

**FINANCIAL CONTROL MECHANISM TO ENSURE THE
EFFECTIVENESS OF LEGAL REGULATION OF THE EDUCATION
SYSTEM: THEORETICAL AND INTERNATIONAL LEGAL ASPECTS**

Elena PEVTSOVA, Prof., PhD, Vice-Rector,
Russian University of Cooperation
E-mail: pevtsova@bk.ru

Nicolai CERNOGOR, Prof., PhD,
Lomonosov Moscow State University
E-mail: Chernogor@spa.msu.ru

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Abstract

The article is devoted to the implementation of financial control in the field of education. The authors argue that the financial control, as a form of control is associated with the implementation of the financial activity of the state. Development of the system of financial control and legal aspects related to it in foreign countries is determined by two factors: the current national practices and principles of the Lima Declaration, adopted within the framework of INTOSAI in 1977. Research on the subject has revealed that the worldwide system of organization of the supervisory bodies is determined by the peculiarities of the form of government, political system and socio-political systems. One of the functions of financial control in the financial and economic support of the education system is to maintain the effectiveness of its legal basis.

Keywords: financial control, the effectiveness of the legal regulation of the education system, the legal regulation.

1. Introduction

The Russian system of financial control has a long history. Yet "... in 1836 in the Russian Empire it was officially adopted a general accounting system ..." [1, p. 110], which laid the foundation for the implementation of the organizational and control functions in the field of finance. In modern conditions, the organization of a well-functioning system of financial control will be available only with the account of circumstances which have caused the genesis of its formation. An analysis of the history of financial control, on the one hand, will help not repeat the mistakes of previous periods and, on the other hand, the experience and achievements that have passed the test of time, will allow to solve diverse problems facing the modern system of financial control. It should be noted that in modern legal science the view of the continuity in the formation of a national system of control bodies and its progressive development is prevailing. This position, in principle, can be considered justified, but it requires a refinement - until 1993, the Russian State did not have at its core the principle of separation of powers. Thus, one of the tasks of modern researchers is to clarify how the accumulated experience of national financial control system can be effectively applied in the context of this constitutional provision.

2. Degree of investigation of the problem at present, research purposes

Socio-economic changes of the last decades in Russia led to a change of law. The key moment in this process was the emergence of the private sector (including the education system as well). One

consequence of this process was the need to rethink the role and place of the state in social and economic processes in general and in financial control in particular. Investigation of the mechanism of realization of organizational and control function, its reinterpretation, based on current conditions (introduction of the system of separation of powers and functioning of the private sector of economy), will enable a deeper understanding of its goals and objectives, which in turn will lead to the formation of an effective system of financial control, including the education system as well.

3. Methods and materials applied

Financial control is perhaps one of the most researched topics in the science of financial law and science of finance. Doctoral theses devoted to financial control are defended almost every year in Russia in the framework of specialties 12.00.04 Financial Law; tax law; budget law, and 08.00.10 Finance, monetary circulation and credit. Particular issues in this field are considered in the framework of related topics. This is due to the fact that financial control, as a specific type of activity, has a complex structure, multifunctional nature and the result is manifested in various aspects, each of which requires an independent scientific understanding. The following methods were applied in the study of the problem: the statistical method, methods of analysis and synthesis, as well as a comparative legal method.

4. Results and discussions. Effective financial control of education in Russia and abroad

The word „control” itself is taken from the English language. Thus, in Concise Oxford English Dictionary it has three meaningful values: a) to check or control, consequently, to regulate (payments, etc.); b) to request the report; c) to contain and guide the free action [2, p. 341]. The semantics of the given word was studied by domestic experts as well. Vladimir Dal in his Explanatory Dictionary of the Live Great Russian language defines „control” as accounting, checking accounts and accounting; government offices, engaged in controlling accounts (reporting) [3, p. 98]. S. I. Ozhegov in the Dictionary of the Russian language considered „control” as checking and monitoring in order to verify; control statements [4, p. 251]. Typically, from the semantic point of view, the term „control” is inextricably linked to the financial sector, in which it actually originated and received its spread. Initially, it was only possible to monitor what is subject to calculation in cash or in kind.

