

North Carolina Should Eliminate the Use of Personal Services Contracts in Favor of Using Existing Mechanisms

A presentation to the
Joint Legislative Program Evaluation Oversight Committee

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Stakeholders

All North Carolina agencies and University of North Carolina constituent institutions

Department of Administration's Division of Purchase and Contract (P&C)

Office of Information Technology Services (OITS)

Office of State Budget and Management (OSBM)

Office of State Human Resources (OSHR)

North Carolina Administrative Code

Definition of Personal Service

- Personal services are “services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions”

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Overview: Findings

1. Agencies have circumvented state law when procuring personal services and have also compensated contractors at high rates
2. State reporting requirement fails to capture the magnitude of the use of personal services contracts
3. Executive Branch agencies have violated state law by not obtaining approval for IT personal services contracts
4. The lack of a shared definition and process for personal services contracts has led to erroneous procurement, classification, and reporting
5. Personal services contracts are unnecessary when existing mechanisms can be used

Overview: Recommendations

- The General Assembly should enact legislation to
 - prohibit the use of personal services contracts
 - require all Executive Branch agencies to obtain non-IT supplemental staff through OSHR
 - require OITS and OSBM to approve the procurement of IT services from individuals, report on a biennial basis, and conduct compliance reviews

Background

Oversight of State Procurement of Goods and Services

- Non-IT: Department of Administration's Division of Purchase & Contract (P&C)
- IT: IT Strategic Sourcing within the Office of Information Technology Services (OITS)
- Contracts for goods and services over \$25,000 must be reviewed and approved by P&C or OITS

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Administrative Code Exempts Personal Services Contracts from Oversight

- Exemption allows agencies to:
 - solicit contractors in any manner
 - select vendor based on internal criteria
 - negotiate contract duration, terms, and amount
 - execute the contract without P&C or OITS approval

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Findings

Finding 1.

Agencies and institutions have circumvented state law when procuring personal services and have also compensated contractors at high rates

None of the Personal Services Contracts for Consultant Services Obtained Governor's Approval in FY 2013

- Non-IT consultant contracts must be justified to and approved in writing by the Governor and P&C
- Agencies must follow consultant contracting procedures when a personal services contract is for consultant services
- 12 personal services contracts for consultant services were not approved by the Governor and P&C as required by law

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State Retirees Received Benefits While Exceeding Their Earning Limitation and Were Not Reported in FY 2013

- Three retirees received benefits even though they exceeded their earning limitation
- Executive Branch agencies violated reporting requirements by failing to report 6 of 12 state retirees re-employed through personal services contracts

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Compensation Rates Exceed the Highest Paid State Executives, FY 2010 – 2013

- 255 personal service contractors were paid at an hourly rate equivalent to an annual salary greater than \$164,150

$$\begin{array}{rcl} \text{(Hourly contractor rate)} & & \$164,150 \\ & \times & \\ & \text{(2000 hours)} & > \text{(Average salary of highest} \\ & & \text{paid State executives, 2013)} \end{array}$$

Finding 2.

