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H.R. 12171, the proposed "Federal Accounting and Auditing Act of 1978" would establish a new mechanism for the appointment of future Comptrollers General and their deputies, provide GAO with additional authority to audit "unvouchered" expenditures, and strengthen GAO's power to enforce its rights of access to records. The Comptroller General would be selected by the President for Senate confirmation from a list submitted by a Commission composed of congressional officials. Deputy Comptrollers General would be appointed by the Comptroller General. The congressional involvement in this selection process would assure that future Comptrollers General will have the support of the Congress in exercising their responsibilities. The mechanism for appointment of the Deputy Comptroller General is desirable for good management. Under the provision for additional audit authority, GAO would be authorized to make the necessary examinations to determine whether expenditures were actually made for authorized purposes. The bill provides for protection of confidentiality and strikes the proper balance between accountability and discretion. The bill would permit the Comptroller General to institute legal action when he is denied access to records within 20 days of receipt of a formal request for access. This provision does not expand GAO's rights of access but provides more speedy enforcement. (HTW)

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STATEMENT OF

ELMER B. STAATS

COMPTROLLER GENERAL OF THE UNITED STATES

Before the

SUBCOMMITTEE ON LEGISLATION AND NATIONAL

SECURITY OF THE COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 12171, 95th Congress

Mr. Chairman and Members of the Subcommittee:

Again, Mr. Chairman, I want to express my appreciation to you for your introduction of H.R. 12171. As with the other legislation discussed this morning, H.R. 12196, we strongly support this bill's provisions and hope that it will be given prompt and favorable consideration by the Congress.

H.R. 12171, the proposed "Federal Accounting and Auditing Act of 1978," has three major objectives.

The first objective is the establishment of a new mechanism for the appointment of future Comptrollers General and their Deputies. The bill provides for a Commission made up of the congressional leadership and the chairmen and ranking minority members of the House Government Operations and Senate Governmental Affairs Committees. The Commission, after consultation with the President, would submit to him the names of not less that three potential nominees for the Office of Comptroller General. The President would select one of these names in making a nomination for Senate confirmation, or he could request the submission of additional names. The bill also provides that future Deputy Comptrollers General be appointed by the Comptroller General and serve at his pleasure.

Mr. Chairman, I can personally attest that having had the support of the Congress has proven to be of immense importance to the General Accounting Office.

The Comptroller General, in order to effectively discharge his responsibilities, must enjoy a special relationship with the Congress. For this reason, we believe it is entirely appropriate that congressional officials of both Houses be given a formal role in the selection of the Comptroller General. With the degree of congressional involvement in the Comptroller General selection process proposed by H.R. 12171, we believe the necessary steps will have been taken to assure that future Comptrollers General will continue to have the support of the Congress in the execution of their oversight and review responsibilities.

Thus, I am particularly pleased to be able to appear in support of H.R. 12171. The bill, in modifying the appointment mechanism for future Comptrollers General, takes a significant step to foster a close and harmonious working relationship between the Congress and the Comptroller General.

This section of the bill also provides for appointment of the Deputy Comptroller General by the Comptroller General, to serve at the pleasure of the Comptroller General. This simply makes good management sense. The Deputy, being the second ranking official of the GAO, must

have continuously a close and compatible working relationship with the Comptroller General. That objective can be assured by vesting the appointment and removal power in the Comptroller.

The bill further provides GAO with additional authority to audit expenditures authorized by law to be accounted for solely on the approval or certificate of the President or other officials. These are the so-called "unvouchered" or confidential funds provided to a number of Federal agencies. We would be authorized to examine records and other information necessary to determine, and advise the cognizant congressional committees, whether such expenditures were actually made for authorized purposes.

We believe it is important that the Congress have the means, as provided in this bill, for assuring that funds it makes available for use on a confidential basis are in fact used for authorized purposes. The bill would not grant us the authority to take exception to payments made pursuant to such certifications and it protects the essential confidentiality of any underlying information involved by limiting disclosure to certain committees of the Congress. We think the bill strikes the proper balance between the need for accountability on the part of those who administer unvouchered accounts and the preservation of discretion on the part of these same individuals with regard to their use of unvouchered funds.

Parenthetically, I would also like to point out, Mr. Chairman, that the approach of section 2 is similar to one of the Government Operations Committee's own amendments to H.R. 11003, a bill that clarifies the authority for appointment of White House personnel. Specifically, this Committee recommended, and the House adopted, on April 13, 1978, a provision that allows GAO to look at Presidential and Vice Presidential official entertainment expenses, and staff travel expenses, for the purpose of verifying that the expenditures were properly within the authorized categories.

I might also add that this bill represents a "compromise" with respect to the treatment of unvouchered expenditures proposed in other legislation before this Committee. H.R. 12171 does not go as far as another bill, H.R. 7133 which, if enacted, would subject the authority to make unvouchered expenditures to close congressional scrutiny, including a report of the items or services obtained with the moneys; as well as an audit of the account by the Comptroller General.

H.R. 12171 also strengthens GAO's power to enforce its legal rights of access to records of Federal departments and establishments and of non-Federal persons and organizations--including contractors, subcontractors, grantees, and other recipients of Federal assistance.

With regard to access to records of Federal agencies, the bill would permit the Comptroller General to institute

an action in a U.S. District Court against any Federal department or agency which fails to grant us access to its records within 20 calendar days from receipt of a formal request for access.

With regard to non-Federal entities, the bill would also permit us to issue, and seek judicial enforcement of, subpoenas for the production of records where we have access rights.