As part of any judicial investigation, implying consideration of conceptual and categorical apparatus, an appeal to the semantics of the relevant terms is necessary but not sufficient. The main objective is to establish a special legal (judicial) sense. In this context, control is considered, in addition to financial and legal science, in the framework of administrative law science, as well. Each of these branch sciences has made its own significant contribution to the disclosure of this concept.

Persons involved in the administrative work reveal the concept of control through a system of monitoring and verification of the object’s functioning in order to eliminate deviations from the set parameters [5, p. 433]. Also it is underlined that control is „... *the most important kind of feedback by which authorities are informed about the actual situation, the implementation of decisions ...*” [6, p. 608]. It is this approach, which is also shared by some representatives of financial and legal science, which is essential for this study. Also, it should be emphasized that the experts in the field

of administrative law highlight its broad and narrow meaning by considering the implementation of organizational and control functions. In a broad sense - it is a set of political, economic and ideological processes and methods designed to ensure the stability of the society and political system, respect for social order, impact on mass and individual consciousness. In a narrow sense – it means checking the execution of higher organizations, compliance with technical, economic, organizational regulations, the implementation of planned activities (tasks), compliance with labor discipline and the rule of law. Such control is inherent in the management cycle and is considered in the series of management functions [7, p. 52].

It seems reasonable the consideration of the implementation of organizational-control functions not only as a collection and compilation of information about what the real situation is, but also as a very valuable information about how justified are the „set parameters”, how qualitative is decision-making and the established rule of law, taking into account the real situation in the society. Control as a feedback channel provides very important information for the understanding of the reality that is crucial for improving the work of the state apparatus. Control (monitoring) should facilitate the identification of the causes and conditions that give rise to unlawful conduct, including the one due to non-compliance of the behavior model, embodied in the legal norm, to the actual conditions of social life.

At the same time, the more transparent the activities of regulatory bodies and the more precisely the regulated components, such as the object, forms, methods and means of control, the more effective the implementation of the organizational and control functions; and, conversely, inconsistent and redundant regulation of control activities generate the proliferation of controlling institutions aimed at the process of gathering information, rather than its result. Thus the information obtained by controlling entity is of no value to provide feedback. This circumstance is indicated both in foreign and domestic literature [8, p. 51; 9, p. 7].

Financial control, as a form of control, is associated with the implementation of the financial activities of the state. In this capacity, it is considered in the financial and legal science.

For example, in the textbook of financial law, edited by N. I. Himicheva, financial control is defined as „...*the control over the legality and appropriateness of action for education, distribution and use of funds of the state and local government entities for the effective social and economic development of the country and individual regions ...* „, [10, p. 83]. Herewith, it is only limited to state financial control, but it also targets local money funds.

M. V. Karaseva is also considering, as the object of the financial and legal regulation, only the state and municipal financial control, which is carried out by bodies of state financial control and local governments. The immediate goal here is to ensure the efficiency of the financial activities of the state and municipalities [11, p. 156].

More widely financial control is considered by E. Y. Gracheva. In her opinion, financial control is a „... *control carried out by the authorized state bodies and organizations of the legality in the process of collection, distribution and use of funds of the state and municipalities in order to implement an effective budgetary policy in the society to ensure the rights and freedoms of citizens...*” [12, pp. 73 – 74].

V. M. Rodionova and V. I. Shleynikov determine the financial control as „... *one of the functions of management system of financial relations, whose main task is to monitor the correct functioning of these relations at the level of a particular managed object to determine the feasibility and*

effectiveness of management decisions and the extent of their implementation, to identify deviations, about which it is advisable to inform the authorities that may affect the improvement of the situation ..." [13, p. 16]. This definition covers not only the state financial control, and an external independent financial control (audit), but public financial control as well, the task of revival which has been put by the President of Russian Federation in his annual message to the Federal Assembly. Thus *„...monetary relations are objects of state financial control, arising in connection with the formation of financial resources at the disposal of the State (and its institutions) and the use of these funds to meet the needs of the state and society ...*" [13, p. 31].

When comparing the different approaches of the researchers to the definition of financial control it is evident that each of them emphasizes the orientation of the state financial control in the economic relations connected with the formation, distribution and use not of any funds, but financial means of the state and local government, i.e. public funds. In addition, E. Y. Gracheva underlines the subject structure of such control - the authorized state bodies and organizations. In particular, customs authorities, tax authorities, the executive bodies of state extra-budgetary funds are endowed with the power to exercise financial control.

