
STATEMENT OF HON. BRIAN D. MILLER

INSPECTOR GENERAL

GENERAL SERVICES ADMINISTRATION

TO

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

APRIL 21, 2009



MADAME CHAIR, RANKING MEMBER COLLINS, DISTINGUISHED MEMBERS, LADIES AND GENTLEMEN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY, TODAY, ON IMPROVING THE ABILITY OF INSPECTORS GENERAL TO PREVENT AND UNCOVER CONTRACT FRAUD.

I WOULD LIKE TO THANK YOU, FIRST, FOR YOUR STRONG SUPPORT OF INSPECTORS GENERAL, AND ADD THAT I AM VERY ENCOURAGED BY CONGRESS HOLDING THIS HEARING, TODAY. INSPECTORS GENERAL SHARE YOUR STRONG COMMITMENT TO OVERSIGHT. SENATOR MCCASKILL, AS YOU HAVE NOTED RECENTLY, ACQUISITION OVERSIGHT IS LAGGING BEHIND GROWTH IN CONTRACTING. NOWHERE IS THAT MORE EVIDENT THAN AT GSA.

THE AMERICAN RECOVERY AND REINVESTMENT ACT BRINGS WITH IT A SHARP MANDATE TO MOVE QUICKLY IN ADDRESSING OUR NATION'S ECONOMIC PROBLEMS. DOING SO MEANS THAT TRADITIONAL OVERSIGHT METHODS MAY NEED TO BE MODIFIED, TO KEEP FROM UNDULY SLOWING DOWN THE WORK ENVISIONED BY THE RECOVERY ACT. SUGGESTIONS I WILL OFFER, TODAY, ARE MADE IN THE HOPE OF ENSURING PROPER OVERSIGHT, WHILE HELPING THE GOVERNMENT TO MOVE AHEAD AS QUICKLY AS POSSIBLE TO MEET THE NEEDS OF OUR CITIZENS.

AS VICE CHAIRMAN OF THE NATIONAL PROCUREMENT FRAUD TASK FORCE AND CO-CHAIR OF ITS LEGISLATION COMMITTEE, I WORKED WITH DHS IG RICK

SKINNER AND REPRESENTATIVES OF 18 OTHER IG'S TO FORMULATE AND COORDINATE THE TASK FORCE'S LEGISLATIVE WHITE PAPER. THE TASK FORCE STANDS AS AN EXCELLENT EXAMPLE OF IG COORDINATION. MORE RECENTLY, THE EFFORTS OF THE COUNCIL OF INSPECTORS GENERAL FOR INTEGRITY AND EFFICIENCY (CIGIE) AND THE RECOVERY AND TRANSPARENCY BOARD ARE AIMED, I BELIEVE, AT FURTHERING COORDINATION TO BRING THE OVERSIGHT COMMUNITY MORE CLOSELY TOGETHER AND BRING ADDITIONAL VALUE TO THE AMERICAN TAXPAYERS. I HAVE RECENTLY ASSIGNED ONE OF MY SENIOR STAFF TO THE RECOVERY AND TRANSPARENCY BOARD TO HELP COORDINATE INVESTIGATIONS AND LIAISON WITH THE U.S. DEPARTMENT OF JUSTICE.

AS YOU KNOW, SOME RECOMMENDATIONS FROM THE TASK FORCE'S WHITE PAPER HAVE ALREADY MADE IT INTO LEGISLATION, SUCH AS CONTRACTOR REPORTING REQUIREMENTS LEADING TO CHANGES IN THE FAR RULE, EXPANSION OF PFCRA, AND INCLUSION OF ELECTRONIC DATA IN IG SUBPOENAS. I THANK THE CONGRESS FOR SHOWING INTEREST IN HELPING IG'S IN THEIR IMPORANT TASKS. HOWEVER, OTHER RECOMMENDATIONS SHOULD STILL BE ADDRESSED. OTHERS ON TODAY'S AGENDA WILL ADDRESS SOME OF THOSE ISSUES.