I would like to emphasize, Mr. Chairman, that the enforcement provisions of H.R. 12171 do not expand GAO's existing rights of access concerning either Federal agencies or non-Federal entities. Our existing access rights generally afford us an adequate legal basis for the accomplishment of our work. The need is for a reasonably speedy means to force those with whom we deal to comply with their statutory and contractual obligations.

We have included for the record an attachment which provides an overview of the types of access problems we encounter and how the judicial remedies proposed in H.R. 12171 should help very substantially. I would like to summarize briefly the points made in this attachment.

At the Federal agency level, we do encounter access problems which are never resolved. Much more frequently, however, compromises are eventually reached -- often after long and arduous negotiations -- through which we get some form of limited access. Federal agencies resist granting us access

for a variety of reasons. Sometimes the agencies raise substantial legal issues or have other very real concerns. Unfortunately, agencies also engage in mere delaying tactics based on vague concerns or, perhaps, on nothing more than indifference or intransigence. I am particularly concerned here with official guidelines issued by some agencies which tend to foster a negative approach to GAO's access needs.

Whatever the reasons underlying an agency's resistance or the ultimate result, the crucial fact is that we now lack the legal means of dealing with access problems quickly and definitively. We anticipate that the very existence of a judicial remedy would have enough deterrent effect to prevent many of the access problems we now face from arising.

Even where the agencies have genuine concerns, the mere existence of the enforcement remedy should prove useful. We are sensitive to the need to protect the confidentiality of certain information, such as law enforcement files, and we would continue to seek reasonable accomodations with the agencies. The greatest benefits of the enforcement remedy here would be to put us on an equal footing with the agencies for purposes of negotiation and to speed up the process. Of course, we would not hesitate to invoke our enforcement remedy in those probably rare instances where legal or other issues simply cannot be resolved satisfactorily by negotiation.

Our experience in pursuing access from non-Federal sources is generally similar to our experiences at the Federal level. Here again, we expect that the existence of subpoena power would be most beneficial as a deterrent to the access problems and delays which now occur. As explained in detail in the attachment, this has certainly been the case with our existing subpoena power under the Energy Policy and Conservation Act.

Providing the Comptroller General with subpoena power to enforce his right to access to records is consistent with a bill that you have co-sponsored, H.R. 12053, that establishes an Office of Inspector General in each executive department. Section 5 of that bill authorizes each departmental inspector general to subpoena those documents he deems necessary to effectively carry out his duties. Furthermore, at least two Federal agencies, the Departments of Energy and Health, Education, and Welfare, have an Office of Inspector General with subpoena power. (See 42 U.S.C. 7138, and 42 U.S.C. 3525.) The similarity between the duties proposed to be assigned or already assigned to the group of Inspectors General and those assigned to the Comptroller General suggests that each should be given equally effective tools to carry out his respective responsibilities. More than 50 departments and agencies of the executive branch

have been granted subpoena authority in the performance of their responsibilities.

Mr. Chairman, this completes my prepared statement on H.R. 12171. We would be pleased to answer any questions at this time.

SUBMISSION FOR THE RECORD

DETAILED ANALYSIS OF H.R. 12171

Unvouchered Expenditures

Section 2 of H.R. 12171 amends section 117 of the Accounting and Auditing Act of 1950, 31 U.S.C. §67, to provide that the Comptroller General shall be furnished such information and such access to all necessary books, documents, records, and papers as he may request relating to expenditures made solely on the approval, authorization, or certificate of the President or an official of a department or establishment, in order to determine whether the expenditure was, in fact, made and whether it was applied for an authorized purpose. This authority would be granted the Comptroller General notwithstanding any other provision of law enacted before or after passage of the bill except a subsequent enactment which specifically repeals or modifies the provisions of this bill.

Generally, GAO's audit authority extends to the expenditures of the various departments and establishments. There are, however, exceptions provided by law, including a fairly substantial number of "unvouchered" or confidential funds which are accounted for solely by the President or head of the department or establishment involved. For example, the expense allowance of the President need not be accounted for (3 U.S.C. §102). Also, annual appropriations for the expenses of the

White House Office, for matters such as Official Entertainment, Special Projects, and Operating Expenses of the Executive Mansion are to be accounted for solely on the President's certificate. (See, for example, the Treasury, Postal Service, and General Government Appropriation Act, 1978, Pub. L. No. 95-81, 91 Stat. 341 at 344.) Annual appropriation acts for the military establishment make funds available for emergency or extraordinary expenses to be expended on approval or authority of the applicable Secretary, and make the Secretary's determination final and conclusive on the accounting officers of the Government. (See also 10 U.S.C. §7202 and 31 U.S.C. §108.) Annual appropriations for the Federal Bureau of Investigation and the Immigration and Naturalization Service include funds to meet unforeseen emergencies of a confidential character to be expended under the direction of the Attorney General and accounted for solely on his certificate. (See, for example, Pub. L. No. 90-470, approved August 9, 1968, 82 Stat. 673 at 674 and 675.)

The President and the Secretary of State (or other officials) have similar authority when conducting foreign affairs. (See, for example, 22 U.S.C. §2364(c) involving the President's special authority in foreign affairs; 22 U.S.C. §§2396 and 2384(d)(7) involving certain expenses of a confidential nature; 22 U.S.C. §2514(d)(7) involving unforeseen emergencies and contingencies arising in the Peace Corps.)

