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Federal leaders fault GPRA

The Government Performance and Results Act (GPRA) has not yet come close to reaching its full potential for improving federal decisionmaking and strengthening performance and accountability, according to executive and congressional representatives who recently testified before the House Subcommittee on Government Efficiency. Speakers included Sean O'Keefe, Deputy Director of the Office of Management and Budget (OMB), J. Christopher Mihm, Director of Strategic Issues at the General Accounting Office (GAO), and Senator Fred Thompson (R-TN). All agreed that agencies' progress in implementing the Act has been disappointing, and that much work remains to instill effective performance management across all agencies.

Christopher Mihm explained that the key to meeting federal program goals and demands is for agencies to adopt a results orientation. Agencies need to develop a clear sense of the results they want to achieve, instead of just focusing on the actual products and services, Mihm said. He also noted that the government is entering a new, more difficult and important phase of GPRA implementation. Agencies are now faced with using results-oriented performance information on a routine basis as a part of their day-to-day management and for congressional and executive branch decisionmaking.

Senator Thompson concurred and added that despite a marginal improvement in agencies' fiscal year 2000 performance reports over those submitted for FY 1999, the reports are generally unacceptable. According to Thompson, the performance reports

- do not assess agencies' performance;
- do not compare programs across the government;
- contain poor or inadequate data on performance; and
- show an unwillingness among agencies to set goals to resolve long-standing problems in programs.

Sean O'Keefe reinforced Thompson's concerns and emphasized that the Bush Administration is taking steps to initiate a greater focus on performance. Beginning in FY 2003, the budget will integrate performance measures. OMB plans to work with agencies to select outcomes for a few important programs, along with targeted outputs, cost, and overall improvement. OMB also has begun to

- use workforce planning to anticipate critical skills;
- reduce organizational layers;

- realign staff for better service delivery;
- reward employees for achieving results;
- improve the reliability, usefulness, and timeliness of financial reports; and
- make greater use of performance-based contracts.

Thompson commended OMB's decision to prioritize the improvement of federal performance.

Senators confront agencies on improper payments

Late last month, Senate Governmental Affairs Committee Chairman Joe Lieberman (D-CT) and Ranking Member Fred Thompson (R-TN) sent letters to all 24 Chief Financial Officers (CFO) Act agencies asking what steps they are taking to reduce improper payments. According to the Senators' letter, federal agencies are making billions of dollars worth of improper payments each year.

"We are confident you agree that administration of government funds is an essential public trust and that agencies have a clear duty to ensure that this money is properly spent in support of the agency's missions and goals," Lieberman and Thompson wrote. "Yet, the General Accounting Office (GAO) has reported that in fiscal years 1998 and 1999, agencies have made between $19.1 billion and $20.7 billion in improper payments."

The Senators cited GAO's finding that the payments stem from agency errors including duplicate payments, poor management of agency programs, or outright fraud and abuse by program participants or agency employees. The letter reinforced the fact that improper payments result in wasteful spending, ineffective government programs, and a higher relative tax burden.

To evaluate existing internal controls and improve payment strategies, Lieberman and Thompson asked agencies

- what they plan to do to create a culture of accountability that provides a positive and supportive attitude toward improvement and achievement of program goals;
- to what extent improper payments in the agency are the result of agency error, need for improved oversight and monitoring, inadequate eligibility controls, or fraud;
- how they will determine the nature and extent of the agency's improper payments;
- what agency efforts are underway to design and implement a plan for significantly reducing the amount of, and the potential for making, improper payments; and
- how they will track and report on their progress in reducing improper payments.

Agencies are expected to review the recent GAO report on improper payments *(see* Federal Financial Management News, *June 15, 2001, page 8)* and respond to the Senators' letter with input on the above questions. A complete copy of the letter is available online at *www.senate.gov/~gov_affairs/062601_letter1.htm.*

Events Calendar

11th Annual Government Financial Management Conference

When: August 7-9, 2001

Where: Hyatt Regency Bethesda, MD

Contact: 202.874.9560

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Appropriations Status

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (H.R. 2330): Voted out of the House Subcommittee on Agriculture on June 6 and voted out of the House Committee on Appropriations on June 13. No Senate bill has been introduced. No date has been scheduled for House floor debate.

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies: Voted out of the House Subcommittee on Commerce, Justice, State on June 27. No full-committee mark-up session has been scheduled at this time.