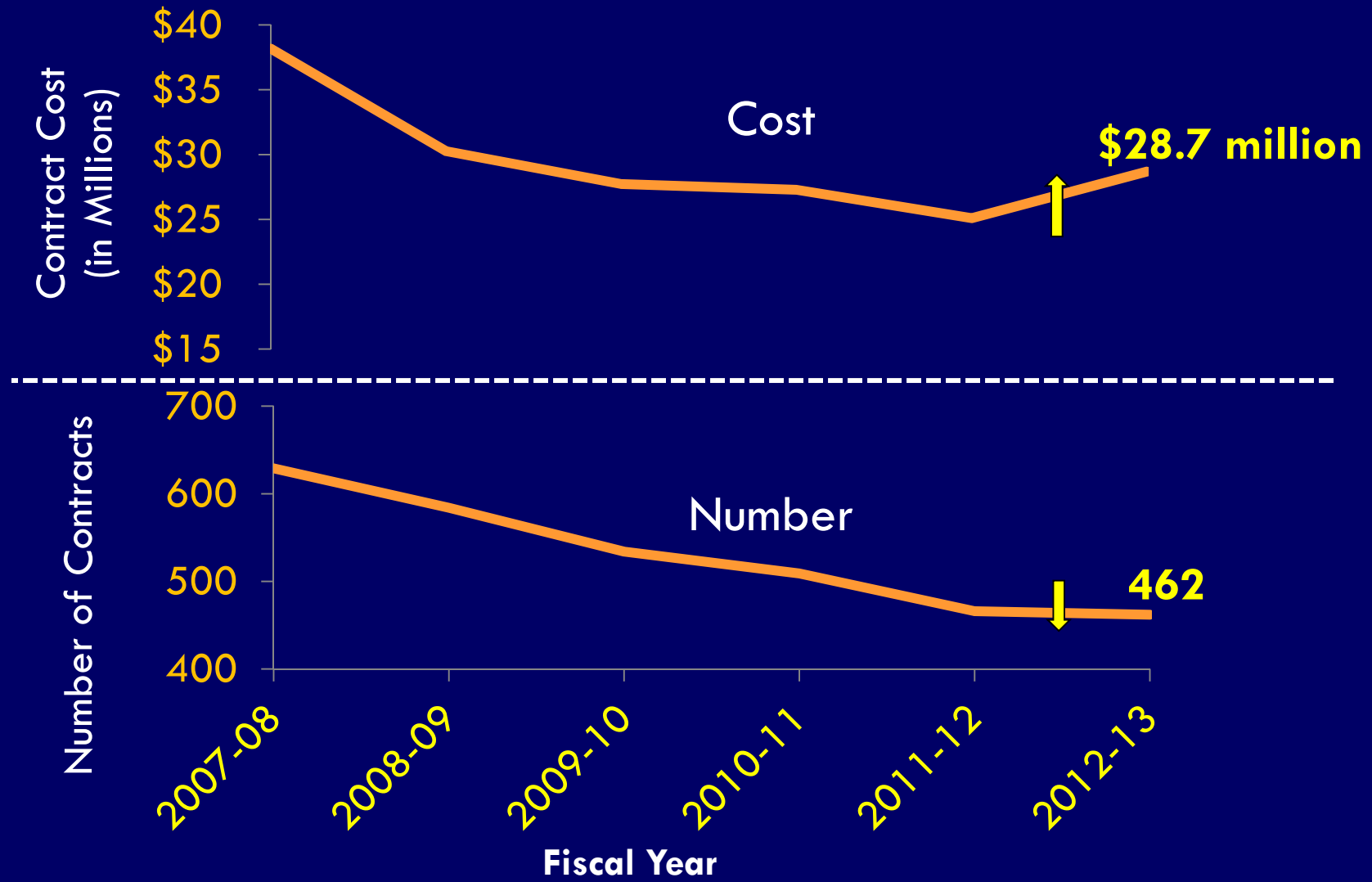
The State reporting requirement fails to capture the magnitude of the number and cost of personal services contracts and provides insufficient oversight of their use

