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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

**GAO PRESS STATEMENT
ON WALKER v. CHENEY
February 7, 2003**

After thorough review and analysis of the district court's decision in Walker v. Cheney, as well as extensive outreach with congressional leadership and others concerning various policy matters and the potential ramifications of the court's decision, for the reasons outlined below, GAO has decided not to appeal the decision.

As Comptroller General Walker has made clear on a number of occasions, GAO would not have filed this suit absent a formal written request from at least one full Senate committee with jurisdiction over this matter. Contrary to the district court's decision, and as re-confirmed in a letter to the Comptroller General dated January 24, 2003, two full committee chairs and two subcommittee chairs of the Senate, acting on behalf of their respective committees and subcommittees, all of which had jurisdiction over this matter, asked GAO to pursue its NEPDG investigation prior to GAO filing suit last year. Importantly, under GAO's governing statute, the agency is required to perform work when requested by a committee. In this case, GAO had made exhaustive efforts to reach an accommodation with the Administration, and only after all such attempts had failed did GAO file suit as its only remaining option. This is precisely the process that Congress directed GAO to follow when it enacted GAO's access statute in 1980.

For a number of reasons, GAO strongly believes the district court's decision is incorrect. In GAO's view, the district court misapplied the Supreme Court's decision in Raines v. Byrd to GAO. Unlike the legislator-plaintiffs in Raines, who sought to invalidate a statute which had been enacted by the Congress, GAO sought to carry out – not invalidate – the information-gathering responsibilities which Congress assigned to it in GAO's access statute. The district court's decision thus has prevented GAO from discharging its statutory responsibilities in this case. Furthermore, the opinion was based, in part, on a material factual error relating to the role various Senate chairs played as noted above. The opinion also leads to the highly questionable result that private citizens have more authority to enforce their rights to obtain information from the Executive Branch than the Comptroller General of the United States, acting in his official capacity as head of GAO.

Despite GAO's conviction that the district court's decision was incorrect, further pursuit of the NEPDG information would require investment of significant time and resources over several years. At the same time, several private litigants are attempting to obtain much of the same information GAO has been seeking, and this information will be made available to GAO if they are successful in their cases. Importantly, because the district court's decision did not address the merits, it has no effect on GAO's statutory audit rights or on the

obligation of agencies to provide GAO with information. In addition, the court's decision is confined to the unique circumstances posed by this particular case and does not preclude GAO from filing suit on a different matter involving different facts and circumstances in the future.

GAO will continue to fulfill its statutory mission: to support the Congress in the discharge of Congress' constitutional responsibilities and to help assure reasonable transparency and appropriate accountability in government. GAO also will continue to perform its audit, evaluation, and investigative work in a professional, objective, fact-based, non-partisan, non-ideological, fair, and balanced manner.

According to Comptroller General Walker, "In the final analysis, transparency and accountability in government are essential elements for a healthy democracy. In America, all public servants, including constitutional officers, work for the people. While reasonable people can disagree on the proper amount of transparency and the appropriate degree of accountability, in the world's greatest democracy, we should lead by example and base public disclosure on what is the right thing to do rather than on what one believes one is compelled to do. Based on my extensive congressional outreach efforts, there is a broad-based and bi-partisan consensus that GAO should have received the limited and non-deliberative NEPDG-related information that we were seeking without having to resort to litigation. While we have decided not to pursue this matter further in the courts, we hope that the Administration will do the right thing and fulfill its obligations when it comes to disclosures to GAO, the Congress, and the public, not only in connection with this matter but all matters in the future. We hope that GAO is never again put in the position of having to resort to the courts to obtain information that Congress needs to perform its constitutional duties, but we will be prepared to do so in the future if necessary."