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United States
General Accounting Office
Washington, D.C. 20548

Information Management and
Technology Division

B-222177



147725

September 30, 1992

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

In a letter dated June 25, 1992, you asked that we review several concerns of the Taxpayer Assets Project¹ pertaining to public access to data within the Securities and Exchange Commission's (SEC) Electronic Data Gathering, Analysis, and Retrieval (EDGAR) System. Our review focused on determining (1) whether the Commission's approach to providing public access to EDGAR data is consistent with applicable statutes, and (2) whether concerns pertaining to the cost and means of accessing EDGAR data expressed in the Project's letter of June 17, 1992, to SEC Chairman Breeden reflect a full and accurate understanding of the SEC's plans for public access to EDGAR data.

RESULTS IN BRIEF

The Commission's approach to providing public access to and dissemination of EDGAR data is consistent with the specific requirements Congress established for the system in the Securities and Exchange Authorization Act of 1987.² The specific dissemination requirements established in the act are incorporated in the EDGAR contract awarded to BDM International, Inc., in January 1989.

¹The Taxpayer Assets Project is an ad hoc group composed of over 200 economists, journalists, librarians, and researchers seeking better, less costly access to EDGAR data through dissemination programs and products designed to meet their needs.

²Section 102 of Public Law 100-181, December 4, 1987, 15 U.S.C. 78ll.

GAO/IMTEC-92-86R, SEC: EDGAR Information Dissemination

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Some of the concerns expressed by the Taxpayer Assets Project do not reflect a full and accurate understanding of the approach provided for under the EDGAR legislation and contract. For example, the Project's concern that public access to EDGAR is limited to SEC's reading rooms in three cities does not reflect the Commission's current plans. Beginning in 1993, the Commission intends to make EDGAR information available at its headquarters and at all regional and branch offices--a total of 13 cities.

Other concerns, while reflecting an understanding of the EDGAR legislation and contract, raise public policy questions that are beyond the scope of this review. For example, free public online access to government databases, including EDGAR, raises a policy issue which has been debated and remains unresolved.

BACKGROUND

Federal securities laws require certain entities seeking to raise money from the public, or whose securities are traded publicly, to file certain disclosure documents, such as financial statements, with the Securities and Exchange Commission. The Commission manages a program to provide access to this information. However, the Commission does not provide free access to the data, except in public reading rooms.

Intended users of the EDGAR system fall into three categories: (1) filers of information to the SEC, (2) SEC analysts and attorneys who need to retrieve and manipulate the information filed, and (3) investors. Once completed, the system is intended to provide for the electronic receipt, acceptance, review, and dissemination of information filed with the Commission pursuant to federal securities laws. When fully developed, the Commission estimates that the EDGAR database will contain the equivalent of 20 million pages of information.

EDGAR DATA DISSEMINATION APPROACH CONSISTENT WITH AUTHORIZATION ACT

In the Securities and Exchange Commission Authorization Act of 1987, the Congress authorized the SEC to obtain a contractor to establish and operate the EDGAR system, including the dissemination of EDGAR data to the public. Specifically, the EDGAR legislation requires the Commission

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to ensure that information in the EDGAR system³ that is disseminated by the contractor:

- may be sold or disseminated by the contractor only pursuant to a uniform schedule of fees prescribed by the Commission;
- may be obtained by a purchaser by direct interconnection with the EDGAR system;
- shall be equally available on equal terms to all persons; and
- may be used, resold, or redisseminated by any person who has lawfully obtained such information without restriction and without payment of additional fees or royalties.

The dissemination provisions of the EDGAR contract are consistent with the requirements of the legislation. According to the contract, the contractor is required to sell EDGAR information to the public in four ways: electronic form, magnetic tape, paper, or microfiche. Purchasers buying the electronic form would need to connect their computers to the EDGAR dissemination subsystem operated by the contractor. The cost of the four types of information is regulated by SEC. This regulated fee schedule is intended to assure that information is available to all persons on equal terms. Once the service is purchased there are no limitations which prevent the purchaser from reselling the information obtained.