Reporting Requirement for Personal Services Contracts

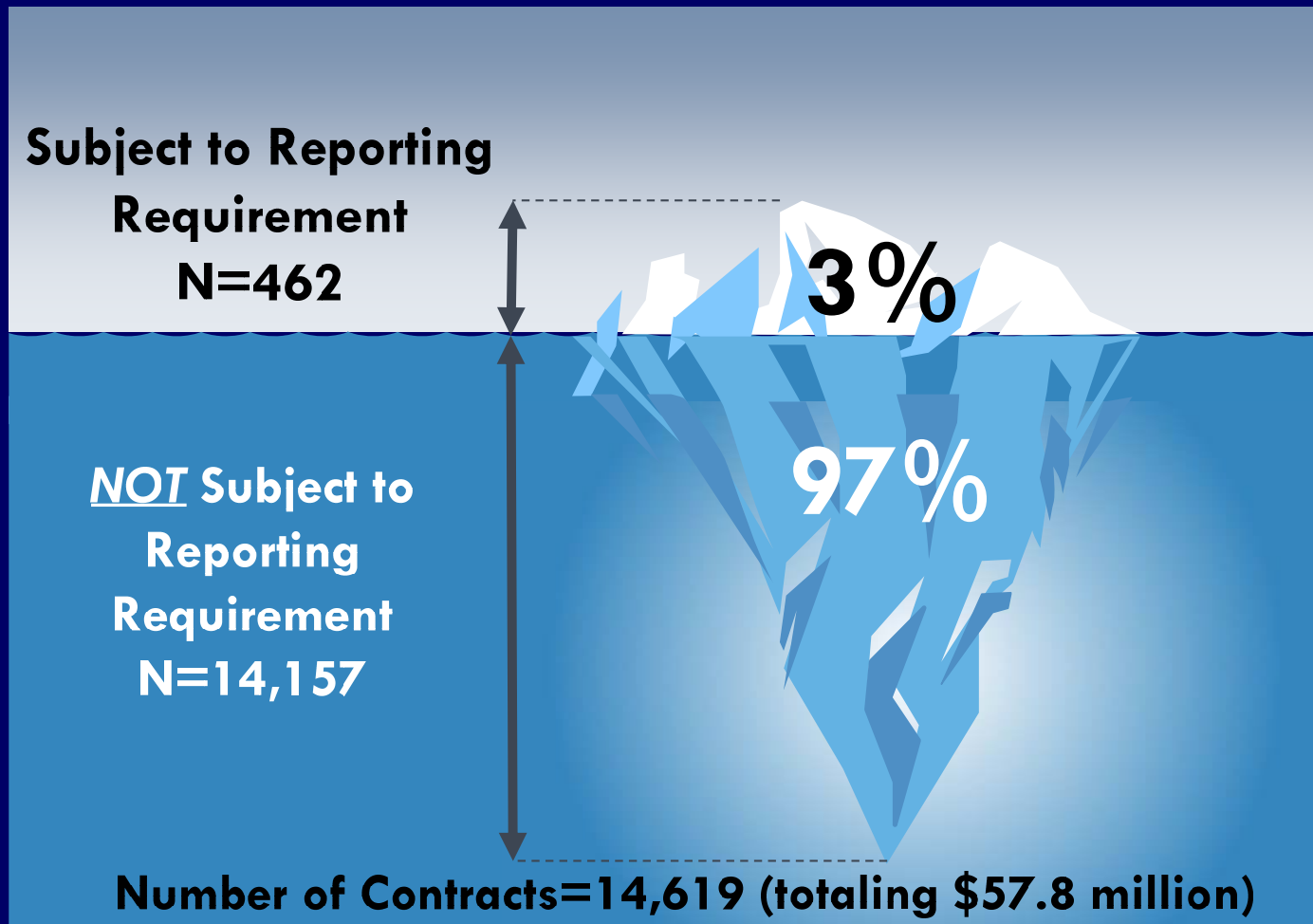
- State law requires agencies to report personal services contracts with annual expenditures greater than \$25,000 to OSBM
- OSBM compiles annual report on contracts

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Number and Total Dollar Amount of Personal Services Contracts > \$25,000



Reporting Requirement Captures Only the Tip of the Iceberg, FY 2013



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Finding 3.

Executive Branch agencies have violated state law by not obtaining approval for IT personal services contracts, and OITS lacks a process to ensure compliance with the law

Review of IT Personal Services Contracts Will Expire at End of FY 2015

IT personal services
exempt from OITS
review

Sess. Law 2011-145
Sess. Law 2013-360
IT personal services require
OITS and OSBM review

Session Law Expires:
IT personal services
will be exempt from
review



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Most IT Personal Services Contracts Did Not Obtain Required Approval in FY 2013

- 95% of IT personal services contracts over \$25,000 were not submitted or approved by OITS and OSBM (\$1.7 million)
- OITS lacks a process to ensure agencies obtain prior approval to procure personal services

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Finding 4.

The lack of a shared definition for personal services contracts has led to erroneous procurement, classification, and reporting

PED Criteria of a Personal Services Contract

1. Individual is an independent contractor
2. Contract duration is for a temporary or occasional basis
3. Individual has unique professional skills

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A Grab Bag of Services Have Been Reported as Personal Services Contracts



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State's Commitment to Competition is Hindered by Personal Services Contracts

- Agencies have used personal services contracts to procure services from the same individuals for three or four years in a row
- Approximately 21% of personal services contracts reported to OSBM from Fiscal Year 2010–2013 were for one year or more of full-time work

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Finding 5.

