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STATEMENT OF

ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL

OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ON DISCLOSURE OF LOBBYING ACTIVITIES

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Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the General Accounting Office on H.R. 81 and related bills.

Our testimony this morning will focus on three areas. As the subcommittee requested, we first will express our general opinion on the need for lobbying disclosure legislation. Second, we will suggest several refinements that could be made to the bills to minimize recordkeeping burdens and promote the reporting of meaningful information. And third, we will explain our views on the administration and enforcement of the proposed law.

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NEED FOR DISCLOSURE LEGISLATION

Mr. Chairman, I believe the necessity for change in the present law is now almost universally accepted.

As you may know, on April 12, 1975, GAO issued a report entitled "The Federal Regulation of Lobbying Act--Difficulties in Enforcement and Administration." Since its enactment in 1946, the Federal Regulation of Lobbying Act has been the subject of continual congressional scrutiny and generally has been judged to be ineffective. In our report, we confirmed this judgment. We found the enforcement and administration of the Act to be woefully inadequate and, on numerous occasions, testified to this effect before this subcommittee and before the Senate Committee on Governmental Affairs.

The rationale for a new and comprehensive disclosure statute finds support on several other grounds, however, and these grounds have only an indirect relationship to the defects of present law, and the clear shortcomings in the present law's administration and enforcement.

In recent years, for example, the Congress has passed disclosure legislation that is aimed at openness in Government and at providing members of the public access to information about the workings of their Government. These initiatives cover the disclosure of records through the Freedom of Information Act, the disclosure of campaign finances, open agency and

congressional hearings, and the disclosure of financial holdings of senior governmental officials, and other matters.

An important aspect of the governmental process that is not covered in any meaningful way is the disclosure of major lobbying efforts that are designed to secure the passage or defeat of legislation. We believe a substantial public interest could be served by reasonable disclosure legislation in this area as well. The interest to be served by lobbying legislation is analogous to the interest served by other disclosure statutes, namely, the public's right to know the source and scope of the major influences that are brought to bear on the legislative process by the private sector. Removing the cloak of secrecy from efforts to influence the Congress also should improve the public's confidence in the legislative process. Unjustified suspicions of improper behavior could be removed and better appreciation gained of how Congress seeks to develop, from competing views, legislation that is in the public interest.

H.R. 81

We consider the disclosure provisions of H.R. 81 a marked improvement over those of the present law. We believe several refinements to the bill's threshold and disclosure requirements could minimize recordkeeping burdens and promote the reporting of meaningful and useful information.

Thresholds

H.R 81 would apply to any organization that spends more than $2,500 in any quarterly filing period to retain another person to engage in certain lobbying activities on its behalf. The bill also would apply to any organization which, acting through its employees, made a specified number of lobbying communications during a quarter and made expenditures in excess of $2,500 for lobbying. A lobbying organization that crossed either of these so-called "thresholds" would register as a lobbyist and would file quarterly reports on certain of its lobbying activities and lobbying expenditures.

To determine whether it had crossed a threshold, H.R. 81 would require an organization to allocate its lobbying and nonlobbying expenditures for a wide variety of cost items, including the costs of research, drafting, support staff salaries, the salaries and fees of employees and retainees who do not lobby exclusively and, under certain circumstances, the costs of overhead. For organizations that make expenditures for activities other than lobbying, cost allocations for several of these items could prove difficult.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report, we recommend allocation requirements for the apportionment of comparatively indirect costs

like utility expenses, office supplies, etc., be avoided to the maximum extent practicable. By confining threshold expenditures to cost items such as gifts to Federal officers, social events held for Federal officers, retainer fees, and lobbyists' salaries, we believe organizations would be able to determine with greater ease whether they had crossed a threshold.

Quarterly Reports

H.R. 81 would require registered lobbying organizations to file quarterly reports with the Comptroller General. These reports ordinarily would contain considerably more information than that required for registration.

Among other matters, quarterly reports would disclose: (1) total quarterly expenditures for direct lobbying activities; (2) the identity of certain of the organization's retained lobbyists and employees, and expenditures made incident to the retention or employment; and (3) the issues upon which the organization spent a significant amount of its direct lobbying efforts. Under H.R. 1979, a bill identical to one passed by the House during the 95th Congress, a registered lobbying organization also would disclose certain of its indirect lobbying campaigns and specified organizational contributions that were used for lobbying purposes.

H.R. 81's disclosure provisions would require organizations to apportion lobbying and nonlobbying costs when reporting total direct lobbying expenditures. The sundry cost items to be included in this apportionment are similar to those that must be considered in determining whether an organization crossed a threshold. We believe cost allocations for the purpose of disclosing total direct lobbying expenditures could be limited along the lines suggested for the thresholds.

We also recommend the subcommittee clarify the requirement that an organization disclose the issues upon which it spends a "significant amount" of its direct lobbying efforts. One possible solution would require disclosure of a specified number of issues, as measured by the approximate amount of time or money expended.

Exemptions

Certain activities that would otherwise qualify as lobbying are specifically excluded from the bill's definition of "lobbying communications." Exempt activities are neither reportable nor considered in the determination whether an organization meets one of the bill's thresholds.

One exemption excludes from coverage any communication made at the request of a Federal officer. Under this exemption, a Federal officer presumably could ask an organization to

lobby other Federal officers on a given issue. The resulting communication would not be covered by the bill. We believe this exemption needs narrowing, and recommend it be confined to communications made to the requesting Federal officer or to an entity such as a congressional committee, that the requesting official represents.