I WOULD LIKE TO HIGHLIGHT FOUR NEW IDEAS THAT HAVE BEEN EVOLVING IN OUR DISCUSSIONS, AND WHICH I BELIEVE WILL HELP TO EXPEDITE OIG REVIEWS AND CONTROL FRAUD AND OTHER CRIMINAL ACTIVITY.

MY WRITTEN STATEMENT CONTAINS MORE DETAILED SUMMARIES AND PROPOSALS FOR ACCOMPLISHING EACH OF THESE CHANGES.

I CALL THE FIRST PROPOSAL "DON'T TIP OFF THE TARGET." BASIC INVESTIGATIVE TECHNIQUES INCLUDE NOT "TIPPING OFF" A SUBJECT ABOUT AN INVESTIGATION. PREMATURE DISCLOSURE CAN LEAD TO DESTRUCTION OF EVIDENCE, INTIMIDATION OF WITNESSES, OR FLIGHT. IT CAN ALSO PRECLUDE UNDERCOVER WORK AND PROVIDE AN OPPORTUNITY FOR THE SUBJECT TO MANIPULATE HIS FINANCES TO FRUSTRATE THE GOVERNMENT'S INTERESTS. AS AN ILLUSTRATION, TELLING SOMEONE LIKE BERNIE MADOFF THAT HE WAS UNDER INVESTIGATION WOULD ONLY GIVE HIM AN OPPORTUNITY TO HIDE OR TRANSFER ILL-GOTTEN GAINS BEFORE THE GOVERNMENT HAD AN OPPORTUNITY TO UNDERSTAND THE FULL EXTENT OF HIS CRIMES OR FREEZE HIS ASSETS.

CURRENTLY THE RIGHT TO FINANCIAL PRIVACY ACT REQUIRES INSPECTORS GENERAL (IG'S) TO NOTIFY SUBJECTS BEFORE THE IG CAN OBTAIN THE SUBJECT'S FINANCIAL RECORDS. THIS NOTICE REQUIREMENT CAN HARM THE INVESTIGATION AND CAUSE UNNECESSARY AND UNDUE DELAY. I ASK THAT

YOU TREAT INSPECTOR GENERAL SUBPOENAS THE SAME AS GRAND JURY SUBPOENAS, WHICH ARE EXEMPT FROM GIVING THE SUBJECT NOTICE.

SECOND, AS YOU KNOW, THE EXCLUDED PARTIES LIST SYSTEM (**EPLS**) MAINTAINED BY GSA IS A DATABASE OF SUSPENDED AND DEBARRED COMPANIES AND INDIVIDUALS. AS THE RECENT GAO REPORT ON **EPLS** HAS OUTLINED, PROBLEMS HAVE ARISEN WITH BOTH THE CONTENT AND USE OF **EPLS** DATA, LEADING TO POTENTIALLY LIFE-THREATENING RISKS, AS WHEN DEFECTIVE BULLETPROOF VESTS WERE PURCHASED BY THE GOVERNMENT FROM A COMPANY THAT WAS DEBARRED.

USA.SPENDING.GOV, MANAGED BY OMB AND HOSTED AT GSA, ALREADY CONTAINS A LISTING OF WHERE AND ON WHAT ENTITIES THE GOVERNMENT IS SPENDING ITS MONEY. ONE WOULD NOT EXPECT TO FIND THE SAME COMPANIES OR INDIVIDUALS ON BOTH **USASPENDING.GOV** AND **EPLS**. DISTURBINGLY, HOWEVER, THOSE INSTANCES WERE FOUND EASILY BY MY STAFF.

A SIMPLE ANNUAL OR PERIODIC REPORT TO CONGRESS ON THOSE INSTANCES IN WHICH ENTITIES APPEAR IN BOTH **USASPENDING.GOV** AND **EPLS** DATABASES WOULD HELP HIGHLIGHT THE CRITICAL NEED TO FULLY CHECK ON THE STATUS OF CONTRACTORS AND GRANTEEES BEFORE THE GOVERNMENT DOES BUSINESS WITH THEM.