Personal services contracts are unnecessary when existing mechanisms with greater oversight allow agencies and institutions to procure services from individuals on a temporary or occasional basis

Personal Services Contracts Could Have Been Acquired Through Other Mechanisms

Personal Services
Contracts Reported
in FY 2012–13



N=462

34%

Not Subject to State Purchasing Laws
or Granted Purchasing Flexibility
(Legislative Branch, Judicial Branch,
University of North Carolina System)

Executive Branch

6%

**IT Service Contract or
Short-Term Staffing (OITS)**

5%

**Service Contract with
Individual (P&C)**

8%

**Consultant Contract
(P&C and the Governor)**

32%

**Temporary Solutions
(OSHR)**

15%

Supplemental Staff

66%

OITS Would Not See an Increase in Responsibility

Personal Services
Contracts Reported in
FY 2012–13 → 6% IT Service Contract or
Short-Term Staffing (OITS)

OITS should expect to annually review approximately 25 more requests for IT services over \$25,000

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P&C Would See a Minimal Increase in Workload

Personal Services
Contracts Reported in
FY 2012–13



5%

Service Contract with
Individual (P&C)



P&C would have to review and approve approximately 22 more contracts a year

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P&C and the Governor Would Continue to Review Requests for Consultant Services

**Personal Services
Contracts Reported in
FY 2012–13** → **8%** **Consultant Contract
(P&C and the Governor)**

P&C and the Governor should expect to review approximately 36 additional consultant contracts each year if agencies follow the proper approval requirements

OSHR Would Fill More Staffing Needs Through Temporary Solutions

Personal Services
Contracts Reported in FY 2012–13 → 32% Temporary Solutions (OSHR)

Almost 150 personal services could have been filled through Temporary Solutions, saving the State almost \$1 million

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Agencies Would Hire More Supplemental Staff

Personal Services

Contracts Reported in FY 2012–13 → **15%** **Supplemental Staff**



Agencies would hire approximately 70 more supplemental staff, over which OSHR could implement hiring and compensation guidelines

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Recommendations

Recommendation 1.

The General Assembly should enact legislation prohibiting agencies and institutions from using personal services contracts

General Assembly Should Eliminate Use of Personal Services Contracts

- Enact law to prohibit personal services contracts
- Direct P&C and OITS to
 - update Administrative Code
 - modify procurement manuals and guidelines
 - notify agencies of the changes to the law
- Repeal reporting requirement for personal services contracts

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Agencies Could Procure Services with Individuals through Service Contracts

- Agencies would still have the ability to procure services from individuals through service contracts
- Agencies would maintain purchasing flexibility by
 - procuring services for \$10,000 or less without having to go through P&C
 - requesting a waiver of competition or special delegation
 - responding to emergency service needs by obtaining verbal approval from P&C

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Recommendation 2.

The General Assembly should enact legislation requiring all Executive Branch agencies, including Council of State agencies, to obtain non-IT supplemental staff through Temporary Solutions

All Cabinet and Council of State Agencies Should Use Temporary Solutions

- The General Assembly should
 - require all Executive Branch agencies to submit all requests for non-IT supplemental staff to OSHR to be filled through Temporary Solutions
 - direct OSHR to develop policies and procedures to guide how agencies hire and use supplemental staff
 - direct OSHR to conduct compliance reviews
 - require OSHR to report biannually on frequency and duration of use of supplemental staff to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division

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Recommendation 3.

The General Assembly should enact legislation to require the Office of Information Technology Services to review and approve service contracts with individuals, report on a biennial basis, and conduct compliance reviews

Codify and Modify Session Law

- Require agencies to obtain approval from OITS and OSBM prior to procuring IT services from individuals
- Codify Session Law 2013-360, Section 7.8 with the following modifications:
 - Replace the language referring to personal services to read “service contracts with individuals”
 - Direct OITS to conduct compliance audits
 - Direct OITS to prepare biennial report

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Summary: Findings

- Agencies have violated state law when procuring personal services
- The State provides insufficient oversight of the use of personal services contracts
- Personal services contracts are unnecessary when existing mechanisms can be used