The need for financial control is due to: 1) the rule of law and discipline in the financial activities of the state; 2) the identification and elimination of disturbances arising in the course of such activity; 3) the establishment of the causes and conditions that lead to abnormalities in the area of public finances. Thus, one can reasonably argue that financial control is a form of feedback in the implementation of the financial activities of the State in order to identify shortcomings in the creation, distribution and use of state and municipal funds of financial sources, as well as the improvement of these processes. In the financial control it is essential to ensure the legality and financial discipline, purposefulness and efficiency in the process of formation, distribution and use of these funds.

In the context of this study, we are primarily interested in the provision of the rule of law. The multi-dimensionality of this category should be noted. Thus, the concept of legality includes not only the requirements for compliance, strict implementation and proper application of laws and regulations, adopted in accordance with them, but also some aspects of the legislation and the laws themselves [14; 15, p. 37]. In this connection, D. A. Kerimov rightly notes: *„Implementation of the law on the basis of the requirements of the rule of law cannot be imagined in the absence of the laws themselves, as well as legislative activity would have lost any meaning, if the laws created as a result of this activity are not implemented in life*" [16, p. 493]. Laws and the adopted in accordance with them regulations form in their totality the basis of legality, but are not identical to it and do not represent its content.

The requirements of the laws apply not only to the process of implementation of laws, but also to legislative drafting. The legality of the public finance sector is not only and not so much *„... strict enforcement of laws and other corresponding legal acts by the state bodies, officials, citizens and civil society organizations*" [17, p. 101]. The implementation of the principle under consideration in the public finance sector supposes that laws themselves match the level of development of the society and the state, their real financial resources, and assume the distribution of income and costs between different levels of government, which would allow proper performance of their mandates by all state authorities and local governments.

Since the beginning of the budgetary reform, which is coming to its end now, V. V. Putin, the President of Russian Federation, in his Budget Message *„On the budgetary policy in 2004*" to the

Federal Assembly of the Russian Federation, noted that „... *the establishment of a clear and stable division of revenue and expenditure responsibilities is a necessary condition to bring the state and municipal obligations in line with the actual resources available for their implementation. The result will be a more effective performance of functions by state authorities and local administrations, the independence of these bodies in conducting the budgetary policy will increase, their responsibility for its results will strengthen, the quality and accessibility of public services will improve, there will be new conditions for sustainable economic growth ...*” [18].

The action of the principle of the rule of law applies to all aspects of the legislative process: 1) the establishment of the supremacy of law in the legal system; 2) consistent subordination of legal acts according to their legal force and the area of implementation; 3) the timeliness of the adoption of new regulations, change, update and cancellation of the functioning regulations; and so on.

The action of the principle of legality in the field of public finance is inextricably linked and should be based on other principles: reasonableness, appropriateness, validity and efficiency. Thus, Sec. 2, Art. 15 of the Constitution of RF stipulates that the state authorities, local self-government bodies, the officials, citizens and their associations must observe the Constitution of the Russian Federation and the laws adopted in accordance with it. The above constitutional provision allowed some researchers to conclude that „... *public authorities, local self-government bodies, the officials, citizens and their associations must observe the Constitution of the Russian Federation and the laws ... observance of the Constitution and laws and compliance of all other issued regulations to the current legislation constitutes the essence of the rule of law...*” [19, p. 430].

With regard to public finance, the requirements of the rule of law are the following: 1) strict adherence to the Constitution, to laws and other legal acts adopted on its basis by all state authorities and local self-government bodies, by their officials, citizens and organizations, without exception; 2) committing of financial instruments only by authorized bodies and persons in accordance with their competences; 3) committing of financial acts in the well-defined forms, established in accordance with the current legislation; 4) establishment of a strict hierarchy of normative legal acts regulating financial relations, assuming the supremacy of law; 5) observance of the specified hierarchy, not allowing contradictions between legal acts of lower level to higher level acts; 6) adherence to the law-making procedure and the rules of legislative technique, accounting in the formulation and adoption of legal acts, economic laws and financial viability; 7) timely adoption, amendment and cancellation of normative legal acts regulating public relations in the field of public finance; 8) ensuring the sustainability and stability of the regulatory legal acts regulating public relations in the field of public finance; 9) timely compliance, enforcement and application of normative legal acts regulating public relations in the field of public finance; 10) accurate and uniform application of normative legal acts regulating public relations in the sphere of public finances in full compliance with their meaning and observance of the organizational forms established by legislation; 11) execution of normative legal acts regulating public financial relations in the sphere of public finances in the volume and value provided for therein; 12) ensuring the implementation of normative legal acts regulating public financial relations in the sphere of public finance by providing all necessary material, organizational and ideological resources; 13) implementation of ongoing supervision and monitoring of execution, observance and application of normative legal acts regulating public relations in the sphere of public finance by public authorities, local governments, civil society institutions and their officials.

