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Thompson's report highlights federal financial waste

On his final day as Chairman of the Senate Governmental Affairs Committee, Senator Fred Thompson (R-TN) issued a comprehensive report on ongoing mismanagement within the federal government. The report discusses financial management issues, in addition to workforce management, information technology management, and overlap and duplication.

According to the report, most agencies are woefully unable to account for the amount of appropriated funds currently available to them or what their appropriations have been used to purchase.

Several agencies were singled out by the report. For example, the report noted that the

- Department of Defense (DoD) made about 14.8 million purchases in 1999, worth approximately \$140 billion, but most agency officials were unable to account what they bought or whether they even needed what they purchased;
- Department of the Navy recently wrote off more than \$3 billion in inventory as "lost in transit," even though it had no record of the property. As a result, the service made several unnecessary purchases;
- Internal Revenue Service (IRS) has been unable to calculate how much it actually collects in Social Security and Medicare taxes. As a result, it allocates money to the programs based on an estimate from the Treasury;
- Department of Education (Ed) reported in its financial statements that it had \$7.5 billion in the bank, when it actually owed that amount to the Treasury;
- Department of Agriculture (USDA) was unable to account for \$5 billion of receipts and expenditures since it was uncertain whom it was collected from, where it had gone, or to whom it was owed; and
- Department of Housing and Urban Development (HUD) made over \$900 million in erroneous payments to subsidize low income housing during 1999, but at the same time did not spend the \$151 million specifically allocated to public housing.

The report emphasized that it is virtually impossible to pinpoint the source of the government's financial management weaknesses. As a result, the report recommends that

- agencies should better train their employees on good financial management practices;
- agencies must stop investing exorbitant amounts of money in financial management systems that do not work; and
- financial accounting systems should be designed to provide managers with information to assess the quality and efficiency of their work. ☐

Bush says that FY 2001 appropriations will not sustain basic government operations

Earlier this month, the President submitted \$6.5 billion in supplemental spending requests to Congress for fiscal year 2001. The request was made to ensure that there are sufficient funds to meet routine government operations. The shortfall exists, according to Mitch Daniels, Director of the Office of Management and Budget (OMB) due to the totals contained in the preliminary budget for FY 2001 prepared by the Clinton Administration.

Bush requested that Congress pass the supplemental spending measure by July 4.

Eleven agencies would benefit from the supplemental funding. The list of agencies includes

- Department of Agriculture (USDA);
- Department of Defense (DoD), including the Army Corps of Engineers;
- Department of Energy (DOE);
- Department of Health and Human Services (HHS);
- Department of Housing and Urban Development (HUD);
- Department of the Interior (DOI);
- Department of Transportation (DOT);
- Department of Treasury;
- Department of Veterans Affairs (VA);
- International Assistance Programs; and
- National Aeronautics and Space Administration (NASA).

President Bush noted that the supplemental request is primarily for defense activities such as pay, support, training, and quality of life for military personnel. "It is imperative to reverse the pattern of under-funding these costs in the annual appropriations measure," the President wrote to Congress. Daniels added that the additional money is needed to maintain critical operations for the rest of the fiscal year. "The new funds will also help low-income people with rising energy costs, protect against foot and mouth disease, enhance security for the Salt Lake City Winter Olympics, and increase energy efficiency at the Government Printing Office," he said.

The proposed supplements are within the statutory limits for discretionary spending that Congress established last year, and according to Daniels, OMB will not recommend that the President sign a bill to provide discretionary spending above the current spending caps.

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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Tom's Corner Writer

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OMB helps agencies improve financial statements

The Office of Management and Budget (OMB) has issued new guidelines aimed at helping agencies produce timely, useful, and reliable financial statements. According to Joseph Kull, OMB Deputy Controller, agencies must improve their financial information to make effective operating, budget, and policy decisions.

Despite the fact that three-quarters of federal agencies received unqualified audit opinions on their fiscal year 2000 statements, there is still room for improvement, Kull said. "Good financial management is more than just producing financial statements once a year," he noted. OMB does realize, however, that meeting its financial management goals will take time. Toward that end, the guide listed the following intermediate steps for agencies to take:

(1) Improve timeliness. Agencies need to close their books more quickly and prepare their statements closer to the end of the reporting period. Agencies must

- submit unaudited interim financial statements, beginning with FY 2002. For the 6-month period ending March 31, 2002, unaudited financial statements must be submitted to OMB by May 31, 2002. In FY 2003, agencies will be required to submit unaudited financial statements on a quarterly basis, due December 31, March 31, and June 30; and
- submit annual financial statements and accountability reports to OMB and Congress by February 27, 2002. For annual reports beginning with FY 2002, the deadline for submission will be February 1 of the following fiscal year. Accelerating the deadline will make the accountability reports available before the President sends the budget to Congress.