As for the exemptions generally, we believe lobbying organizations should have the option of using the exemptions when making threshold computations and preparing quarterly reports. In this way, organizations could avoid an apportionment of expenditures and contacts between exempt lobbying and reportable lobbying.

Administration and Enforcement

H.R. 81 designates the Comptroller General as the official responsible for administering the proposed law effectively, and for ensuring, among other matters, that lobbying information is available to and accurately summarized for the Congress and the public. Subject to a legislative veto, the Comptroller General also would issue rules and regulations. But for reasons that are not clear to us, authority to ensure all aspects of compliance is vested exclusively with the Attorney General. We believe this enforcement scheme would prove to be inequitable, unworkable, and ineffective.

When disclosure legislation was under consideration by the 94th and 95th Congresses, we said that GAO was willing

and able to perform the administrative and noncriminal compliance functions required by bills that covered lobbying on legislative matters. We testified that vesting some compliance authority in the Comptroller General would be essential to the administration of the new law. We have not changed this position.

But H.R 81, unlike the lobbying bills passed by the Senate and the House during the 94th Congress, and the bill reported favorably from this subcommittee during the last Congress, does not place any compliance authority with the Comptroller General. Although the bills under consideration today give the impression that the Comptroller General would be responsible for the law's effective administration and for monitoring compliance with numerous disclosure requirements, we would have no real means to assure either effective administration or its corollary, compliance.

As the bill is presently drafted, for example, we would lack authority even to inquire informally of a registered lobbying organization whether it had inadvertently failed to file a quarterly report. Under the bill, routine matters of this and substantially lesser gravity would be referred instead to the Attorney General for investigation and corrective action. We consider reliance on the administering officials for resolution of these problems, rather than on the prosecutive arm of Government, a less intrusive, more amicable,

and more effective approach to compliance. But unless the statute provides us some reasonably effective compliance authority, so we can assure the Congress, lobbying organizations, and the American public that the new law has adequate oversight, we strongly recommend that responsibility for administering lobbying disclosure not be placed with the Comptroller General.

Mr. Chairman, I believe our position on this matter is justified in view of the experience with the present law.

The Department of Justice is responsible for enforcing the current lobbying law. Although the Clerk of the House and the Secretary of the Senate administer the law, these officials are mere repositories of information they cannot verify, and they lack investigative and compliance authority. Our report on the present lobbying law confirmed the near total ineffectiveness of this enforcement scheme, and the crippling effects of that scheme on the lobbying law's administration.

The report shows that of the nearly 2,000 lobbyists who filed in one 3-month period in 1974, over 60 percent filed late and nearly 50 percent of the filings were defective on their face. Unlike other disclosure statutes, the administering officials had no authority to require correction of the most minor of these inadequacies. And the Justice Department investigated only five matters over a 4-year period, 1972-1975.

As to the existing lobbying law, the Justice Department has repeatedly said the administering officials are in the best position to monitor compliance and provide oversight. While we agree from a managerial and efficiency standpoint, we are obliged to point out that the administering officials are not able to perform either function, since they lack authority to review records, to give meaningful guidance to lobbyists, to handle minor or technical infractions, or to ensure completion of the reports lobbyists file. Other than transferring responsibilities to the Comptroller General to be a records repository, H.R 81 would not change this situation.

We have serious reservations whether the Justice Department should be relied upon as the exclusive agency to foster compliance with a disclosure statute that deals with lobbying. The Department and its investigative arm, the Federal Bureau of Investigation, have extensive and timeconsuming enforcement responsibilities for substantially the entire Federal criminal code. From the standpoint of its resources and existing enforcement priorities for serious criminal and civil offenses, we question whether the Department would be in a position to resolve all or even substantially all of the noncriminal compliance problems, most of them relatively minor, that may arise under an expanded and comprehensive disclosure law.

If there is to be effective administration, the administering agency, in our view, should have some basic tools, such as the authority to provide oversight, the authority to provide meaningful guidance to lobbyists on disclosure and registration requirements, limited authority to gain access to records required to be maintained, and the ability to handle routine or technical civil compliance problems.

When problems such as the inadvertent, unknowing, or negligent omission of information from a quarterly report do arise, the administering officials should be in a position to attempt to conciliate the problem administratively or informally in a timely, effective, and unobtrusive manner.

Mr. Chairman, we are also concerned with the transfer of clerical duties to the Comptroller General, without any compliance tools--and that is what H.R. 81 proposes to do. It could place GAO in the anomalous and awkward position of appearing responsible for administration and for providing complete lobbying information, when, in fact, the Comptroller General would lack the tools to administer the law effectively.

It is for these reasons that we urge the subcommittee to modify H.R. 81's enforcement scheme or, alternatively, place responsibility for administration with some other governmental entity or official. We also recommend the

Attorney General's lobbying disclosure enforcement responsibilities generally be limited to the resolution of aggravated situations where a lobbyist proceeds in an apparently deliberate or reckless violation of law.

With these modifications, we believe H.R. 81 would accomplish the companion objectives of providing the Comptroller General with the means necessary to administer the law effectively, and of affording lobbying organizations optimum opportunities to comply with the new law before corrective action by the Attorney General would be necessary or desirable.

Mr. Chairman and Members of the Committee, this concludes our statement. We will be glad to respond to any questions you have.