Significant amounts are authorized to be expended solely on the certificate of the President and the heads of departments and agencies (or their designees). A recent study by the Congressional Research Service identified approximately $23.5 million appropriated in fiscal year 1977 for such funds, not including funds of the Central Intelligence Agency and other intelligence operations. The CIA, however, probably makes the greatest use of these funds. See 50 U.S.C. §403j(b).

Section 2 provides that the Comptroller General determine for what purposes these funds were actually expended and whether the expenditures are authorized by law. It also contains provisions designed to safeguard information obtained by GAO in its audits of such expenditures. All officers and employees of GAO would be prohibited from disclosing the findings of the audits, and information concerning the expenditures, except to other GAO personnel or to congressional committees having legislative or oversight responsibilities over the subject matter of the expenditures.

Enforcement of Access to Records

One of the principal needs of GAO is a means for enforcing the Comptroller General's existing rights of access to information in the possession of the executive branch. Section 3 of H.R. 12171 would authorize the Comptroller General to institute judicial enforcement actions to compel production of documents

in cases where an executive department or establishment fails to comply with a request for information, books, documents, papers, or records within 20 days following a formal demand. This section would also authorize us to issue and enforce subpoenas to obtain records from non-Federal entities to which we now have a legal right of access.

This section would not expand GAO's statutory authority relating to access to records of Federal agencies, contractors, and recipients of Federal assistance. It merely establishes judicial remedies for obtaining the records to which GAO is legally entitled. GAO would be represented by its own attorneys in judicial enforcement actions.

One of the most important duties of GAO is to make independent audits of agency operations and programs and to report to the Congress on the manner in which Federal departments and agencies carry out their responsibilities. The Congress, in establishing GAO, recognized that the Office would need to have complete access to the records of the Federal agencies.

The more important factors underlying the law, the intent of the Congress, and the GAO's policy of insisting on generally unrestricted access to pertinent records of agencies in making audits are:

1. An adequate, independent, and objective examination contemplates obtaining a comprehensive understanding of all important factors underlying the decisions

and actions of the agency management relating to the subject of GAO examinations.

2. Enlightened management direction and execution of a program necessarily must consider the opinions, conclusions, and recommendations of persons directly engaged in programs that are an essential and integral part of operations. Similarly, knowledge of this type is just as essential to us in making an independent review and evaluation as it is to management in making basic decisions.

3. Agency internal audits and other evaluative studies are absolutely necessary. They are important tools by which management can keep informed of how large and complex activities are being carried out. Knowledge of the effectiveness of corrective action is essential to GAO in the performance of its responsibilities.

4. Availability of internal audit and other evaluative documents to GAO enables us to concentrate a greater part of our efforts in determining whether action has been promptly and properly taken by agency officials to correct identified weaknesses, and helps eliminate duplication and overlapping in audit efforts.

GAO cannot be fully effective if its access to records, information, and documents pertaining to the subject matter

of an audit or review is limited. The intent of the various laws assigning authority and responsibility to the GAO is clear on this point. The right of generally unrestricted access to records is based not only on laws enacted by the Congress but is a necessary adjunct to the duties and responsibilities of the Comptroller General.

Obviously the Attorney General, who may represent the defendant in actions brought by GAO against an executive department or agency under this section, cannot also represent GAO. The GAO, in seeking access and disclosure in order to fulfill its legislative responsibilities, must be independent of the Justice Department. Thus, this section permits the Comptroller General to be represented by attorneys of his own selection in any action brought under it.

Second, section 3 would permit the Comptroller General to subpoena records and information from those non-Federal persons and organizations to which the Comptroller General has a right of access by law or agreement. Included within the scope of this provision would be contractors or subcontractors having negotiated Government contracts and various other non-Federal persons or organizations, most of which have received Federal grants or other financial assistance. This subpoena authority would be used only in those situations where it becomes difficult or impossible otherwise to obtain necessary information from those doing business with the Government.

We anticipate that the mere existence of subpoena authority will be useful.

The procurement statutes require negotiated Government contracts in excess of $10,000 to contain a clause by which the contractor agrees to allow the Comptroller General access to "any books, documents, papers, and records of the contractor, that directly pertain to, and involve transactions relating to the contract or subcontract." In addition, the Comptroller General has access by law or agreement to the records of a number of recipients of Federal grants or other financial assistance.

We have identified more than 50 departments and agencies, representing close to 100 separate programs of the Federal Government, with authority to subpoena records. A listing of these agencies and a citation to their subpoena power is attached. On the other hand, subpoena authority has been granted to GAO in only the following areas:

--verification examinations of energy information (42 U.S.C. §6382),

--monitoring and evaluating all Department of Energy functions (Pub. L. No. 95-91, §207; Pub. L. No. 93-275, §12), and

--audits of Social Security Act programs (Pub. L. No. 95-142, §6).

For the reasons stated above, we believe that enactment of the additional subpoena power proposed here could facilitate GAO's

work in many other areas.

Significant delays and other possible complications could be avoided by permitting the Comptroller General to use attorneys of his own selection to enforce subpoenas under the provision here proposed, instead of being required to refer the matter to the Department of Justice. This authority was specifically included in two of the existing GAO subpoena provisions cited above. Litigating authority has also been granted, in various contexts, to a number of other independent agencies.

Appointment of the Comptroller General and the Deputy Comptroller General

Section 302 of the Budget and Accounting Act, 1921, as amended, now provides for the appointment of the Comptroller General and Deputy Comptroller General by the President, with the advice and consent of the Senate. Section 303 provides 15-year terms for both officials and limits the grounds for their removal from office.