(2) Enhance usefulness. Financial statements should compare like information from period to period to integrate with other reporting requirements and identify trends. Agencies are required to

- prepare comparative financial statements, beginning in FY 2001. Comparative reporting is also required in the interim financial statements that must be submitted in FY 2002; and
- prepare integrated accountability reports that compare performance between years, beginning in FY 2002 and going forward.

(3) Ensure reliability. Agencies must receive unqualified audit opinions in order to assure the reliability of their financial statements. To improve reliability, agencies should

- earn "clean" audit opinions on all civilian agency financial statements no later than FY 2003, and governmentwide by FY 2005; and
- undergo annual audits of all major agency component units, beginning in FY 2003. This information will improve the reliability of agency component data, and facilitate production of governmentwide financial statements.

In addition to the above steps, OMB is requiring agencies to modify the form and content of the financial statements by

- linking the Statement of Budgetary Resources with the President's Budget;
- providing additional explanatory guidance for the preparation of both the Statement of Budgetary Resources and the Statement of Financing;
- consistently formatting related information contained in different statements, to establish their relationship; and
- referring to the updated Federal Accounting Standards Advisory Board (FASAB) bulletin for revised financial reporting and disclosure requirements.

OMB is reminding agencies that Chief Financial Officers (CFOs) and Inspectors General (IGs) are responsible for providing the Department of the Treasury with timely and accurate information in order to produce annual governmentwide financial statements.

A complete copy of OMB's guidance is available online at www.whitehouse.gov/OMB/financial. ☐

Congressman finds that DoD's poor financial management affects the entire government

The Department of Defense (DoD) has not properly accounted for the billions of dollars it spends each year, and is effectively tarnishing the record of the entire executive branch, according to recent testimony from Congressman Stephen Horn (R-Calif.), Chairman of the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations.

DoD spent \$397 billion in fiscal year 2000 – 16 percent of total federal spending. Despite the enormous budget, however, DoD's inspector general has been unable to render an opinion on the reliability of the department's financial statements. In addition, the agency recently received its fifth consecutive "F" on the federal financial management report card prepared by Congressman Horn's subcommittee.

According to Gregory D. Kutz, Director for Defense, State, and NASA Financial Management at GAO, changing security threats, increased globalization, and rapid technological advances make it more challenging for the agency to ensure accountability. "Each Defense dollar that is spent inefficiently is a dollar that is unavailable to meet other departmental priorities or to meet other governmentwide needs," Kutz said.

Kutz cited the following longstanding financial management weaknesses at DoD:

- ➔ **Budget execution accounting** – DoD was unable to reconcile an approximately \$3.5 billion difference between its available fund balances between its records and Treasury's at the end of FY 2000;
- ➔ **Environmental and disposal liabilities** – DoD reported environmental and disposal liabilities of \$34 billion in FY 1998, \$80 billion in FY 1999, and \$63 billion in FY 2000, but excluded from those amounts billions in future liabilities associated with non-nuclear weapons; conventional munitions; training ranges; and other property, plant and equipment;
- ➔ **Asset accountability** – DoD has continued to experience problems with properly accounting for and reporting on its weapons systems and support equipment;
- ➔ **Unreliable net cost information** – DoD does not yet have the systems and processes in place to capture the required cost information from the hundreds of millions of transactions it processes each year; and
- ➔ **Financial management systems** – DoD lacks integrated, transaction-driven double entry accounting systems that are necessary to properly control assets and costs.

Kutz noted that it will be tough work to change how DoD carries out its financial management operations. He said that going forward, the department should

- address its financial management challenges as part of a comprehensive, integrated, DoD-wide process reform;

- provide for active leadership by the Secretary of Defense and resource control to implement needed financial management reforms;
- establish clear lines of responsibility, authority, and accountability for such reform tied to the Secretary;
- incorporate results-oriented performance measures tied to financial management reforms;
- provide appropriate incentives or consequences for action or inaction;
- establish an enterprisewide architecture to guide and direct financial management modernization investments; and
- ensure effective oversight and monitoring.