Energy, Water, and Development (H.R. 2311): Voted out of the House Subcommittee on Energy and Water on June 19 and voted out of the House Committee on Appropriations on June 25. Passed by the House on June 28. No Senate bill has been introduced.

Foreign Operations: Voted out of the House Subcommittee on Foreign Operations on June 27. No full-committee mark-up session has been scheduled at this time. No Senate bill has been introduced.

Department of Interior and Related Agencies (H.R. 2217): Voted out of the House Subcommittee on Interior on June 7 and the Senate Subcommittee on Interior on June 28. Voted out of the House Committee on Appropriations on June 13 and out of the Senate Committee on Appropriations on June 28. Passed by the House on June 28.

Department of Labor, Health and Human Services: No bill has been introduced.

Legislative Branch: No bill has been introduced.

Military Construction: No bill has been introduced.

National Security/Department of Defense: No bill has been introduced.

Department of Transportation (H.R. 2299): Voted out of the House Subcommittee on Transportation on June 11. Voted out of the House Committee on Appropriations on June 20. Passed by the House on June 26. No Senate bill has been introduced.

Department of Treasury and General Government: No bill has been introduced.

Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies: No bill has been introduced.

OPM tells how telework works

The Office of Personnel Management (OPM) has recently determined that it takes a combination of open-minded managers, motivated employees, and clear expectations to successfully implement federal telecommuting programs. OPM's findings emerged as a result of a study of several government employees who have had success at telecommuting.

OPM undertook the study to showcase examples of positive telecommuting experiences within the government and to encourage an expansion of the practice. According to the report, employees do not always require a traditional office setting – they are generally more interested in work flexibility than stability. Those changing values, along with the growth of technology and environmental concerns about conserving energy and reducing traffic congestion make telework a necessary and viable option in the federal workplace.

Ten years ago, the President's Council on Management and Improvement, along with OPM and the General Services Administration (GSA), co-sponsored the first telecommuting initiative, called "Flexiplace." Flexiplace was a pilot that allowed federal employees to occasionally work outside the office – either at home, or in a telecenter to avoid excessively long commutes.

Most agencies currently utilize some type of telework program, usually allowing employees to work at least one full day per week outside the office. In addition, many agencies use episodic arrangements, where employees can work from home temporarily while recovering from illnesses or injuries, or while completing certain assignments, the report noted.

In its research for the report, OPM surveyed regularly-scheduled teleworkers as well as their supervisors, recording anecdotes of telecommuting experiences. Overall, employees and supervisors

- believed that productivity had increased as a result of teleworking, attributing the increase to having uninterrupted time to read and think;
- found that telecommuters felt more relaxed and less tense as a result of not having to commute one or two days a week;
- agreed that avoiding the commute gave telecommuters more time to be with their families, run errands, or go to doctor's appointments, and made a significant difference in their quality of life;
- experienced no limitation of electronic access to email and information;
- felt that it was worth the investment to pay for equipment, computers, or phone lines in order to work outside the office; and
- found that they had to work harder to maintain relationships with coworkers while away from the office.

The key to a successful telework experience, OPM found, is the willingness of supervisors to step away from the longstanding, traditional workplace model, where the office is the center of the work experience. Also, employees must be motivated and self-starting to be able to work independently to achieve agencies' missions and goals.

A complete copy of OPM's survey is available at *www.opm.gov/studies/index/htm.*

Decisions

Accountable officers are found not liable

RULE: *GAO must settle accounts of accountable officers within 3 years after the date the loss, if caused by embezzlement, fraud, or other criminal activity, is discovered.*

B-287043

As a general rule, accountable officers can be held personally liable for improper payments. The General Accounting Office (GAO) may relieve any financial responsibility if certain conditions are met. How those standards are applied and the statute of limitations for liability was recently reviewed by GAO.

Two employees of the General Services Office (GSO) at the American Embassy in Harare, Zimbabwe, colluded with a vendor to falsify a substantial number of petty cash receipts between January 1996 and February 1998. The total amount of improper payments was $5,000.

For the 25 months in question, the employees repeatedly submitted inflated purchase requests to the GSO for approval and then to the cashier for an advance payment. On each occasion, the vendor agreed to sell a low-cost item for fewer items than specified in the purchase request to the employees and only complete the vendor's copy of the receipt. The original receipt, given to the GSO employees, was left blank for the employees to complete with a higher price and quantity than paid to the vendor. After the facilities maintenance supervisor approved the invoices, the employees submitted the original copies of the receipts, which they had altered, to the post cashier.