To provide assurance that the SEC's fee schedule is reasonable, the contract provides for the Commission to conduct an annual review, based in part upon an audit of the contractor's financial records by an independent accounting firm. SEC officials stated that the first annual review is planned for the Spring of 1993, and subsequent annual reviews will take place after mandatory filing begins.

ANALYSIS OF PROJECT CONCERNS

The Taxpayer Assets Project raised several concerns pertaining to the adequacy of the Commission's dissemination of ~~public information contained within the EDGAR system~~. The Project stated that the Commission's dissemination plans are flawed because librarians, journalists, economists, and other

³Some information within the EDGAR database is proprietary and therefore not available to the public.

researchers will not be able to (1) search the EDGAR database online from remote locations other than SEC reading rooms, (2) rely on the SEC to exercise sufficient management control over the EDGAR database, (3) acquire CD-ROM⁴ products that meet their needs, (4) obtain EDGAR information through the Federal Depository Library Program,⁵ or (5) avoid costly payments to commercial firms. The Project also stated that electronic versions of public records received and stored in the EDGAR system should be available through the Freedom of Information Act.⁶

Online Access To EDGAR Data

The Project's concern that citizens will not be able to search online from remote locations does not accurately reflect the options available to subscribers to the EDGAR database. For example, the EDGAR contractor must make available an online, real-time interconnection option as required by the contract and EDGAR legislation. In addition, the Project's statement that public access would be limited to reading rooms in Washington, D.C., New York, and Chicago is incorrect. The Commission plans to provide online access to EDGAR from the following regional offices as well as the above reading rooms: Atlanta, Boston, Denver, Fort Worth, Los Angeles, Philadelphia, and Seattle. Online access will also be available at the Commission's Miami, Salt Lake City, and San Francisco branch offices.

Control of the EDGAR Database

The Taxpayer Assets Project is also concerned that the present EDGAR contract will significantly diminish the Commission's control over the EDGAR database. For example, the Project states that the SEC's official database will only

⁴Compact Disk-Read Only Memory (CD-ROM), the compact-disk format for computer data, is generally used for the storage of relatively unchanged data and images, such as archival files.

⁵The Federal Depository Library Program is the primary mechanism for disseminating public policy and educational information to the public through 1,400 libraries. The Depository Library Act provides for the printing, binding, and distribution of public documents, 44 U.S.C. 86, 1901-1916.

⁶Public Law 89-487, July 4, 1966, 5 U.S.C. § 552, et. seq. as amended.

be available on microfiche and the machine-readable copy of the EDGAR database will be controlled by the contractor and stored on computers owned by the contractor. We found that the official archival record will be available on microfiche, in accordance with current federal archival standards. Although the EDGAR database is located at the contractor's site, the SEC retains a complete copy of the database. SEC's database is located at its Computer Operations Center in Alexandria, Virginia, which has back-up facilities at SEC headquarters.

Availability of CD-ROM Products

The Project is also concerned that the Commission would not sell CD-ROM products that meet the needs of librarians, journalists, economists, and researchers. SEC does not currently have the responsibility, under the EDGAR authorizing legislation (P.L. 100-181), to develop specific products or services in any particular media, such as CD-ROM and such provisions are not in the contract. According to its Executive Director, the Commission agrees that providing CD-ROM products could be a very useful public service. However, before the data can be provided in such a format, standards and other technical issues must be resolved. In this regard, the National Archives and Records Administration and the National Institute of Standards and Technology are researching the suitability of CD-ROM and other optical media for archival applications such as EDGAR, but are still gathering the data needed to evaluate the different media.

Obtaining EDGAR Data Through the Federal Depository Library Program

The Commission does not now participate in the Federal Depository Library program. The program, which has long been the primary mechanism for distributing public policy and educational information to the public, distributes government publications to approximately 1,400 libraries nationwide. Commission officials said they would be open to considering ways to make EDGAR data available through the library program. They cautioned, however, that in exploring alternative ways to make EDGAR data available to the public, the Commission would take steps to ensure that it did not jeopardize existing contractual arrangements.

Paying Commercial Firms for EDGAR Data

The Project states that the data in the EDGAR system is collected at taxpayer expense to inform the public, and that the public therefore should not have to pay commercial firms,

such as the contractor, to receive data paid for with tax dollars.

