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United States General Accounting Office
Washington, DC 20548

October 31, 2002

The Honorable Carl Levin
Chairman
The Honorable John Warner
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Bob Stump
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

Subject: *DOD User Fees: Implementation Status of Section 1085 of the National Defense Authorization Act for Fiscal Year 2001*

Section 1085 of the National Defense Authorization Act for Fiscal Year 2001 authorized the military department secretaries to (1) charge fees to persons requesting information from the primary military archives and (2) retain collected fees to help defray costs associated with providing the information. The military archives also have authority under the User Charge Statute (31 U.S.C. § 9701) and the Freedom of Information Act (FOIA) (5 U.S.C. § 552) to charge for general information provided to the public. A major distinction, however, is that the fees collected under these two provisions are to be deposited with the Department of the Treasury.

The Conference Report on the National Defense Authorization Act for Fiscal Year 2001 directs the Comptroller General to provide a report 1 year after implementation of Section 1085 of the act on the fees collected and the associated costs of providing historical information. In preliminary work aimed at that reporting requirement, we issued a report in October 2001¹ that identified Section 1085 implementation issues and other issues related to Department of Defense (DOD) fees under the User Charge Statute and FOIA. That report (1) provided the status of Section 1085 implementation by the primary military archives at that time, (2) identified the fees charged by the archives under existing authorities, and (3) discussed other issues relating to DOD fees for providing information to the public.

¹ U.S. General Accounting Office, *User Fees: DOD Fees for Providing Information Not Current and Consistent*, GAO-02-34 (Washington, D.C.: Oct. 12, 2001).

As agreed with your offices, this report is being issued about 1 year after the first archive implemented Section 1085. It updates the matters discussed in our October 2001 report and fulfills the Comptroller General reporting requirements in the conference report. For this update, we obtained information on the status of implementation of Section 1085 by the four designated archives. We also obtained information on DOD's actions to update fee schedules for the User Charge Statute and FOIA . We did not independently audit the basis for any of the established or proposed fees. We obtained information by reviewing pertinent documents and interviewing DOD officials in the Office of the Under Secretary of Defense (Comptroller), Directorate for Freedom of Information and Security Review, and the four primary military archives. Our work was done from August through October 2002.

One of Four Archives Implements Section 1085

With Section 1085 authorizing but not requiring action by the four primary military archives, only the Army Military History Institute has implemented a fee schedule under Section 1085. Officials of the other three archives told us that the archives have no plans to implement a fee schedule under Section 1085.

The Army Military History Institute first implemented a Section 1085 fee schedule in October 2001 and modified it in April 2002 to simplify some of the fees and increase mailing fees for foreign addresses. Officials told us that the fee schedule was based on total cost with some adjustments. For example, they said that the revised fee schedule provides for free handling and shipping of up to 8 pages to avoid the expenditure of staff time to administer and collect small fees. Also, they said that a uniform copying fee of \$.25 per page was established in lieu of separate fees for copying by patron and by staff. Officials reported to us that about \$32,000 was collected from October 2001 through July 2002 and that they did not have any problems related to implementing a fee schedule under Section 1085.

Actions Taken or Under Way to Update FOIA and User Charge Fee Schedules

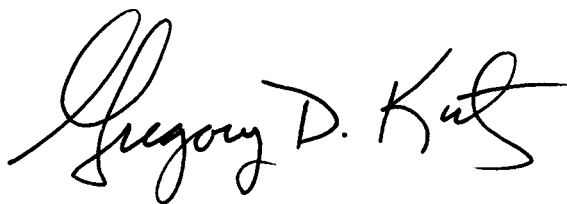
In our prior report, we recommended that DOD update the FOIA and User Charge fee schedules, which had not been revised since 1986. DOD implemented a new fee schedule for FOIA requests on July 1, 2002. The hourly rates for search fees, an element in the fee schedule, were increased for all three categories: (1) clerical from \$12 to \$20, (2) professional from \$25 to \$44, and (3) executive from \$45 to \$75.

Regarding fees under the User Charge Statute, a draft revision to the DOD Financial Management Regulation is currently in the process of coordination. The proposed hourly rate for search fees is consistent with the revised FOIA rates and the proposed minimum fee is \$5.00, an increase from the current \$3.50. DOD officials expect the revised regulation to be issued early in 2003.

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We are sending copies of this report to the Under Secretary of Defense (Comptroller); the Director, Freedom of Information and Security Review; Director, Office of Management and Budget; and interested congressional committees. Copies of this report will also be made available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

Please contact me at (202) 512-9505 or kutzg@gao.gov or David Childress at (202) 512-4639 or childressj@gao.gov if you have any questions.

A handwritten signature in black ink that reads "Gregory D. Kutz". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke at the end.

Gregory D. Kutz
Director
Financial Management and Assurance

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