The petty cash procedures at the embassy consisted of the following steps: (1) an employee general received a cash advance from the cashier based on the approval of a purchase request by the General Services Officer; (2) the employee would purchase the goods; (3) the employee would present the invoice to the facilities maintenance supervisor who would sign it as the receiving officer (the embassy's procedures did not require that the receiving officer visually ascertain that the goods had been received prior to approval of the invoice; (4) the employee presented the invoice to the Class B cashier; (5) the cashier batched the invoices on which he or she had made payments and provided the batch to the certifying officer for signature, and the certifying officer's signature authorized a payment to reimburse the cashier's imprest fund.

The employees' fraudulent activities were discovered when the facilities maintenance supervisor saw a stock of security lights in the warehouse and remembered that he had recently signed a petty cash receipt for the purchase of the same type of lights. The employees had claimed that the warehouse was out of stock.

The regional security office conducted an investigation and found that 125 altered receipts had been submitted to the approving officer and then to the Class B cashier. Both employees admitted to falsifying the receipts. The embassy reported the fraud to the local police and requested that theft charges be filed against the two.

The Department of State (DOS) requested an opinion from GAO on whether the certifying officers and cashier involved with the case should be held liable for the improper payments.

GAO found that all the accountable officers involved were not liable. According to Volume II, Chapter 9, Section (B)(2)(a) of the *Principles of Federal Appropriations Law*, certifying officers are responsible for the legality of proposed payments, and are liable for the amount of illegal or improper payments resulting from their certifications. GAO noted, however, that it has the authority under section 3528(b) of Title 31 of the U.S. Code to relieve certifying officers from liability where "certification was based on official records and the official did not know, and by reasonable diligence could not have discovered, the correct information."

Here, the certifying officers met this standard. They did not know of, and would not have been able to discover through reasonable efforts, the fraudulent activities of the employees. The officers relied on original receipts approved and received by the facilities maintenance supervisor.

GAO also found that the cashier as a disbursing officer should not be held liable for the deficiency resulting from the improper payments. It noted that 3528(c) of Title 31 authorizes it to relieve disbursing officers from liability for a deficiency resulting from an improper payment when the record indicates that agency personnel acted within the bounds of due care as established by applicable regulation and if there is no evidence of bad faith on the part of the accountable office. In the instant case, the embassy cashier had no reason to suspect that fraudulent receipts had presented for payment.

GAO emphasized, however, that even if the cashiers or the certifying officers had or should have had knowledge of the fraud, they could not be held liable for the payments because the disbursements had occurred more than 3 years previously. Section 3526(c) of Title 31 provides that the Comptroller General must settle an account of an "accountable official within 3 years after the date the Comptroller General receives the account." In general, the 3-year limitation begins to run when an agency's accounts are substantially complete for audit purposes, except for losses caused by embezzlement, fraud, or other criminal activity. In such cases, the 3-year period does not begin to run until the loss has been discovered and reported to the appropriate agency officials. In this case, the regional security officer who investigated the fraud reported it to the American Embassy in Harare on February 11, 1998. Therefore, the 3-year limitation for all accountable officers expired on February 10 of this year.

As a concluding note, GAO emphasized that the embassy's General Services Officer and the facilities maintenance supervisor could not be held liable for the payments since they are not accountable officers, i.e., they were not responsible for nor did they have custody of government funds. As a result, they could not be held personally liable for any negligent performance of their duties.

Subject: Relief of Accountable Officers – American Embassy, Harare, Zimbabwe, May 29, 2001.

Brooks Act does not permit future year charges to previous appropriations for contract actions

RULE: *The Brooks Act only permits subsequent interagency obligations to be charged to a previous year's appropriation without first deobligating the*

Employee Corner

Q: Must agencies pay employees voluntary separation incentive payments if funds are available but their internal policies do not require such payments be made?

A: No. *See Office of Personnel and Management, File Number 00-4245.*

After an employee had retired, he brought a claim seeking a voluntary separation incentive payment (VSIP) with OPM. He admitted that he signed a statement at the time of his retirement that he was voluntarily accepting an early retirement option without a buyout or a VSIP. However, he claimed that he signed the document only after his agency informed him that due to the lack of available funds, a VSIP would not be offered to him. He later learned that there were ample funds available for a VSIP. As a result, he filed claim for one.

OPM rejected his claim. It emphasized that the decision to grant a VSIP is at the sole discretion of an agency if the authority granted to an agency to permit voluntary early retirement does not require it to issue VSIPs or its internal policies do not require such payments.

excess. Contractual commitments must be fulfilled by the terms of the Economy Act.