Section 4 of H.R. 12171 would amend these provisions by (1) establishing a new procedure relating to the appointment of the Comptroller General, and (2) providing that the Deputy Comptroller General be appointed by, and serve at the pleasure of, the Comptroller. The amendments would not apply to the incumbent Comptroller and Deputy.

The bill provides that a Commission made up of key congressional officials develop, in consultation with the President, a list of not less than three potential nominees to be submitted to the President. The Commission would consist of:

--the Speaker of the House of Representatives and the President pro tempore of the Senate,

--the majority and minority leaders of the House of Representatives and the Senate, and

--the Chairmen and the ranking minority members of the House Committee on Government Operations and the Senate Committee on Governmental Affairs.

The existing provision of law for appointment of the Comptroller General by the President, with the advice and consent of the Senate, would be retained. However, in making a nomination, the President would be required to select one of the names submitted to him by the Commission. If the President was not satisfied with any of the names initially submitted, he could request the Commission to submit additional names.

OVERVIEW OF ACCESS TO RECORDS EXPERIENCE

On a number of occasions over the years we have encountered outright refusals by Federal agencies to honor our statutory access rights. Several fairly recent examples serve to illustrate this problem.

In a multi-agency review of the Government's role in East-West trade, which began in 1974 and culminated in a 1976 report to the Congress (ID-76-13A, February, 1976), we were unable to resolve certain access problems or to establish uniform access guidelines. Access guidelines, promulgated by the White House Counsel's office and the President's Committee on East-West Trade Policy, were that:

1. Each agency decides the question of GAO access to its records.
2. GAO could not have information on subjects for which discussions had not been finalized or subjects still under discussion with other countries.
3. Certain "sensitive" data would not be made available.

As a result, we faced differing agency guidelines, arbitrary and subjective judgments on which subjects were pending or still under negotiation, and various definitions of "sensitive" data.

On October 10, 1974, we sent a letter to the White House Counsel requesting reconsideration of the above access guidelines. Our letter also requested reconsideration of determinations to deny us access to certain records of the Council on International Economic Policy and the National Security Council. We never received a response.

On several recent occasions we have been denied access to records of military departments on sweeping and general grounds, such as the records are "internal working papers that should not be released to the GAO" or are not "official" agency documents. In one recent instance (February 1978) the Air Force refused to give us copies of certain briefing materials prepared by the Comptroller's office concerning projected deficiencies in 1980 based on Mission Area Analyses completed in December 1977. This denial was based on the fact that the analyses were done in support of the fiscal year 1980 budget which had not gone to Congress, even though no cost or budgetary data were included in such analyses.

These are not merely ad hoc denials made by lower level officials, but reflect formal agency policy guidelines which can serve to engender a negative approach to GAO access. For example, the Air Force recently promulgated, over our objections, a revised instruction on relations with GAO -- Air Force Regulation 11-8 (10 February 1978). Paragraph 17 of

this regulation acknowledges GAO's "statutory authority for access to information and records necessary to carry out their statutory responsibilities." However, the next paragraph sets out a two-page listing of "special cases" involving certain types of "sensitive information which require special procedures or denial of access."

Among other things, this paragraph describes the Inspectors General as "confidential agents of the Secretary of the Air Force and the Chief of Staff," whose reports, classified or unclassified, must not be released to GAO without the Secretary's approval. Another provision of this paragraph states:

> "f. Internal Working Papers and Informal Records. Internal working papers which do not represent the official position of the Department of the Air Force or the DOD need not be released to GAO. Memoranda for the record, briefing material, trip reports, and transcripts of informal discussions not representing official positions, are considered internal working papers."

In a similar vein, the Secretary of the Navy's Instruction 5741.2F (24 May 1977), concerning relationships with GAO, contains the following rather remarkable statement

> "7. Access to information. GAO representatives are authorized access to such information and records as are necessary to permit them to carry out their statutory duties and responsibilities. However, a request for unrestricted and uncensored access

> through raw files in the nature of a 'fishing' expedition would be considered an improper request. * * *"

Of course, pervasive restrictions such as those quoted above are patently inconsistent with GAO's statutory rights of access. See, e.g., 31 U.S.C. §54.*/ Our problem is the lack of a judicial forum through which to put them to rest. In fact, we suspect that the mere enactment of a judicial enforcement remedy would put to rest the m[illegible] frivolous legal challenges to our access authority. At the same time, we recognize that serious legal issues may arise concerning the scope of our access authority under particular statutory provisions or factual circumstances, and we would not dispute an agency's right to press them. Here resort to the courts is the only means of fairly resolving such issues on the merits, thereby breaking the impasses which now occasionally result (with GAO necessarily on the losing end).

While additional examples of flat refusals to grant GAO any access to certain classes of records could be listed, it is fair to say that most problems eventually result in GAO's

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*/ It is interesting to note that the "colorful and nostalgic slogan 'no fishing expeditions'," apparently revived in the Navy Instruction, has been specifically rejected by the courts as a basis for denying Federal agencies access to the records of private parties. See United States v. Morton Salt Co., 338 U.S. 632, 641-643 (1950); see generally, 1 Davis, Administrative Law Treatise, §3.06. We consider it particularly curious that one Federal agency would assert this tired excuse against another.

gaining some sort of limited access, occasionally accompanied by restrictions or conditions upon our use of the information. As a practical matter, these situations can be more troublesome than flat refusals due to the time and effort consumed in negotiations and consequent delays in providing our reports to the Congress. Moreover, limited access may preclude us from arriving at unqualified factual analyses, conclusions, and recommendations.