MY THIRD PROPOSAL IS IN RESPONSE TO THE DECISION BY THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT IN *UNITED STATES V. SAFAVIAN*. THE D.C. CIRCUIT HELD THAT FEDERAL EMPLOYEES HAVE NO LEGAL DUTY TO DISCLOSE ALL MATERIAL FACTS WHEN THEY PROVIDE INFORMATION IN RESPONSE TO A DIRECT QUESTION FROM AN OIG SPECIAL AGENT. IN THE ABSENCE OF SUCH A LEGAL DUTY, SAFAVIAN COULD NOT BE CONVICTED CRIMINALLY OF CONCEALING INFORMATION WHEN HE PROVIDED HALF-TRUTHS TO A SPECIAL AGENT INTENDING TO MISLEAD THE SPECIAL AGENT.

MY FOURTH PROPOSAL IS TO RESTORE THE CONTRACT CLAUSE THAT ALLOWED GSA OIG TO DO DEFECTIVE PRICING REVIEWS WHEN THEY CONDUCT POST-AWARD AUDITS. PRIOR TO 1997, A GSA CONTRACT CLAUSE ALLOWED POST-AWARD AUDITS CONDUCTED AFTER A CONTRACT WAS AWARDED TO REVIEW WHETHER THE CONTRACTOR PROVIDED ACCURATE, CURRENT, AND COMPLETE PRICING INFORMATION TO OBTAIN THE CONTRACT. WHILE WE LOOK AT THE ACCURACY OF PRICING INFORMATION WHEN WE CONDUCT PRE-AWARD REVIEWS, WE DO NOT CONDUCT PRE-AWARD REVIEWS ON ALL CONTRACTS. ESSENTIALLY, THE REGULATIONS CURRENTLY PROVIDE THAT IF NO PRE-AWARD REVIEW IS DONE, THE CONTRACTOR GETS A FREE PASS AUDIT-WISE FROM ANY LOOK AT WHETHER THEIR PRICING INFORMATION WAS DEFECTIVE. THE QUI TAM LAWSUITS THAT HAVE BEEN BROUGHT SHOW THE CURRENT SCHEME IS NOT WORKING. FOR

EXAMPLE, A QUI TAM THAT SETTLED FOR \$98.5 MILLION WAS BASED ON ALLEGATIONS OF DEFECTIVE PRICING. JUST RECENTLY, A \$128 MILLION SETTLEMENT WITH A MAJOR INFORMATION TECHNOLOGY FIRM POINTS, AGAIN, TO THE NEED TO CONTROL PRICING ISSUES IN CONTRACTS. BOTH OF THOSE CASES INVOLVED CONDUCT THAT COULD NOT HAVE BEEN DISCOVERED IN A POST-AWARD AUDIT UNDER THE OIG'S CURRENT AUDIT AUTHORITY IN GSA'S CONTRACTS.

THANK YOU FOR YOUR ATTENTION. I ASK THAT MY STATEMENT AND WRITTEN MATERIALS BE MADE PART OF THE RECORD. I WOULD BE PLEASED TO RESPOND TO QUESTIONS FROM THE SUBCOMMITTEE.

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Statement of Hon. Brian D. Miller

Inspector General

General Services Administration

To

Ad Hoc Subcommittee on Contracting Oversight

Committee on Homeland Security and Governmental Affairs

United States Senate

April 21, 2009



Detailed Summaries and Legislative Proposals

1. **“Don’t Tip Off the Target” amendment to the Right to Financial Privacy Act (RFPA).**

The RFPA currently requires Inspectors General to provide notice to the subject of an investigation when issuing a subpoena for that person’s financial records, absent a court order delaying such notice for 90 days. Grand jury subpoenas, however, are exempt from this notice requirement. The requirement for notice to the subject prior to obtaining his financial records can be detrimental to an investigation in several ways.

- Providing notice to a target can provide him an opportunity to destroy or tamper with evidence, flee, or intimidate witnesses.
- Such premature disclosure also can prevent legitimate undercover work and make recovery of misspent funds more problematic. These financial transactions can be extremely complicated to trace and unravel, and advance notice can impede the government’s forfeiture and civil remedies that are designed to ensure the minimization of unlawful losses of federal dollars.