Lawrence J. Lanzillotta, Principal Deputy and Deputy Undersecretary for Management Reform at DoD, responded to this report that financial management reform is a top priority for Secretary Rumsfeld. The new secretary has already initiated a study of DoD's financial operations, and has begun assembling a senior leadership team to implement the needed reforms.

MSPB releases survey results

The Merit Systems Protection Board recently released the results of its annual federal job satisfaction survey. The Board found that federal employee satisfaction is at its lowest point in 12 years.

According to MSPB, the results do not prove that federal employees are so dissatisfied that they are ready to leave, but they should be examined in light of the impending human capital crisis in the federal government. "[It] adds a bit of fuel to the fire of concern about the possibility of personnel losses hampering agency mission accomplishment," MSPB noted.

Percent of federal employees who agreed with the statement "In general I am satisfied with my job"

Year	Percentage
1989	70
1992	72
1996	71
2000	67

Source: Merit Principles Surveys 2000, 1996, 1992, 1989

Decisions

Employees must prove TQSE amounts are reasonable if they chose to stay with relatives

RULE: Employees must prove the reasonableness of the lodging costs they incur before agencies will reimburse TQSE, if an employee chooses to stay with a relative or friend.

GSBCA 15498-RELO

Employees relocated to new permanent duty stations for the benefit of the government may be entitled to temporary quarters subsistence expenses (TQSE). Agencies, however, are not required to reimburse any or all costs submitted by an employee. Instead, employees must provide sufficient evidence of the reasonableness of the costs they incurred if they decide to stay with relatives or friends as is demonstrated by the following case.

Robert Laghaie, an employee of the Department of Veterans Affairs (VA), was transferred to Coatesville VA Medical Center in Coatesville, PA. He was authorized 120 days TQSE.

For the first week, Laghaie occupied temporary quarters at the home of his wife's relatives which owned a house in Philadelphia—a furnished 3 bedroom house with a dining and family room, kitchen, 3 bath, and 2 car garage. Laghaie signed a 120 day lease to rent the home for \$2,400 a month. His wife's relatives agreed to pay all utilities.

Laghaie occupied the premises from August 16 to November 29. He paid \$1,200 every 2 weeks except for the last week in November 1998 in which he paid \$1,600. All payments were in cash. Laghaie received handwritten receipts for each payment.

Laghaie submitted the handwritten receipts for reimbursement. VA refused to reimburse him the total amount. The agency informed him that it would only pay for the costs of meals and coin laundry service. It advised him the amount he claimed for TQSE was unreasonable in the circumstances.

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

The Board denied his appeal. It noted that the section 302-5.100 of the Federal Travel Regulation (FTR) provides that agencies must “pay the employee's actual TQSE incurred, if the expenses are reasonable and do not exceed the maximum allow-

ance amount.” In assessing whether Laghaie's costs were reasonable, the VA referred to section 301-11.12 of the FTR. The section addresses lodging with friends or relatives while on temporary duty (TDY) and provides lodging costs incurred while staying with “such individuals is subject to special scrutiny because the rates are generally not set through an arm's-length business relationship.”

Although section 301-11.12 does not explicitly apply to relocation benefits, the Board emphasized that it has previously found that the section's rationale is applicable in such circumstances. As a result, the burden was on Laghaie to demonstrate the reasonableness of the charges he incurred. Laghaie, however, only provided evidence of the actual costs his relatives charged him and not whether the amount was reasonable.

Employee Corner

Q: May employees file claims for living quarters allowance more than 6 years after the expense arose?

A: No. See *Office of Personnel Management, File Number 00-0029, October 6, 2000.*

In the case, an employee requested the Office of Personnel Management (OPM) to reimburse him living quarters allowance for the period from July 27, 1969, through March 31, 1973. The claim was filed on June 1, 2001.

Since the employing agency had not reviewed the claim, OPM forwarded it for review. The agency denied the request.

The employee next requested a review from the OPM's Office of Merit Systems Oversight and Effectiveness, which is responsible for adjudicating compensation claims that are denied by the employing agency. That office denied the claim as well.

It emphasized that the Barring Act, 31 U.S.C. § 3721(b)(1), prohibits claims against the United States unless it is received within 6 years after the date the claim arose. Here, the claim arose more than 30 years previously and had been barred for nearly 21 years. OPM noted that it lacked the authority to disregard, make exceptions, or waive the time limitation provisions of the statute.