The meaning of „legality” is not limited to the above principle of legal influence. It also includes general legal regime, involving strict and rigorous observance and execution of the rule of law by

all parties of public relations [20, p. 297]. By analysing this aspect of the rule of law in relation to public finance, the focus should be on the following characteristic features, consisting in the fact that the general legal regime: 1) is expressed in the above-described set of requirements that constitute the principle of legality; 2) and adherence to these requirements is provided by the legal responsibility.

We can speak about the validity of the principle of legality and efficiency of the legal regime with the same name only if the following conditions [20, pp. 300-302; 21, p. 467]: 1) the unity of the rule of law, i.e., single focus of law-making and law implementation in the territorial, temporal and subjective terms; 2) the feasibility of the rule of law, i.e., the need to choose strictly within the law the best possible option of law-making and law implementation activities, which meets the goals and objectives of the Society; at the same time, it is inadmissible to oppose legality to expediency; 3) the reality of the rule of law, which imply the actual execution of the legal regulations in all activities, as well as the inevitability of punishment for any violations.

A third aspect of the concept of legality is the method of public finances management, which suggests that the state and local governments carry out their functions in the area of public finance only by legal means: the adoption of regulations and ensuring their strict implementation. At the same time, this side of legality assumes that the state and local governments, as well as their bodies and officials are bound by the rule of law and act within it.

The approach chosen in this study does not allow to limit the examination of the legality solely in the context of the requirements of precise and strict observance of the existing legislation. This context, although is well-founded, and generally covers the phenomenon in question from only one side, it is not explained fully. Law in the context of social action of financial law is primarily a concrete historical condition of legitimacy, supported in the sector of public finance, both in the legislative materials, and in its implementation. Thus, the key to the concept of the rule of law becomes the category of lawfulness which can be described as the conformity of subjective rights, reflected and secured in the current financial legislation with the rules and principles of the functioning of public finances

The value of the rule of law increases during periods of transformation of various aspects of social life, including transformations with regard to education reform, which is the main context of this study. Legality is organically linked to the law-making and legislation, and also to the rule of law and discipline, including financial one. This interconnectivity seems so close and deep that in the legal literature it is difficult to grasp the meaning of their difference from each other [16, p. 495].

Providing the rule of law in the area of public finance, including the financial and economic support to the education system, is of particular importance. On the one hand, the law gives the market economy and the financial system certain stability, which in turn, makes the situation predictable, which is a prerequisite for progressive development of the society. On the other hand, providing the rule of law in this area creates a sense of security for all stakeholders of public finances.

Thus, it is topical to develop a mechanism for self-improvement of the legislation, including legislation in the field of public finance and education, because poor-quality regulation is not fulfilling its mission and tends to create unfavorable conditions for participants in social relations. Financial control allows one to provide feedback as part of this mechanism, being an effective source of information for improving the legal framework in this sphere, as the results of monitoring are an original estimate of the norm in the judicial implementation process. All these

improve the normative legal base, providing the stable functioning of public finances and education. Using the results of such monitoring to improve the regulatory and legal framework itself needs to be a promising direction in science.

An effective mechanism for the implementation of supervisory powers, above all, allows the state to ensure the legitimacy and the necessary discipline in the course of its operation. The research on the results of state control contributes to improving the legal framework of the market economy and the financial system.