The Securities and Exchange Authorization Act of 1987 provides for the use of appropriated funds only for the receipt, automated acceptance, and review of filings. In addition, the contract specifically outlined the process for dissemination of EDGAR data and established contractor cost recovery methods to guide that activity. Whether citizens should have to pay private contractors for government data is a wider public policy issue that is outside the scope of this review.

Availability of Electronic EDGAR Information
under the Freedom of Information Act

The Taxpayer Assets Project believes that electronic versions of public records that are received and stored in the EDGAR system should be available under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et. seq., as amended. This act requires agencies to disclose public information upon request unless such information falls into one of the stated exceptions (e.g., national security information). Although the act applies to information that is contained in agency computer systems such as EDGAR,⁷ it appears that agencies are not required to provide information in electronic form if it is readily available in paper form.⁸ Also, according to a 1990 Department of Justice report on electronic records, most agencies believe that the choice of providing alternative forms of FOIA information should be a matter reserved to agency discretion.

Regarding the information contained in the EDGAR system, we understand that all this information is also available in either microfiche or paper form. Therefore, SEC's position that electronic versions of EDGAR information are available

⁷Yeager v. Drug Enforcement Administration, 678 F.2d 315 (D.C. Cir. 1982).

⁸See Dismukes v. Department of Labor, 603 F. Supp. 760 (D.D.C. 1984), in which the agency denied a Freedom of Information Act request for a copy of a computer tape containing certain information, instead offering the requested information on microfiche. The court upheld the agency, holding that a Freedom of Information Act requester does not have the absolute right to designate the format of the information so long as the agency may provide the same amount of information in another form.

only through the contractor, and that in response to Freedom of Information Act requests such information will be made available in either microfiche or paper form, is currently consistent with the act.

The public availability of agency computerized information under the Freedom of Information Act is an important government-wide issue today, one that has been widely debated, encompassing the same issues raised by the Taxpayer Assets Project regarding the EDGAR system. This issue has been addressed in detail by a congressional committee,⁹ the Administrative Conference of the United States,¹⁰ the Office of Technology Assessment,¹¹ and the Department of Justice.¹² The issue is currently being addressed in this Congress with the introduction of S. 1940, the proposed "Electronic Freedom of Information Improvement Act of 1991."

OBSERVATIONS

The wishes of some prospective users of EDGAR data will not be met under the Commission's current dissemination plan. However, the Commission's dissemination plan is consistent with requirements established by enabling legislation.

This situation stems from technological change, not public policy neglect. In 1987, when the Congress established specific requirements for the EDGAR system, the dissemination of data within government databases had not emerged as a broad, government-wide public policy issue in need of immediate resolution. Concerns over access to and

⁹See the House of Representatives Government Operations Committee report entitled Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, H.R. Rep. No. 99-560 (1986).

¹⁰See the Administrative Conference of the United States report entitled Federal Agency Use of Computers in Acquiring and Releasing Information, 1 C.F.R. § 305.88-10 (1989), together with the accompanying report: H. Perritt, The Electronic Acquisition and Release of Federal Agency Information (1989).

¹¹See the Office of Technology Assessment report entitled Informing the Nation: Federal Information Dissemination in an Electronic Age, (Oct. 1988).

¹²See the Department of Justice report on "Electronic Record" Issues under the Freedom of Information Act, (Oct. 1990).

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dissemination of EDGAR data are unlikely to be resolved until the Congress addresses them within the context of the larger, government-wide public policy and funding issues.


AGENCY COMMENTS

Senior officials of SEC's Office of the Executive Director generally agreed with the contents of this letter. We have incorporated their comments in the letter as appropriate. In addition, the Chief Information Officer informed us that he has met with representatives of the Taxpayer Assets Project and is working toward addressing their concerns within EDGAR contractual limitations.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 2 days from the date of this letter. We will then send copies to the Chairman, Securities and Exchange Commission; the Director, Office of Management and Budget; and interested congressional committees. Copies will also be made available to others upon request. If you have any questions about this letter, please contact me at (202) 512-6418 or Mary Ellen Chervenik, Assistant Director, at (202) 512-6418.

Sincerely yours,


Howard G. Rhile
Director, General Government
Information Systems

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