Reminder... bankruptcy is a defense to travel debt

Joseph Worthington, a civilian employee of the Department of Agriculture (USDA), received relocation benefits as a result of an official transfer. USDA informed him that he had received funds in excess to which he was entitled. As a result, he directed him to return a portion of the funds originally issued him. Worthington informed USDA that he had filed for bankruptcy. Therefore, any debt he owed the agency had been discharged.

The General Services Board of Contract Appeals agreed.

He offered no evidence that the rent charged was consistent with that charged for similar property in the area. In addition, he did not indicate whether his relatives had rented the property previously to other business travelers or commercial customers.

As a concluding note, the Board reminded VA that Laghaie may be eligible for a fixed amount of TQSE reimbursement for up to 30 days of occupancy of temporary quarters. *See FTR 302-5.C.* This would reduce the overall amount TQSE Laghaie could receive, however, since the fixed amount method allows reimbursement for only 30 days of expenses whereas the actual TQSE method permits reimbursement for as many as 120 days.

In the Matter of Robert H. Laghaie, April 27, 2001. ☐

Agencies must pay employees the costs of computerized legal research

RULE: *Agencies may be required to pay additional fees or expenses that were originally disallowed if the law or controlling precedent changes while the dispute is pending on appeal before the Merit Systems Protection Board.*

Title 5 of the Code of Federal Regulation (CFR) permits employees to seek attorney fees for defending a claim on appeal. The number and types of expenses that may be recouped may be increased, however, if during the appeals process, the applicable rules change, as is demonstrated by the following case.

Gordon Seely, a civilian employee of the Department of the Army, applied for disability retirement under the Federal Employees' Retirement System (FERS) based on his medical condition of paranoid schizophrenia. The Office of

Personnel Management (OPM) initially issued a reconsideration decision that disallowed his application. An administrative judge eventually reversed that decision.

Following the conclusion of his case, Seely filed a motion for attorney fees, including the costs he incurred for conducting computerized legal research. An administrative judge found the payment of his fees were warranted, except for the expense of electronic legal research, "in the interest of justice because OPM knew or should have known from the record before it when it issued its reconsideration decision that it would not prevail on the merits." The judge awarded Seely \$33,789.13 for attorney costs.

Tom's Corner

Q: Under what authority could we buy giveaways for use at trade shows and similar events?

A: I can think of only 3 possibilities.

1. Discover some rather specific agency legal authority to give gifts. Consult your legal office, but be prepared to find nothing.
2. Use funds for "official reception and representation." This is a relatively small amount of money, usually in the thousands, specifically mentioned in most appropriation acts. There is not much of a definition of "representation," so giveaways could be included. But every dollar spent on trinkets is a dollar less for the for the agency head to spend on entertainment of visitors, so guess where this will lead.
3. Information. GAO appears to have 3 tests here. First, the agency must have legal authority to give out information. Second, there should be a connection between the item and the information. Finally, the item must be cheap. An example that probably meets all of the tests would be a refrigerator magnet to convey information about cold food storage.

A possible item to give away at a trade show would be a pen or pencil imprinted with the agency's information and telephone number. But don't even think about frisbees. Auditors hate to see gifts distributed, so consider just giving away generic business cards or stickers to put on telephones.

Seely appealed the decision to the Merit Systems Protection Board (MSPB). He claimed that he should also be awarded an additional \$129.33 for the expense of computerized research.

The Board agreed. It noted that it only reopen a case resolved by an administrative judge if reaching the right result outweighs the desirability for not disturbing the final decision. The Board recognized that it had previously found that reconsideration is appropriate where there is clear and material legal error and a conflict between the final decision issued and a controlling precedent because of a change in the controlling law between the date of the original decision and the reopening request.

Here, the administrative judge's denial of Seely's request for reimbursement of electronic legal research was correct when originally issued. However, BEFORE the request for reconsideration was filed, the MSPB had changed its position on the issue. *See Thomas v. U.S. Postal Service*, 87 M.S.P.R. 331 (2000). Therefore, on appeal, the Board recognized that it was obligated to follow its newly set precedent and reverse the lower administrative judge's ruling.

It ordered the Army to pay additional legal costs within 20 days.