Control can be effective in the event if its organization, carrying out and results, which are based on scientific research obtained in this field. Many scientists have been studying the problems associated with the state control in the sphere of economy and finance, above all, it should be noted: A. V. Bryzgalin, E. A. Voznesensky, G. A. Hajiyev, E. A. Gracheva, A. S. Emelyanov, M. V. Karaseva, A. N. Kozyrin, M. V. Kustov, I. I. Kucherov, I. A. Oreshkin, S. G. Pepelyaev, G. V. Petrova, E. V. Porolo, O. Yu. Sudakov, P. A. Shevelova and others. The consideration of various elements of specific types of state control is given attention in the works of D. S. Tyajkikh, V. F. Hrutinin, V. V. Sashichev, V. I. Makariev, V. I. Makarieva, Y. M. Itkin, E. V. Bushmin, I. A. Boryakova. However, along with the overall elaboration of issues related to the study of state control, a number of issues of legal regulation in this area remains unresolved. These issues are related to the regulation of the procedures for implementing this type of activity, the definition of the status and competence of the supervisory bodies, ensuring the protection and observance of the constitutionally guaranteed rights and interests of citizens and organizations in the implementation of control measures. To improve the quality of implementation of organizational and supervisory powers it is necessary also to achieve a high technical and technological endowment of the control measures and the corresponding professional level of specialists: it is necessary to develop a system of indicators to reasonably assign control activities and select the appropriate forces and means for it.

The state exercises control with the assistance of its authorities. Research on the competence of state bodies in the field of control and supervisory activities will identify the problems that arise in the course of its implementation, the factors influencing it, and the ways to overcome them. Thus, it is possible to achieve improvement and increase the efficiency of the entire state influence on the economy and finances in general and the state control (supervision) in particular.

The object of financial control are the monetary relations associated with the creation, distribution and use of the state and municipal funds of financial means, financial support of the state and local governments' functioning. „*The objects of financial control are monetary, regulatory processes in conditions of formation and use of financial resources at all levels of the budgetary system of the state*” [22, p. 107]. Other authors include in the object of financial control even „... *control of the use of material, labor, natural and other resources of the country ...*”, substantiating it by the following „...*in the present conditions the production and distribution processes are mediated by financial relationships...*” [10, p. 111]. It is essential that all monetary transactions are included in the area of financial control, and even those which, at first glance, are not related to the budget system. This is especially important in the field of education.

Scientific literature rightly points out that in the process of development of the legislation in the field of financial control it should be taken into account the wide experience accumulated over decades in foreign countries with well-functioning public system of financial control. It is noteworthy that the basic principles of financial control in many countries with market economies

are rather similar. An analysis of the national systems of financial control of foreign countries gives strong arguments in favor of the claim that market conditions in the role of financial control does not weaken, but on the contrary, requires a more powerful control mechanism, adapted to market relations.

Development of the system of financial control and its legislation in foreign countries is determined by two factors: the current national practices and principles of the Lima Declaration [23], adopted within the framework of INTOSAI in 1977. In general, the foreign system of organization of control bodies is determined by the peculiarities of the form of government, state organization and socio-political systems.

Parliamentary control dominates in parliamentary republics. It is carried out by countable control authorities generated by the Parliament, for example, in countries such as Germany, Austria, Hungary and others. In few countries that have retained the monarchical form of government, where the actual state power belongs to the representative bodies, the situation is almost the same (UK, Sweden, Belgium, and Spain).

In presidential and parliamentary-presidential republics (the USA, France and others), along with the parliamentary control, supervisory bodies are usually endowed with considerable powers and they are integrated into the executive branch of the state power. For example, in the USA, in addition to the Office of Financial Auditor subordinated to the Congress, there are such bodies as the Management and Budget Department under the President, the System of inspection services in federal agencies, the Presidential Council for Combating financial abuse in government offices.

In federal states (the USA, Germany, and others) financial control systems have a three-tier structure: federal, regional (state, land, etc.), and municipal (community). In unitary states (France, Italy, etc.) there are usually two levels of financial control: state and municipal. Countries with the autonomous territories (Scotland and Wales in the United Kingdom, Catalonia in Spain, etc.) can have their own features. Autonomous regions in such states may have their own financial control bodies.

In the countries with socialist orientation, where usually there is no adopted system of separation of powers, the supreme audit institutions are integrated into the system of executive bodies or constitute a separate structure. Thus, in particular, in China the State Council, the highest executive body, has set up the Supreme Agency for Auditing of the Accounts, headed by the Auditor General. In Vietnam, the Court of Auditors is subordinated to the Prime Minister.