Several illustrations of the many types of delay problems we have encountered may also be useful. In February 1977 we asked the Department of Agriculture for access to reports submitted by rice millers on the prices they paid farmers for rice. This information was essential to our review of deficiency payments for the 1976 rice crop since it provided the basis for establishing the support level on which Federal deficiency payments of $128 million were made to rice farmers. Agriculture initially refused to provide us the information on the ground that it was obtained in confidence. There followed a lengthy process of negotiation featuring an exchange of correspondence between the Comptroller General and the Secretary of Agriculture and a later exchange between the general counsels of the two agencies. Approximately one year after our original request, Agriculture acknowledged our legal right to the information and provided it to us in a limited form.

Lengthy delays in obtaining necessary information from the military departments have occurred frequently. For example, in connection with a review of the Army's Fire Support Mission, we requested, and were denied, a report evaluating the results of an Army-Air Force test on the joint use of attack helicopters and other aircraft. Our efforts to obtain the report were put off during the period January-April 1978 on the basis that the report had not been finalized and approved. However, in March 1978 Army and Air Force officials testified before a subcommittee of the Senate Armed Services Committee that, based on the evaluation report, the test had achieved favorable results. We understand that questions exist as to the adequacy of the evaluation report and the information provided to the subcommittee. We believe an analysis of the report by GAO could have assisted the subcommittee if we had been granted access to the data before the hearing.

In January 1977, Representative Eilberg, Chairman of the Subcommittee on Immigration, Citzenship, and International Law, House Judiciary Committee, regusted that GAO review investigative efforts by the Immigration and Naturalization Service (INS) concerning alleged Nazi war criminals in the United States. Our progress on this assignment was severely hampered by problems and delays in getting access to needed records. Shortly after we began our work in Janaury, we were informed that in acordance with Department of Justice

regulations, we could not have access to alleged Nazi war criminal files and cases until third-agency documents were removed. Also, in accordance with Department regulations, we could not have access to cases recommended for or under legal p' :dings.

After delays and negotiations spanning seven months (during which time the Subcommittee Chairman was called upon for assistance and Subcommittee hearings were held), arrangements were made to afford GAO access. However, the CIA and FBI furnished us summaries which they prepared, rather than access to original information in investigative files. The agencies' summaries did not contain personal identities or intelligence sources or methods. Various other restrictions were also imposed on our access. As result of these problems, our review was seriously delayed. Also, because of our restricted access to the files, we cannot adequately assure the Subcommittee and the Congress that our findings are complete.

Our experience in the INS assignment illustrates recurring problems we have encountered in reviewing the activities of law enforcement agencies, such as denial of access to original files, withholding of information concerning investigative techniques, and restrictions upon our use of information that is provided. We can appreciate the concerns of law enforcement agencies in wishing to protect sensitive information.

However, the restrictions imposed on our access often conflict with GAO's need to provide reliable and complete findings to the Congress in order that it may effectively carry out its oversight functions.

Perhaps the most frequent delay situations we encounter, and the most difficult to deal with, are those in which it is unclear whether a real access problem even exists. We may get no specific response to a request for access within a reasonable period of time. Follow-up inquiries may elicit that the request is being processed through various channels within the agency or there may be vague allusions to "possible problems" which are under consideration. Unlike situations in which the agency at least articulates specific objections or concerns, we have nothing to respond to here in terms of attempting a resolution. In all probability the records will be provided eventually; but in the meantime assignments have been set back for unclear reasons or, perhaps, for no reason other than indifference or foot-dragging.

We anticipate that the existence of a judicial enforcement remedy would have a very substantial and beneficial impact on each type of delay discussed above. The deterrent effect alone should instill in agencies a greater sensitivity to the need for prompt responses to our access requests, thereby generally speeding up the process. It should also encourage agencies

to quickly focus upon and articulate any real problems which do exist, so that they can at least be approached in a constructive manner.

As discussed above, we recognize that agencies often have sincere and legitimate concerns for the protection of sensitive information. We have always respected these concerns, and we have not hesitated to seek accommodations which afford maximum protection to the agency's information while assuring that our audit responsibilities are carried out effectively. For example, while law enforcement agencies are unwilling to reveal the identity of their informants to us, such information is generally not necessary to our audit work.

Enactment of the judicial enforcement remedy would not change our fundamental approach in this regard. It would, however, effect more subtle changes by placing us on an equal footing with the agencies for purposes of negotiation. While this will probably result in some differences from current practice in the substance of access arrangements, we anticipate that the most significant effect will be to reduce substantially the time required for the negotiation process.

The previous discussion centers on our access experiences with Federal agencies and the anticipated effects of a judicial enforcement remedy. Generally, this discussion applies

as well to access problems involving non-Federal organizations, such as contractors and grantees, and to the proposed subpoena authority which would provide the remedy here.

While cooperation is quite good as a general rule, access problems do arise in the form of challenges to GAO's legal authority, delays due to the informal resolution of stated issues, and delays involving uncertain factors. One possible difference in approach is that non-Federal organizations tend to be less familiar with GAO's functions and authorities. Issues are more likely to arise concerning the basis and scope of our legal access rights, and, in fact, our access rights are more varied than at the Federal level. Also, State laws and procedures may come into play.

As a result, we have occasionally encountered delays caused merely by the need to provide organizations -- particularly grantees -- with detailed statements of our authority. For example, the grantee (or its attorneys) may be entirely willing to cooperate, but may still insist on a formal statement of authority for its own protection in releasing information to us. Thus in a non-Federal context, the presence of subpoena power on the statute books should be most useful as a means of avoiding access delays at the outset, particularly where the potential problem is lack of familiarity with GAO rather than a desire to resist.