Gordon E. Seely v. Office of Personnel Management, Docket Number BN-844E-99-0173-A-1, May 16, 2001. ☞

Lessons Learned

Late last month, the Department of Defense Inspector General (DoDIG) completed an investigation of a government contractor, Michael Holloway, owner and operator of MJB Mobile Auto Service Center (MJB), in Inglewood, CA. Holloway had been providing auto repair services to several federal agencies, such as changing oil, tire rotation, front and rear brakes replacement, and resurfacing brake rotors.

Based on the IG's report, the Department of Justice (DOJ) has charged Holloway with 6 counts of allegedly making false claims to the federal government. Specifically, DOJ has alleged that Holloway established multiple vendor accounts with the General Services Administration (GSA)—the federal agency that leases vehicles to DoD. In addition, the information (similar to an indictment) against Holloway alleges that he forged the names of government officials authorizing and accepting work performed on government vehicles. Using various vendor numbers, Holloway allegedly submitted invoices for unnecessary repairs and services for which he had already received payment. He also allegedly submitted multiple invoices for the same service on the same vehicle and also submitted invoices for services that were not rendered. In total, Holloway submitted invoices to the GSA for over \$150,000 during a 4-year period.

If convicted Holloway faces a maximum sentence of 30 years in prison and a \$1.5 million fine.

Given the facts, the *Federal Financial Management News* pondered what recourse DoD

should take regarding any payments the agency made to Holloway.

Answer: DoD not only may, but it has a duty to attempt to recover the funds paid on the false claims. *See Principles of Federal Appropriations Law* page 13-7. The criminal fine Holloway faces if convicted may not be recouped by DoD; however, regardless of whether a criminal fine is imposed, Holloway remains civilly liable for the illegal payments he received. Therefore, DoD may initiate a civil action against him. The False Claims Act, 31 U.S.C. § 3729, authorizes the government to recover a civil penalty of \$5,000 to \$10,000, plus 2 or 3 times the amount of damages that the government sustained because of false or fraudulent claims.

DoD may keep any funds it collects up to the total of the original payments plus any legal or administrative costs it incurred in initiating the collection action. Any amounts in excess of this total must be deposited with the Department of the Treasury as miscellaneous receipts, unless DoD has specific statutory authority to retain the funds. For DoD to retain the excess funds would amount to an illegal augmentation of its appropriations. *See B-281064, Tennessee Valley Authority—False Claims Act Recoveries, February 14, 2000, for a discussion of double and treble damages recovered under the False Claims Act.*

If DoD has a one-year appropriation, the money collected may only be used for the year it was paid out. The agency would be required to credit back amounts recovered to the years in which the payments on the false claims were made. DoD could only use the funds for obligation adjustments in the appropriate prior fiscal years, such as offsetting cost overruns.

Reports & Testimony

GAO offers strategies to prevent improper payments

Improper payments in federal programs indicate that the government is either spending too much, serving too few recipients, or accomplishing less than planned, according to a recent exposure draft from the General Accounting Office (GAO) – GAO-01-703G. GAO has outlined internal control actions to reduce the amount of money agencies misspend each year.

(1) To create a control environment that instills a culture of accountability, agencies should:

- provide leadership in setting and maintaining an ethical code of conduct; and
- provide a cultural framework for managing risk by engaging the entire organization in the risk management process.

(2) To assess risk by determining the nature and extent of improper payments, agencies must:

- institute a systematic process to estimate how much money is being misspent; and
- determine where risks exist, what they are, and their impact on program operations.

(3) When taking action to address identified risks, GAO recommends that agencies:


- determine which types of control activities would be most effective, based on an analysis of specific risks facing the agency; and
- investigate the possibility of contracting activities out to firms that specialize in specific areas, where in-house expertise is not available.

(4) To effectively use and share knowledge to manage improper payments, agencies need to:

- determine what information is needed by managers to meet and support initiatives to reduce incorrect payments; and
- ensure that needed information is provided to managers in an accurate and timely manner.

(5) To track the success of improvement initiatives, agencies should:

- establish agency-specific goals and measures for reducing improper payments; and
- use baseline information to periodically monitor the progress in achieving the performance measures.

GAO invites agencies to review and comment on the draft by August 15, 2001. Send comments to Linda Calbom or Tom Broderick, Assistant Director, Financial Management and Assurance, U.S. General Accounting Office, 441 G Street, NW, Room 5085, Washington, DC 20548. 

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