- The notice requirements also can cause undue delay. As an initial matter, if the Government does not know all the names on the account, the Government must issue a subpoena to the bank to identify the account holders. Then, after obtaining the identities of the account holders, the Government must issue another subpoena and comply with the notice provisions for each account holder. There is an additional minimum 15 day delay between sending the notice to the customer and obtaining the records, or a potentially longer delay if the Department of Justice decides to seek a court order delaying notice for 90 days. If the Department of Justice seeks a delay or the customer files a challenge in court, the law enforcement agency cannot obtain the records until the court issues a decision, a process that could take a significant amount of time during which the subject would be free to move assets and try to hamper the investigation.

The RFPA also requires notification to the subject within 14 days when records obtained under the RFPA are transferred to another agency, which would apparently include from an Inspector General to the Department of Justice in furtherance of a criminal investigation. We are aware of no other law that requires notifying the subject when records are transferred to a prosecuting authority

Because the target's privacy interests are already protected by existing law, we suggest that Congress consider giving Inspectors General the same exemption that grand jury subpoenas currently have such that an Inspector General does not have to notify a target when a subpoena for his financial records is issued.

PROPOSED LANGUAGE FOR "DON'T TIP OFF THE TARGET"

Amend 12 U.S.C. 3413(i) and 3420 to read as follows:

Title 12. Banks and Banking

§ 3413(i) Disclosure pursuant to issuance of subpoena or court order respecting grand jury proceeding or law enforcement investigation

Nothing in this chapter (except sections 3415 and 3420 of this title) shall apply to any subpoena or court order issued in connection with (1) proceedings before a grand jury or (2) a law enforcement investigation by an Inspector General pursuant to the Inspector General Act of 1978, as amended, except that a court shall have authority to order a financial institution, on which a grand jury or Inspector General subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury or in response to the IG Subpoena, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title.

§ 3420. Grand jury information; notification of certain persons prohibited

(a) Financial records about a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a Federal grand jury or by an Inspector General as part of a law enforcement investigation—

(1) in the case of a grand jury subpoena, shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records;

(2) in the case of a grand jury subpoena, shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure, or for a purpose authorized by section 3412 (a) of this title;

(3) in the case of an Inspector General subpoena, shall be used only for a legitimate law enforcement purpose, and any subsequent disclosure or transfer of records obtained pursuant to that subpoena to the Department of Justice shall be exempt from the provisions of section 3412(a) and (b) of this title;

(4) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraphs (2) or (3); and

(5) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury or by an Inspector General, unless such record has been used in the prosecution of a crime.

(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury or Inspector General subpoena served on such institution in connection with an investigation relating to a possible—

(A) crime against any financial institution or supervisory agency or crime involving a violation of the Controlled Substance Act [21 U.S.C. 801 et seq.], the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26; or

(B) conspiracy to commit such a crime, about the existence or contents of such subpoena, or information that has been furnished to the grand jury or Inspector General in response to such subpoena.

(2) Section 1818 of this title and section 1786 (k)(2) of this title shall apply to any violation of this subsection.

2. Annual or Semiannual Reports from OMB re: crosstabs of USASpending.gov and EPLS.

Agencies seeking to award contracts should be able to reference reliable information about organizations and individuals who are suspended or debarred from receiving Federal funds. A major data system aimed at providing that reference, the EPLS, remains a weak link, as the recent GAO report shows (Excluded Parties List System, GAO-09-174 (Feb. 2009)). Companies that have been suspended or debarred

sometimes do not appear on EPLS, and sometimes companies that do appear end up receiving additional funds from the Government. GAO inspectors were even able to purchase items from some debarred companies! The EPLS search engine is a bit cumbersome, as well, and only sophisticated questioners are successful in getting useful information from it. That sort of *caveat lector* environment may be partly to blame for the fact that some contracting officers don't even consult the database.