At the risk of stating the obvious, our overriding interest in dealing with non-Federal organizations (as it is, of course, with Federal agencies) is to obtain the access necessary to accomplish our functions as promptly as possible. This can best be achieved by approaching such organizations in a nonadvesary manner, but with the necessary legal remedies to support our access authority and evidence our ability to pursue access.

Our experience under title V of the Energy Policy and Conservation Act, 42 U.S.C. §§ 6381 et seq., illustrates the success of this approach. Title V grants GAO subpoena authority in the conduct of verification examinations of energy information. Since the statute was enacted in December 1975, we have obtained company information under title V from 68 different energy companies and conducted on-site audits of certain books and records of 32 companies. All of this has been accomplished without the need to issue a single subpoena. Some companies have been defensive about our involvement and sensitive about complying with our requests for information, especially where we sought proprietary or competitive data. Nevertheless, voluntary compliance has enabled us to obtain the necessary information to complete our reviews. We are convinced that the existence of our title V subpoena authority is, in large measure, responsible for these results.

Two title V reviews in particular illustrate the importance of having subpoena powers. One involved a review of coal operators' books and records supporting coal reserve estimates on public lands. This review involved the top 20 leaseholders of Federal coal and required access to information which was of a very confidential and proprietary nature. Our requests initially drew resistence from several of the companies. Officials of several companies acknowledged that the only reason they would give us the information is because they knew that through our enforcement powers we would, in all likelihood, obtain it in the long run. In another instance, we requested access to management and financial information regarding the construction of the trans-Alaskan pipeline. Although Alyeska -- the service company representing several major petroleum companies -- never acknowledged our rights under title V, they did give us the information we requested. Again, it appears, this was because of our enforcement powers and the company's interest in avoiding a court battle.

We are confident that the same results could be obtained if GAO is provided general subpoena power to enforce its existing access rights by law or agreement to records of non-Federal organizations.

Finally, it should be noted that GAO was also given subpoena power relating to social security programs by the Medicare-

Medicaid Antifraud and Abuse Amendments, 42 U.S.C. § 1320a-4. While we have not developed much experience under this recently enacted subpoena provision (October 25, 1977), we are aware of one instance in which a State agency resisted our access prior to its enactment but has now decided to comply voluntarily in view of the subpoena authority.

FEDERAL DEPARTMENTS, AGENCIES, OFFICES, COMMISSIONS, AND INDEPENDENT ESTABLISHMENTS WITH AUTHORITY TO ISSUE AND SIGN SUBPOENAS

Agency/Activity	United States Code
Agriculture (Department of)	
Pesticides and environmental pesticide control	7 U.S.C. §136d
Packers and stockyards	7 U.S.C. §222
Perishable agricultural commodities	7 U.S.C. §499m
Tobacco inspection	7 U.S.C. §511n
Seed inspection	7 U.S.C. §1603
Cotton research and promotion	7 U.S.C. §2115
Potato research and promotion	7 U.S.C. §2622
American Indian Policy Review Commission	25 U.S.C. §174 note
Civil Aeronautics Board	49 U.S.C. §1484
Civil Rights Commission	42 U.S.C. §§1975a, 1975d
Civil Service Commission	
Political activities of State and local employees	5 U.S.C. §1507
Enforcement of Voting Rights Act of 1965	42 U.S.C. §1973g

Agency/Activity	United States Code
Commerce (Department of)	
Weather modification	15 U.S.C. §330c
Flammability standards	15 U.S.C. §1193
Interstate land sales	15 U.S.C. §1714(c)
Shrimp fisheries log books	16 U.S.C. §1100b-5
Port safety	33 U.S.C. §1223
Shipping	46 U.S.C. §1124
Commission on Security and Cooperation in Europe	22 U.S.C. §3004
Consumer Products Safety Commission	
Hazardous substances	15 U.S.C. §1262 note
General	15 U.S.C. §2076
Council on Wage and Price Stability	12 U.S.C. §1904 note
Detention Review Board	50 U.S.C. §819
Energy (Department of)	
General	Pub. L. No. 95-91, title VI, §645
Powers of Secretary (formerly powers of Federal Energy Administration)	15 U.S.C. §772
Administration of Atomic Energy Act (formerly Energy Research and Development Agency)	42 U.S.C. §5814 (42 U.S.C. §2201(c))
Consumer Products (formerly Federal Energy Administration)	42 U.S.C. §6299

Agency/Activity	United States Code
Environmental Protection Agency	
General	33 U.S.C. §1369
Noise Control Act	42 U.S.C. §4915
Equal Employment Opportunity Commission	42 U.S.C. §2000e-9
Federal Communications Commission	47 U.S.C. §409
Federal Home Loan Bank Board	12 U.S.C. §1464(d)(9)
Federal Maritime Commission	46 U.S.C. §1124
Federal Metal and Non-Metallic Mine Safety Board	30 U.S.C. §729(i)
Federal Paperwork Commission	44 U.S.C. §3501 note
Federal Power Commission	
Natural gas companies	15 U.S.C. §717m
Water power	16 U.S.C. §825f
Federal Savings and Loan Insurance Corporation	12 U.S.C. §1730a(h)
Federal Trade Commission	
General	15 U.S.C. §§45, 49
Consumer products	42 U.S.C. §6302
Foreign Claims Settlement Commission	
Foreign claims	22 U.S.C. §1623
War Claims Settlement	50 U.S.C. (App.) §2001

