



United States
General Accounting Office
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Office of the General Counsel

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June 6, 1997

The Honorable John Warner
Chairman
Committee on Rules
and Administration
United States Senate

Dear Mr. Chairman:

This responds to your letter of April 16, 1997, requesting our suggestions concerning a draft bill entitled the "Government Printing Office Act of 1997." We commend this effort to resolve a number of concerns about government printing and public access to government information, including questions about the constitutionality of the current law.

As discussed below, we support transfer of the Government Printing Office (GPO) to the executive branch as provided in Title II. However, we believe that, while the draft bill would resolve the constitutional separation of powers issue concerning legislative branch control over executive branch printing, the bill would raise an issue of executive branch control over printing for the judicial and legislative branches. One way to resolve this potential problem would be to provide that the government's printing needs could be fulfilled elsewhere whenever it was advantageous to do so. Ending GPO's monopoly over federal government printing in this manner could have the added benefit of enhancing the efficiency and effectiveness of GPO's operations.

We discuss below our views on two broader issues raised by the draft bill: the question of control of legislative and judicial printing by GPO as an executive branch agency and questions about GPO's printing monopoly. Also, we will be providing your staff with a separate list of some specific provisions that are unclear and suggested language changes to help clarify them where we can do so.

Over the past several years, officials in the executive branch have issued a number of opinions challenging the constitutionality of the provisions set forth in 44 U.S.C. § 501 and section 207(a) of the Legislative Branch Appropriations Act, 1993,

Pub. L. No. 102-392, 106 Stat. 1703, 1719 (1992), as amended by section 207(2) of the Legislative Branch Appropriations Act, 1995, Pub. L. No. 103-283, 108 Stat. 1423, 1440 (1994) (set forth at and hereinafter referred to as 44 U.S.C. § 501 note).¹ These provisions require that, with limited exceptions, all federal government printing, be done by or through GPO. Section 501 applies to in-house printing while section 501 note applies to procurement of printing from outside sources.

A May 1996 memorandum issued by the Office of Legal Counsel (OLC) of the Department of Justice declared, to the extent 44 U.S.C. §§ 501 and 501 note require all executive branch printing and duplicating to be procured by or through the GPO, they violate constitutional principles of separation of powers. The OLC found that the GPO is subject to congressional control, and concluded that the GPO's extensive control over executive branch printing is unconstitutional. The memorandum also concluded that executive branch departments and agencies are not obligated to procure printing by or through the GPO and that there is little or no risk of liability or sanction to contracting officers who act consistently with the opinion.²

The 1996 memorandum raises serious questions regarding the validity and enforceability of 44 U.S.C. §§501 and 501 note. While no court has ruled on the constitutionality of these provisions, we agree with the sentiments expressed in your letter to us of April 16, 1997, and the attachments thereto, that the time may be ripe for reform of Title 44 to resolve the long-standing constitutional concern.

Title II of the bill would transfer GPO from the legislative branch to the executive branch while maintaining GPO's monopoly, under 44 U.S.C. §§ 501 and 501 note, over most printing for the executive, legislative, and judicial branches of the federal government. If the bill is enacted, GPO, as an executive branch agency, would continue to have control over all congressional printing including printing of the

¹ See, e.g., Memorandum for William H. Taft, IV, Deputy Secretary of Defense, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: Effect of INS v. Chadha on 44 U.S.C. § 501, "Public Printing and Documents" (March 2, 1984); From Red Tape to Results: Creating a Government That Works Better and Costs Less, report of the National Performance Review, September 7, 1993; and Statement by President William J. Clinton Upon Signing the Legislative Branch Appropriations Act of 1995, H.R. 4454, 30 Weekly Comp. Pres. Doc. 1541, 1542 (July 22, 1994).

²Memorandum for Emily C. Hewitt, General Counsel, General Services Administration, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Government Printing Office Involvement in Executive Branch Printing (May 31, 1996).

Congressional Record, as well as certain printing required by the judiciary. This would raise a question of the independence of the Congress and the Courts in controlling their own printing functions and activities.