Despite the differences mentioned, the system of financial control in foreign countries are mainly formed on the basis of the principles of the Lima Declaration. This document underlines that the organization of control is a mandatory element for the management of public finances, since such control entails responsibility to society. Despite the fact that this Declaration has recommendation character, the fact of recognition of the general principles of financial control for the financial systems of the participating countries it is very important. The Declaration may be a reference for countries that are improving their system of state financial control.

Financial control in the field of education abroad, as a rule, is part of an overall system of financial control. For example, in the US financial control in the area of education, the effectiveness of which has a significant impact on the level of financial and economic support of educational activities, has three-tier structure as the US financial system itself. Nation-wide financial control is carried out at the federal level by US General Accounting Office, Ministry of Finance at

departmental financial control, as well as by the Inspector General of US Department of Education at intradepartmental financial control. At regional level, the financial control bodies, exercising control and audit activities in the field of education, are the state financial auditor, the specialised control-accounting and audit department of the regional Ministry of Education. At local level, the institutional framework of financial control in the sphere of education is constituted by the main financial municipal inspector of the municipal unit or a specialized municipal unit - the school district, as well as the intraeconomic Auditing Department of the school, including the relevant departments of charter schools [24, pp. 10-11]. In Canada there is a similar system of financial control of education [25, p. 58-65].

5. Conclusions

Financial control can and should be considered in the framework of organizational and legal aspects, when the subject of research are targeted, organizational-structural and competency components of the mechanism of implementation of organizational and control functions of the state and municipal bodies, and their systemic relationships of its organization and implementation as well. The given aspect has a more narrower subject, in which we study the methods and forms of control, and analyze the technological tools of control activities. In modern conditions the state, in order to carry out its functions in the field of finance, should have the relevant: 1) regulatory framework; 2) control authorities capable to provide feedback in the field of finance both from the organizational - structural and competence point of view.

It is necessary to treat financial control as an element of the financial system, which provides a process of its self-improvement, as it allows to identify problems and to establish ways to address them. Obviously, the probability of making the right decision is directly proportional to the availability of reliable information about the problem and about its correct qualification.

Thus, it should be recognized that one of the functions of financial control in the financial and economic support of the education system is to maintain the effectiveness of its legal basis. At the same time, defining the role and place of financial control mechanisms to ensure effective legal regulation of the financial and economic support for the education system, it is necessary to indicate its two interrelated features: 1) be a tool for feedback, through which information on social action of financial and legal regulations goes to the legislator ; 2) constitute a means of self-improvement of the mechanism, allowing one to adjust it through acts of official interpretation of financial and legal provisions, financial and planning regulations and government (municipal) programs.

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Rezumat

Articolul este dedicat problemelor controlului (auditului) financiar în sfera învățămîntului. Autorii demonstrează, că controlul (auditul) financiar, ca varietate a controlului în general, este dependent de modul îndeplinirii activității financiare de către stat. Dezvoltarea sistemului controlului (auditului) financiar și legislației corespunzătoare în țările străine are loc sub influența a doi factori: practica națională stabilită și principiile Declarației de la Lima, adoptată în anul 1977 în cadrul INTOSAI. Cercetarea subiectului a identificat că în toate țările lumii sistemul organizării organelor de control se fundamentează în funcție de forma guvernării, sistemul politic și sistemul social-politic. Una din funcțiile controlului (auditului) financiar în condițiile asigurării financiar-economice a sistemului educațional constă în menținerea eficienței bazei juridice a acesteia.

Cuvinte-cheie: control (audit) financiar, eficiența reglementării normative a sistemului educațional, reglementare normativă.

Аннотация

Статья посвящена вопросам осуществления финансового контроля в сфере образования. Авторы доказывают, что финансовый контроль, являясь разновидностью контроля, связан с осуществлением финансовой деятельности государства. Развитие системы финансового контроля и законодательства о нем в зарубежных странах определяется двумя факторами: сложившейся национальной практикой и принципами Лимской декларации, принятой в рамках ИНТОСАИ в 1977 году. Исследование по теме выявило, что во всех странах мира система организации контрольных органов определяется особенностями формы правления, государственным устройством и общественно-политическим строем. Одной из функций финансового контроля при финансово-экономическом обеспечении системы образования является поддержание эффективности его правовой основы.

Ключевые слова: финансовый контроль, эффективность правового регулирования системы образования, правовое регулирование.