The risks of Federal funds continuing to go out to entities and individuals who have committed crimes and are suspended or debarred can sometimes be very large and life threatening, as the examples in the GAO report made clear. Testimony from the House Oversight and Government Reform Committee's March 2009 hearing tended to support the notion that both accurate data and frequent checking are essential to ensure that significant mistakes do not continue to occur.

We have shared with the House Committee on Oversight and Government Reform a description of a relatively simple "fix" that could begin to address some of the inadequacies of EPLS. That fix would be to create a requirement for an annual or semiannual report to the Congress on matches between the USASpending.gov website and the EPLS. USASpending.gov, created as a result of legislation sponsored originally by Senators Obama and Coburn, provides as comprehensive a database as currently exists for Federal contracts and grants. USA Spending.gov is managed by OMB and housed at GSA. GSA also houses and manages EPLS. Comparing the two databases should produce a list of any entities receiving current Federal assistance (in the form of a contract or a grant) that also are suspended or debarred by a Federal agency. So far as we know, that type of comparison is not, now, required to be performed.

A Congressional requirement for OMB to report periodically on those "hits" that are on both databases would: (1) communicate to agencies the importance of accuracy and completeness in submission of data to both USA Spending.gov and to EPLS; (2) remind GSA of the need to keep EPLS up to date and enter data timely; (3) provide an opportunity for agencies to explain how they could be giving Federal money to entities that are not supposed to be receiving it; and (4) assure the public that someone is watching more closely over their dollars.

That fix would be to create a requirement for an annual or semiannual report to the Congress on matches between the USASpending.gov website and the EPLS.

PROPOSED LANGUAGE FOR EPLS/USASpending.gov REPORT

The Director, Office of Management and Budget, shall conduct an annual study to identify persons or entities listed on both (1) USASpending.gov as having a contract or grant during the previous calendar year and (2) the Excluded Parties List System as being suspended or debarred during the time period that such a contract or grant was in place. That study shall also address the circumstances surrounding any person or entity appearing on both data bases, including the amount of federal funds received while being listed on the Excluded Parties List System and the explanation for why those funds were expended. The Director shall submit a report containing the findings

from this study by January 31 of each calendar year, beginning in 2010, to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform.

3. Safavian “fix” – duty to disclose.

In *United States v. Safavian*, 528 F.3d 957 (D.C. Cir. 2008), the U.S. Court of Appeals for the D.C. Circuit held -- contrary to the position taken by the Department of Justice -- that federal employees have no duty to disclose all material facts when they provide information in response to questions from an OIG special agent. In the absence of such a duty, the failure to disclose is not a crime of concealment in violation of 18 U.S.C. § 1001(a)(1). Accordingly, the D.C. Circuit reversed Safavian’s concealment convictions on the basis that “there must be a legal duty to disclose in order” to prove “a concealment offense in violation of § 1001(a)(1).” *Safavian*, 528 F.3d at 964. The *Safavian* court found that neither the ethics standards nor any other current federal requirement created a legal duty to disclose the whole truth to an OIG special agent sufficient for a prosecution under § 1001(a)(1).

Specifically, the jury found that Safavian “concealed his assistance to Mr. [Jack] Abramoff in GSA-related activities.” *Safavian*, 528 F.3d at 962. Safavian also told half-truths to a GSA Special Agent in order to deceive him into believing that Safavian had fully reimbursed Jack Abramoff for a golf trip to Scotland, as well as a weekend visit to London, and that Abramoff was not doing business with GSA.

We support the position that federal employees who choose to provide information to OIG special agents must refrain from deliberately misleading OIG special agents by telling half-truths or from excluding information necessary to make that person’s statement accurate. It is anomalous, to say the least, that those who are entrusted with ensuring that the resources of the American people are spent prudently and honestly are immune from criminal sanction if they selectively provide information in order to deliberately deceive special agents in OIGs charged with overseeing the conduct of government programs and the expenditure of government resources.