B-286929

A central rule governing the use of appropriations funds is that obligated budget authority is available only to liquidate obligations incurred during the period for which appropriations is available. Recently, the General Accounting Office (GAO) issued an opinion on whether that rule is applicable for contractual actions under the Brooks Act.

In 1997, the Department of the Army Personnel Command (PERSCOM) entered into an agreement with the General Services Administration's (GSA's) Federal Systems Integration and Management Center (FEDSIM) to develop and implement a declassification information management system. The agreement was authorized by section 111 of the Brooks Act (P.L. 89-306). Section 757 of the statute permits GSA to enter into multiyear contracts for the provision of information technology software, software, or services for terms up to 5 years.

The agreement provided that the "existence of a defined requirement at the time the Basic Agreement is executed forms the basis for the incurring and recording of a financial obligation on the part of the client. This obligation remains in force across fiscal year boundaries until the specified services are delivered or the Agreement is rescinded. The funds so obligated by the [PERSCOM] do not have to be deobligated at the end of a fiscal year." The agreement explained that the terms of the agreement were possible because FEDSIM derives its financing from the Information Technology Fund which is a revolving fund established under the authority of the Brooks Act as amended by the Paperwork Reduction Reauthorization Act. Therefore, payments for FEDSIM services under the agreement would be governed by the Brooks Act rather than the Economy Act. Such a finding was consistent with GAO's decision in *B-186535, Matter of: Interagency Agreement – Administrative Office of the U.S. Courts*.

The agreement called for a 3-phase project. However, only the first phase was addressed in the agreement while providing that phases two and three would be addressed upon the completion of the first phase.

PERSCOM obligated $17.5 million of fiscal year 1997 funds to the agreed-upon work under phase one. FEDSIM completed the work in May 1998 at a cost of $8.5 million. Despite the language of the initial agreement, PERSCOM, was uncertain whether it could obligate and charge payments to the expired FY 1997 appropriation. It requested an opinion from GAO.

GAO found it could not. It emphasized that obligated authority is available only to liquidate liabilities legally incurred during the period for which the appropriation is available. If any agency, however, has obligated more funds than needed for a project, it should deobligate the excess amount during the availability of the appropriation. If an agency does so, the funds would be available to support new obligations. Otherwise, the funds could not be used for that purpose, although the unobligated balance would be available for up to 5 years to cover appropriate adjustments in an expired account.

Although the PERSCOM agreement with FEDSIM was authorized by the Brooks Act, the statute only permits subsequent interagency obligations to be charged to a previous year's appropriation without first deobligating any excess. However, all contractual commitments must be fulfilled by the terms of the Economy Act.

In the instant case, the PERSCOM had entered into a contract with FEDSIM for the provision of

Tom's Corner

Q: Where can I find out about antecedent liability?

A: It's mentioned on pages 5-32 through 5-34 of *Principles of Federal Appropriations Law*. It has to do with upward contract price adjustments. The general approach is to ask whether the adjustment arises and is enforceable under a provision in the original contract.

If yes, any increase in price is charged to the year of the original agreement. The thinking is that the obligation was there all along; we just didn't know it then.

The last paragraph on page 5-33, however, mentions a sort of exception. When the original contract is of the cost reimbursement type, and it includes a limitation of funds clause, any change by the government contracting officer in a later year is charged to that later year after the change causes the price to exceed the original ceiling.

Final overhead over the ceiling is charged back to the original year when the contractor had an enforceable right to those overhead amounts.

services. Therefore, the authority to charge future obligations to a previous year's appropriation was not available to PERSCOM. Consequently, once it liquidated its obligation, the remaining balance was not available to enter into a new obligation after the account expired.

PERSCOM argued in response that Phases two and three should then be considered bona fide needs of FY 1997, and as a result, the expired budget authority should remain available. GAO again disagreed. It noted that the bona fide needs rule provides that the balance of a fixed-term appropriation is available only for payment of expenses properly made within that period. *See 31 U.S.C. § 1502(a).* GAO had previously interpreted that provision to mean that an "agency may validly obligate an appropriation only to meet a legitimate need existing during the period of availability." *See 73 Comp. Gen. 7, 79 (1994); and 65 Comp. Gen. 741, 743 (1986).*

Given this interpretation, PERSCOM did not take appropriate action to satisfy phases two and three as bona fide needs since it failed to contract for the additional phases during the appropriation's period of availability. GAO emphasized that "nothing in the bona fide need rule suggests that expired appropriations may be used for a project for which a valid obligation was not incurred prior to expiration merely because there was a need for that project during the period."

