, William Perry must request a revision of the original divorce by a Florida court to provide a more precise or different formula for calculating Linda Perry's entitlement.

William H. Perry v. Office of Personnel Management, United States Court of Appeals for the Federal Circuit, March 20, 2001. 🗁

Employee Corner

Q: May agencies pay employees at a higher grade if they are assigned additional work?

A: No, unless an agency regulation requires that an employee receive a temporary promotion and the employee was actually detailed to a higher-graded position. *See Office of Personnel Management, File Number 01-0012, January 4, 2001.*

In the case, an employee was assigned additional duties as part of his GS-13 responsibilities due to organizational and staffing changes. The employee claimed that the new duties were equivalent to the GS-14 level. As a result, he should have been compensated at that pay grade.

His agency refused. It disputed that the additional duties were equal to a GS-14 position.

The employee appealed to the Office of Personnel Management.

OPM denied his appeal. It noted that to establish a claim for back pay based on the performance of duties at a higher-graded position, an employee must show that (1) an agency regulation or agreement requires a temporary promotion to a higher-graded position; and (2) he/she was actually detailed to a higher-graded position.

Here, the employee failed to fulfill either requirement. The employee did not cite any agency regulation requiring that he be paid at a higher rate for the work. In addition, according to his agency, he did not perform GS-14 duties.

As a final argument, the employee claimed he should be paid at a higher rate because he "was faced with a large burden to perform the functions of 3 GS-13 team leaders." OPM emphasized that undertaking a large volume of work does not automatically entitle an employee to an increase in pay grade.

Travel Reimbursement Advice

Q: Can travelers receive a higher per diem to stay in a city neighboring their TDY location if it is more convenient to the airport.?

A: No. *See GSBCA 14087-TRAV; 14088-TRAV,* In the Matters of James R. Reed and Derinda C. Rhodes*, May 9, 1997.*

In the case, James Reed and Derinda Rhodes, employees of the Department of Veterans Affairs (VA), were authorized for a temporary duty (TDY) assignment in Sturgis and Hot Springs, SD. Their supervisors authorized $84 per day for lodging and $30 for meals and incidental expenses (M&IE). These rates reflected those that were effective for Rapid City, SD. The maximum per diem rate for Hot Springs was $61 for lodging and $26 for M&IE. The General Services Administration (GSA) had not established rates for Sturgis. The employees were initially authorized for the Rapid City rates since it was the closest airport to the cities they visited.

Following the completion of their assignment, the employees submitted vouchers. The VA, however, refused to reimburse the total amount after an internal auditor reviewed the expenses. It limited reimbursement to the rates effective for Sturgis.

The employees appealed to the General Services Board of Contract Appeals (GSBCA).

The Board rejected their appeal. It noted that although agencies may approve reimbursement above the applicable rate for an area if it is inadequate, the exception was inapplicable here. The employees' TDY assignments were scheduled for Hot Springs and Sturgis, and they were required to acquire lodgings in those cities. The listed rates were sufficient for that purpose. A location's rate should not be considered inadequate simply because it is more convenient for an employee to stay in a more expensive neighboring city that is closer to the airport.

Reports & Testimony

Agency FY 2000 financial statements still don't cut it

The federal government has received its fourth consecutive audit disclaimer from the General Accounting Office (GAO) on its fiscal year 2000 financial statements. Only 3 of the 24 Chief Financial Officers (CFO) Act agencies submitted statements that were both free of material control weaknesses and compliant with applicable laws and regulations, according to recent testimony from Comptroller General David Walker – *GAO-01-570T*.

Walker emphasized that until agencies further improve existing financial statement issues, the government is unable to ensure accountability, measure and control costs, or manage for results.

Agencies have shown steady improvement on the timeliness and reliability of their financial data since the CFO Act was implemented in 1996, but remaining issues prevent the government from establishing a fully reliable report of its critical assets. The challenges include the government's inability to

- properly account for and report material amounts of property, equipment, inventories, and supplies;
- properly estimate the cost of certain major federal credit programs and the related loans receivable and loan guarantee liabilities;
- estimate and reliably report material amounts of environmental and disposal liabilities and related costs at DoD, and determine the proper amount of various reported liabilities, including postretirement health benefits for military employees and accounts payable and other liabilities for certain agencies;
- accurately report major portions of the net cost of government operations;
- ensure that all disbursements are properly recorded; and
- properly prepare the government's consolidated financial statements, including balancing the statements, accounting for substantial amounts of transactions between government entities, fully ensuring that the information in the consolidated financial statements is consistent with the underlying agency financial statements, and reconciling operating results with budget results.

GAO recommends that agencies accelerate the pace of their ongoing and planned efforts for financial management reform. 🗁