This issue was presented in a constitutional context by the Public Printer, Michael F. DiMario, in his April 24, 1997, testimony on the draft bill. He stated that, "if the proposition is accepted that in order to be constitutional GPO must be transferred to the executive branch, the legislative and judicial branches will immediately be provided with a constitutional pretext for withdrawing their work from GPO." It was also raised in testimony delivered on April 24, 1997, by Judge Royce C. Lamberth, District Court Judge for the District of Columbia. Judge Lamberth, speaking as a representative of the judiciary, stated that re-creation of GPO as an executive branch agency, with the authorities set forth in the draft bill, "potentially challenges the judiciary's independence" and raises "issues of independence that may have serious impact on the production of information both for and from the federal courts."

This issue could be avoided if, in addition to transferring GPO to the executive branch, its monopoly over printing for the federal government is eliminated. Ending GPO's printing monopoly would be one way of addressing another issue concerning GPO's operations. In prior work on the printing and procuring operations of GPO, we found that GPO's monopoly has contributed to inefficiencies and ineffectiveness in its operations. For this reason, in our 1994 report on the National Performance Review (NPR), we supported a recommendation that GPO's printing monopoly be eliminated.³

In a 1990 report on GPO, we stated that, while GPO's monopoly-like role in providing printing services was originally created to assure efficiency, with the passage of time that role has been transformed.⁴ The monopoly perpetuates inefficiency because centralized control permits GPO to be insulated from market forces. The agency does not have the incentives to improve operations and processes that would ensure quality services at competitive prices. On the basis of limited comparisons, we found that GPO's \$150 million of in-house printing in fiscal year 1989 might have been procured from commercial printers for as little as \$75 million.

³Management Reform: Implementation of the National Performance Review's Recommendations (GAO/OCG-95-1, Dec. 5, (1994).

⁴Government Printing Office: Monopoly-Like Status Contributes to Inefficiency and Ineffectiveness (GAO/GGD-90-107, Sept. 26, 1990).

In the 1990 report, we identified a number of operational problems that stemmed from GPO's monopoly, including costly in-house production, a procurement system where important quality of performance information was not readily available, customer service efforts hampered by poor communications, and weak accountability throughout GPO's performance management system. While we recognized that these operational problems could and should be improved within the existing legislative structure, we recommended that GPO's role be reexamined.

In a 1994 report, we concluded that with the emergence of various electronic technologies, the framework of laws and regulations used to manage many aspects of government publishing had become outdated.⁵ For example, we found that outdated definitions of printing and duplicating were driving federal publishing decisions rather than sound business practices emphasizing cost-effectiveness and customer service. We stated that as Congress reviewed proposals to change the existing legislative framework, it might wish to consider alternative frameworks built on sound business practices and changing publishing technologies.

In the 1994 report on the NPR mentioned previously, we reiterated that GPO's monopoly-like status contributes to inefficiencies and ineffectiveness. We agreed with a recommendation made in the NPR that GPO's mandatory source status for executive branch agencies should be eliminated. The NPR called for modification of Title 44 to remove the executive branch from coverage and eliminate the mandatory requirement to use GPO. It anticipated that GPO would market its services to the executive branch at competitive prices. The NPR recognized, however, that in order for GPO to make a successful transition, the executive branch should be required for a limited period of time to use GPO to satisfy most of its printing needs.

The draft proposal to transfer GPO to the executive branch provides an opportunity for the Congress to decide whether it should end GPO's monopoly over printing for all three branches of government. Such an approach holds the potential of resolving what might otherwise become another ongoing controversy while enhancing the efficiency and effectiveness of future GPO operations.

Finally, regardless of the ultimate determination of GPO's structure, we believe the nature of its activities require that GPO comply with sound financial management practices. Accordingly, we recommend requiring GPO to comply with the financial management reforms Congress has enacted for 24 major executive departments and agencies by adding GPO to the list of executive agencies subject to the Chief Financial Officers Act of 1990. This would subject GPO to the same financial

⁵Government Printing: Legal and Regulatory Framework is Outdated for New Technological Environment (GAO/NSIAD-94-157, April 15, 1994).

management practices, including audited financial statements, as the 24 major executive departments and agencies to help assure the issuance of complete, reliable, timely, and consistent financial information, and to deter fraud, waste, and abuse of Government resources. Alternatively, the bill could be revised to require GPO to prepare annual financial statements covering all accounts and associated activities consistent with the requirements of section 3515 of Title 31, United States Code and obtain an annual audit of those statements consistent with section 3521 of Title 31, United States Code.

Again, thank you for the opportunity to provide our comments on the draft legislation.

Sincerely yours,

Robert P. Murphy
General Counsel