As a final note, GAO advised PERSCOM that its opinion does not prevent the agency from entering into a new agreement for the remainder of the project using current year funds, assuming it has sufficient budget authority for that purpose.

Matter of: Continued Availability of Expired Appropriation for Additional Project Phases, April 25, 2001.

Belief or assumptions about lodging availability is not sufficient to qualify for AEA

RULE: *Employees must provide sufficient data about the lack of alternative lodging to qualify for AEA.*

GSBCA 15428-TRAV

Federal employees are entitled to lodging reimbursement while on official travel. The regulations governing federal travel contain detailed tables of per diem rates specifying the maximum reimbursement that employees may receive. While an employee may stay at a hotel that exceeds the maximum rate, he/she will only be reimbursed up to the maximum per diem amount, except for limited circumstances. How an employee may qualify for reimbursement above the maximum rate is often decided on a case-by-case basis, as is demonstrated by the following case.

Dr. John Castellani, a research physiologist for the Army Medical Command, was authorized to attend a scientific conference in Indianapolis, IN. He and an office colleague, who also intended to attend the conference, arranged to share a room at the hotel hosting the event in order to reduce the overall expenses that would be charged to the government. The room cost $149 which the Medical Command employees planned to split.

A day before the conference began, Dr. Castellani learned that his colleague would be delayed by a day. He believed that locating lodging within the per diem rate would likely be impossible at the last minute. In addition, he thought staying at the hotel would be more in keeping with the government's purpose in sending him to the conference since it would permit him to interact with his fellow scientists. As a result, he did not try to locate alternative lodging for the night and instead paid the full charge for the room.

Upon returning, he submitted a voucher for his expenses. The Army Medical Command reimbursed his costs except for his actual lodging cost of $149 for the first day at the conference. Instead, it limited reimbursement to $65 — the maximum allowable lodging rate for Indianapolis.

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

The Board denied the appeal. It noted that the Joint Travel Regulations (JTR) provides that reimbursement for lodging expenses may not exceed actual lodging costs up to the applicable maximum per diem amount for the area. *See JTR C4553-C.1.* GSBCA recognized, however, that the regulation contains provisions which permit employees to receive reimbursement for actual expenses in excess of the per diem rates normally applied to lodgings-plus per diem. This form of per idem is referred to as "actual expense allowance" (AEA). AEA is authorized when, owing to extraordinary circumstances, the actual and necessary expenses of an employee exceed the normally allowable maximums for per diem allowance. *See JTR C4600.*

The Board emphasized, however, that even under the AEA method there are limits. Moreover, the award of AEA reimbursement should not be made lightly. Requests are generally made before travel is performed, and all requests must be well documented as to the pertinent facts and reasons why the normal per diem allowances are not sufficient.

Here, Castellani's circumstances did not meet the strict standards for receiving AEA. Castellani did not provide any evidence that no other lodgings were available at or below the maximum per diem rate. Rather, he only "believed" that finding a room at the last minute would be impossible. According to the Board, an employee's "belief" or "assumption" is not sufficient evidence to qualify for additional reimbursement.

In the Matter of John W. Castellani, June 28, 2001. 🗁

Reports & Testimony

JFMIP revises core financial system requirements

The Joint Financial Management Improvement Program (JFMIP) has issued an update to its report on core financial system requirements.

The document is intended to assist agencies in reviewing new core financial systems and improving or evaluating existing commercially based, core financial software.

New additions include:

- mandatory and value-added requirements, along with the technical requirements;
- a more logical numbering scheme;
- expanded, mandatory revolving fund requirements;
- mandatory ad hoc reporting requirements;
- requirements that state "automatically," for those requirements that the system must meet without manual intervention;
- mandatory technical requirements allowing system changes only by "authorized users;"
- a value-added, automated method to reclassify accounting data; and
- a glossary.

JFMIP is accepting comments on the update until August 20, 2001. Send comments in Microsoft Word format, if possible, with responses in red text, to Joint Financial Management Improvement Program, Suite 430, 1990 K Street NW, Washington, DC 20006, Attn: Core Financial System Requirements, Steve Balsam.

A complete copy of the report is available online at *www.jfmip.gov/jfmip/roadmap.htm*. 🗁