PROPOSED LANGUAGE FOR THE “SAFAVIAN FIX”

OPTION 1: Add a new section 18 U.S.C. § 1041:

A similar result could easily be achieved here by adding a new section 18 U.S.C. § 1041:

(a) For the purposes of this chapter, the term “falsifies, conceals, or covers up by any trick, scheme, or device” includes the withholding by a federal employee of information he knows to be material when he provides related information in response to a law enforcement inquiry or a request for information by a committee or subcommittee of the United States Senate or House of Representatives.

(b) For purposes of this section,

(1) "Federal employee" means an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia.

(2) Law enforcement officer shall have the meaning provided in 18 U.S.C. § 115(c)(1).

(c) Nothing in this section creates a duty for a federal employee to disclose self-incriminating information.

OPTION 2: Revise 18 U.S.C. § 1519:

(a) Whoever knowingly

(1) alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case;

(2) or, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, withholds material information when he provides related information in response to a law enforcement inquiry, with the intent to impede, obstruct, or influence that inquiry,

shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Nothing in this section creates a duty for a federal employee to disclose self-incriminating information.

4. Reinstate audit rights for GSA OIG over negotiations with respect to pricing information in the GSA MAS Program.

We support the National Procurement Fraud Task Force recommendation to reinstate audit rights over pricing information in Multiple Awards Schedule post-award audits. Under the MAS program, GSA relies on vendor-supplied pricing information, rather than head-to-head competition, to achieve fair and reasonable pricing. The ability of GSA to negotiate prices commensurate with the Government's purchasing power is dependent on getting current, accurate and complete pricing data from vendors. Required contract provisions allow the government to recover funds when a contractor, in obtaining a contract, provides cost or pricing information that is not current, accurate, or complete ("defective pricing"). GSAR 552.215-72. This clause is based on the premise that the Government, to adequately protect its interests, is entitled to have the information it

needs to effectively negotiate a contract. However, in 1997 GSA removed from the contract clause the right to conduct post-award defective pricing audits. Defective pricing audits are allowed only with high-level approval and a finding of a likelihood of significant harm in the absence of such a review. GSAR 552.215-71.

Allowing post-award audits to look for defective pricing would significantly help protect the Government's interests, especially during these times of recovery. Prior to the 1997 change, the OIG could look for defective pricing as a normal step in post-award audits performed under the contract clause. In our view, the only truly adverse consequence to the contracting community was the discovery of numerous defective pricing incidents. In the three year period prior to the 1997 change, roughly 84% of post-award audits contained findings of defective pricing. Of these audits, only 15 percent with defective pricing findings were referred to the Department of Justice based on concerns regarding the fraudulent nondisclosure or misrepresentation of pricing information. The remaining post award audits were referred to GSA COs for administrative resolution.

The continued existence of defective pricing concerns is demonstrated by qui tam actions under the False Claims Act. For example, one qui tam lawsuit that led to a \$98.5 million recovery in 2006 was based on allegations of defective pricing, which would be outside the scope of a post-award audit under the GSAR as currently written. While the OIG now does more pre-award reviews, which can identify potentially defective pricing, obviously the OIG cannot do pre-award reviews for all contracts, and contractors should not be given a free pass for defective pricing when they do not undergo a pre-award review. At this point, legislation may be the quickest way to fix this problem in time to allow effective oversight of Recovery Act expenditures.

PROPOSED LANGUAGE FOR AUDIT RIGHTS

The Administrator, General Services Administration, shall ensure that the Examination of Records by GSA (Multiple Award Schedule) clause contained at GSAR 552-215.71, which limits any examination to overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee and Sales Reporting clauses, shall be removed from the GSAR and not used in any future Multiple Award Schedule contract or modification to or extension of a current Multiple Award Schedule contract. Rather, effective immediately, the Administrator, General Services Administration, shall ensure that all future Multiple Award Schedule contracts, including modifications to or extensions of existing contracts, contain the current GSAR 552.215-70, Examination of Records by GSA, and not GSAR 552-215.71, so that all examinations can include both post-award and pre-award transactions related to the contract, if the Multiple Award Schedule contract exceeds the simplified acquisition threshold.