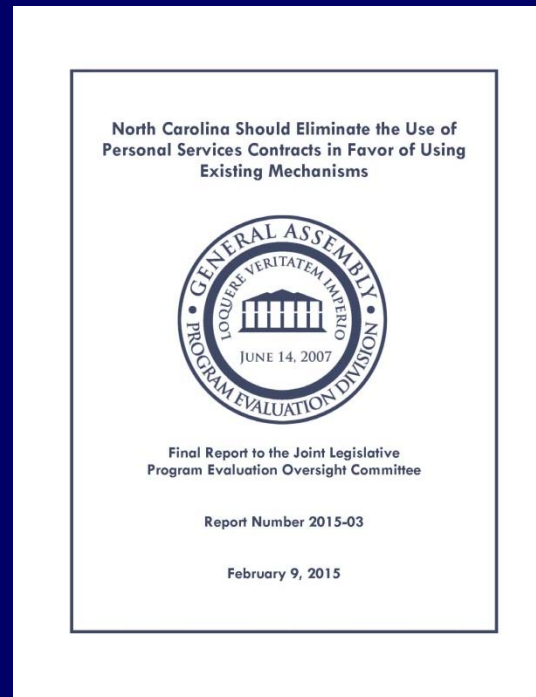
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Legislative Options

- Accept the report
- Refer it to any appropriate committees
- Instruct staff to draft legislation based on any of the report's recommendations

**Report available online at
www.ncleg.net/PED/Reports/reports.html**



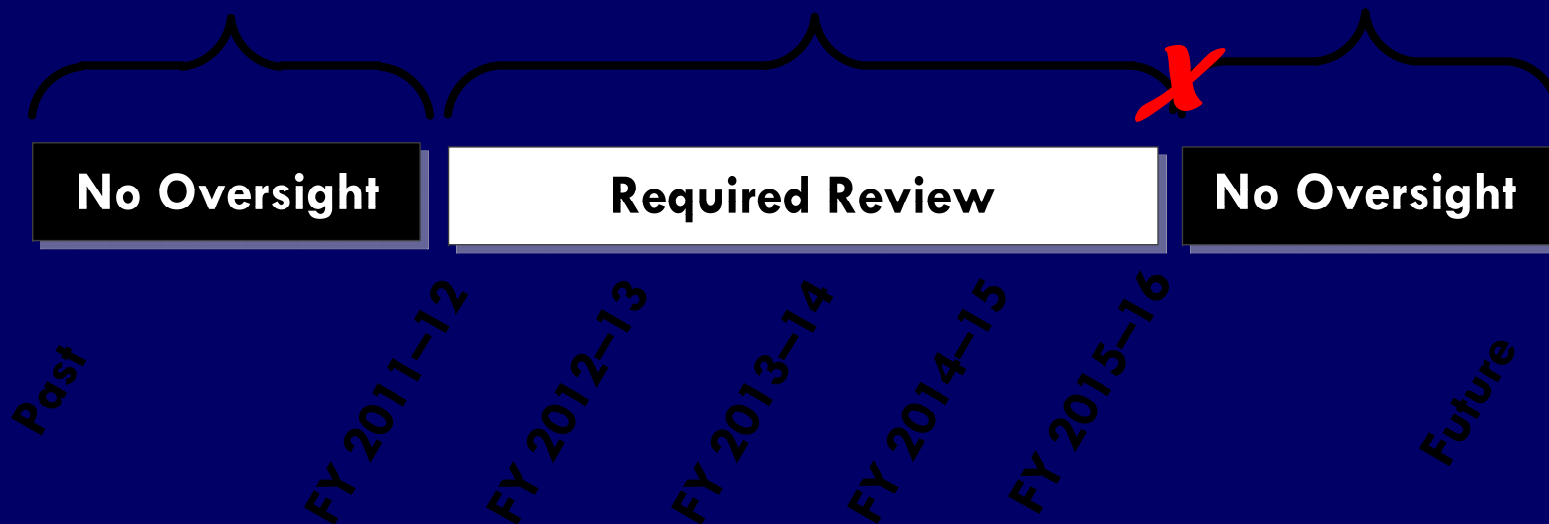
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