Agency/Activity	United States Code
General	
Secretary of Department for which Coast Guard is operating (investigations of safety and environmental quality of ports, harbors, and navigable waters)	33 U.S.C. §1223
Secretary of Department administering Export Regulation Act	50 U.S.C. (App.) §2406
General Accounting Office	
Department of Energy Organization Act and Federal Energy Administration Act of 1974 (upon the adoption of a resolution by the appropriate congressional committee)	Pub. L. No. 95-91, title II, §207, 91 Stat. 565, 574; 15 U.S.C. §771
Energy Policy and Conservation Act	42 U.S.C. §§6382, 6384
Medicare-Medicaid Antifraud and Abuse Amendments	42 U.S.C. 1320A-1
Health, Education and Welfare (Department of)	
Old-age survivors and disability insurance benefits	42 U.S.C. §405(d)
Housing and Urban Development (Department of)	
Interstate land sales	15 U.S.C. §1714
Discriminatory housing practices	42 U.S.C. §3611
Immigration and Naturalization Service	
Immigration	8 U.S.C. §1225
Naturalization	8 U.S.C. §1446(b)
Indian Claims Commission	25 U.S.C. §70q

Agency/Activity	United States Code
Interior (Department of)	
Coal mines	30 U.S.C. §813
Public lands	43 U.S.C. §102
Internal Revenue Service	26 U.S.C. §§7602-7603
Interstate Commerce Commission	
Explosives transport	18 U.S.C. §835
Common carriers	49 U.S.C. §§12, 46
Motor vehicles	49 U.S.C. §305(d)
Joint Federal-State Land Use Planning Commission for Alaska	43 U.S.C. §1619(d)
Labor (Department of)	
Workmen's compensation	5 U.S.C. §8126
Farm labor contractors	7 U.S.C. §2046
Fair labor standards	29 U.S.C. §209
Longshoremen	33 U.S.C. §927
Government contracts	41 U.S.C. §39
Law Enforcement Assistance Administration	42 U.S.C. §3754
National Commission on Electronic Fund Transfers	12 U.S.C. §2404(d)
National Credit Union Administration	
Examination of insured credit unions	12 U.S.C. §1784

Agency/Activity	United States Code
National Labor Relations Board	
Determination of bargaining units; investigations into the fairness of elections; and unfair labor practices	29 U.S.C. §161
National Mediation Board	
Mediating disputes between carriers and their employees	45 U.S.C. §157
Pension Benefit Guaranty Corporation	29 U.S.C. §1303
President	
Enforcement of Defense Production Act	50 U.S.C. (App.) §2155
Railroad Retirement Board	
Railroad unemployment insurance claims	45 U.S.C. §362
Securities and Exchange Commission	
Security Exchange Act	15 U.S.C. §78u
Public utility holding companies	15 U.S.C. §79r
Investment companies	15 U.S.C. §80a-41
Small Business Administration	
Assistance recipients	15 U.S.C. §634
Investment company licensing	15 U.S.C. §§687a, 687b
Tariff Commission	19 U.S.C. §1333

Agency/Activity	United States Code
Technology Assessment Board	2 U.S.C. §473
Transportation (Department of)	
Safety standards	15 U.S.C. §1401
Tolls in navigable waters	33 U.S.C. §506
Transportation Safety Board	49 U.S.C. §1903(b)
Treasury (Department of)	
Marijuana investigations	21 U.S.C. §§198a, 198b, 198c
Enforcement of narcotics laws	31 U.S.C. §1034
United States Railway Association	45 U.S.C. §713
War Production Board	
Audits of defense contractors	50 U.S.C. (App.) §643a
Procurement and repair of naval vessels	50 U.S.C. (App.) §1152(4

EXPIRED AUTHORITY

Agency/Activity	United States Code
Commission on Consumer Finance	15 U.S.C. §1601 note
Commission on Food Marketing	7 U.S.C. §1621 note
Commission on the Organization of the Government for the Conduct of Foreign Policy	22 U.S.C. §2824

Agency/Activity	United States Code
Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance	18 U.S.C. §2510 note
Commission on the Review of the National Policy toward Gambling	18 U.S.C. §1955 note
Public Land Law Review Commission	43 U.S.C. §1398
Subversive Activities Control Board	
Investigations on communist-action-front groups or infiltrated organizations*/	50 U.S.C. §792
Transportation (auto insurance investigation)	49 U.S.C. §1653 note

*/ The Board's funding ceased on June 30, 1973. See 50 U.S.C. §791.

EXAMPLES OF AGENCIES WITH UNVOUCHERED ACCOUNTS

Table 1. Unvouchered Expenditure Funds Available For Fiscal Year 1977

Appropriation act	Account	Authority	Amount
Defense (Public Law 94-419)	Contingencies, defense	10 U.S.C. 140	$2,500,000
Do	Operations and maintenance, Army	10 U.S.C. 140	2,929,000
Do	Operations and maintenance, Navy	10 U.S.C. 140	4,462,000
Do	Operations and maintenance, Air Force	10 U.S.C. 140	2,393,000
Do	Operations and maintenance, Defense agencies.	10 U.S.C. 140	8,384,000
District of Columbia (Public Law 94-446).	General operating expenses (Mayor)	Public Law 93-140	2,500
Do	General operating expenses (Chairman, District of Columbia Council).	Public Law 93-140	2,500
Do	Public safety (Chief of Police)	Public Law 93-140	200,000
Do	Education (Superintendent of Schools)	Public Law 93-140	1,000
Do	Education (president, Federal City College)	Public Law 93-140	1,000
Do	Education (president, Washington Technical Institute).	Public Law 93-140	1,000
Do	Education (president, District of Columbia Teachers College).	Public Law 93-140	----------
Foreign assistance [1]	President's special authority	22 U.S.C. 2364(c)	50,000,000
Do	Confidential expenses	22 U.S.C. 2396(a)(8)	50,000
Do	Inspector General, Foreign Assistance	22 U.S.C. 2384(d)(7)	2,000
Do	Peace Corps	22 U.S.C. 2514(d)(7)	5,000
HUD, Space, Science (Public Law 94-378).	National Aeronautics and Space Administration, research and program management.	Public Law 94-307	35,000
Do	National Science Foundation	Public Law 94-471	5,000
Legislative branch (Public Law 94-440).	Contingent expenses of the House, allowances and expenses (American Group of the Interparliamentary Union).	22 U.S.C. 276b	Unspecified.
Do	Contingent expenses of the House, allowances and expenses (Canada-United States Interparliamentary Group).	22 U.S.C. 276g	Unspecified.
State, Justice (Public Law 94-362).	Emergencies in the diplomatic and consular services (State).	31 U.S.C. 107	2,100,000
Do	Salaries and expenses, general legal activities (Justice).	----------	30,000
Do	Federal Bureau of Investigation, salaries and expenses.	28 U.S.C. 537	70,000
Do	Immigration and Naturalization Service, salaries and expenses.	8 U.S.C. 1555	50,000
Do	Drug Enforcement Administration, salaries expenses.	----------	70,000
Treasury (Public Law 94-363)	Treasury Department, Office of the Secretary, salaries and expenses.	----------	100,000
Do	Compensation of the President	3 U.S.C. 102	50,000
Do	White House Office, salaries and expenses (travel funds).	----------	100,000

[1] The 4 items for foreign assistance derive from the Foreign Assistance Act of 1961, as amended; they do not require specific appropriations each year.

Table 2. Unvouchered Expenditure Funds Requested, Fiscal Year 1978

Appropriation account	Authority	Amount	Page reference in budget appendix
Compensation of the President	3 U.S.C. 102	$50,000	55
The White House Office, salaries and expenses		100,000	55
Executive residence, operating expenses		(1)	55
Operation and maintenance, Army	10 U.S.C. 140	3,219,000	228
Operation and maintenance, Navy	10 U.S.C. 140	1,507,050	229
Operation and maintenance, Air Force	10 U.S.C. 140	2,538,050	231
Operation and maintenance, Defense agencies	10 U.S.C. 140	3,743,000	232
Contingencies, Defense	10 U.S.C. 140	5,000,000	237
Salaries and expenses, general legal activities (Justice Department)		30,000	185
Federal Bureau of Investigation, salaries and expenses	28 U.S.C. 537	70,000	489
Immigration and Naturalization Service, salaries and expenses	8 U.S.C. 1555	50,000	491
Drug Enforcement Administration, salaries and expenses		70,000	493
Emergencies in the Diplomatic and Consular Service (State Department).	31 U.S.C. 107	2,600,000	522
Office of the Secretary [of the Treasury], salaries and expenses		100,000	589
National Aeronautics and Space Administration, research and program management.	(2)	35,000	660
National Science Foundation, salaries and expenses	(2)	50,000	715
President's special authority in foreign assistance[3]	22 U.S.C. 2364(c)	50,000,000	----
Foreign assistance, confidential expenses[3]	22 U.S.C. 2396(a)(8)	50,000	----
Foreign assistance, Inspector General[3]	22 U.S.C. 2384(d)(7)	2,000	----
Peace Corps[3]	22 U.S.C. 2514(d)(7)	5,000	----
District of Columbia, general operating expenses (Mayor)[4]	Public Law 93-140	2,500	----
District of Columbia, general operating expenses (Chairman, District of Columbia Council)[4].	Public Law 93-140	2,500	----
District of Columbia, public safety (chief of police)[4]	Public Law 93-140	200,000	----
District of Columbia, education (superintendent of schools)[4]	Public Law 93-140	1,000	----
District of Columbia, education (president, Federal City College)[4].	Public Law 93-140	1,000	----
District of Columbia, education (president, Washington Technical Institute)[4].	Public Law 93-140	1,000	----
Contingent expenses of the House of Representatives, allowances and expenses (American Group of the Interparliamentary Union).	22 U.S.C. 276b	(5)	12
Contingent expenses of the House of Representatives, allowances and expenses (Canada-United States Interparliamentary Group).	22 U.S.C. 276g	(5)	12

[1] Request for entire account is $2,157,000, part of which is for "official entertainment expenses of the President to be accounted for solely on his certificate."

[2] Authority is renewed each year in substantive legislation handled by authorizat committees.

[3] Derives from the Foreign Assistance Act of 1961, as amended. Does not require specific appropriations each year. The $50,000,000 authority is available over a number of years, until exhausted.

[4] Information on the fiscal 1978 budget is not yet available. These confidential funds were included in the fiscal 1977 budget for the District of Columbia.

[5] Request for the entire account is $54,682,800, part of which may be spent with certificates in accordance with the authorities contained in title 22 of the U.S. Code, sec. 276b and 276g. On the basis discussions with House and Senate disbursing offices, it appears that these expenditures, in practice, are vouchered.