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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

October 21, 1981

B-201695

The Honorable William Bradford Reynolds
Assistant Attorney General
Civil Rights Division
Department of Justice

Dear Mr. Reynolds:

This is in response to your letter of August 21, 1981, concerning Executive Order 12250, 45 Fed. Reg. 72995 (1980), entitled "Leadership and Coordination of Nondiscrimination Laws." That order assigns responsibility to the Attorney General for coordinating the implementation and enforcement by executive agencies of: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.); Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); and any other provision of Federal statutory law which prohibits discrimination under any program or activity receiving Federal financial assistance.

You note in your letter that while for the most part the above laws apply only to programs receiving Federal financial assistance, Section 504 of the Rehabilitation Act was amended in 1978 to proscribe discrimination on the basis of handicap under any program or activity conducted by "any Executive agency or by the United States Postal Service." You conclude that because the General Accounting Office (GAO) falls within the definition of "Executive agency" as stated in 5 U.S.C. § 105, this Office is covered under Section 504 of the Rehabilitation Act and is subject to the provisions of Executive Order 12250 for purposes of that Act. You request our views on this conclusion.

We do not believe that the title 5 definition of "Executive agency" should be applied in these circumstances. For that reason, and for the other reasons stated below, we feel that the GAO is exempt from the requirements of Executive Order 12250.

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The term "Executive agency" as defined in 5 U.S.C. § 105 includes an "independent establishment," which is defined at 5 U.S.C. § 104(2) to specifically include the GAO. However, sections 104 and 105, by their own terms, provide that these definitions are for the purpose of title 5, United States Code.

While for some limited purposes GAO is included within the definition of "Executive agency," for most purposes it is considered as an independent agency within the legislative branch. See 31 U.S.C. § 41. As a further indication of its status as such, it receives its operating funds in the annual legislative branch appropriations acts. See, e.g., Pub. L. No. 95-391, 92 Stat. 763, 787-88.

Also, in order to guarantee its independence, Congress has separated GAO's personnel system from that of the executive branch. We invite your attention to the provisions of the General Accounting Office Personnel Act of 1980, which established an independent personnel system for GAO, effective October 1, 1980, with the purpose of exempting it from executive branch administration of laws and regulations relating to personnel management. Pub. L. No. 96-191, February 15, 1980, 94 Stat. 27, 31 U.S.C. § 52-1 et seq. Congress recognized the potential conflict of interests presented between GAO's responsibility for evaluating executive agencies' personnel programs and regulation of GAO personnel management by certain of those executive agencies. See H.R. Rep. No. 494, 96th Cong., 1st Sess. (1979); S. Rep. No. 540, 96th Cong., 1st Sess. (1979).

In establishing an independent personnel system for the GAO, Congress ensured that GAO employees would continue to have rights and benefits enjoyed by employees in other Government agencies. The GAO Personnel Act establishes a GAO Personnel Appeals Board to perform functions of the Office of Personnel Management, the Merit Systems Protections Board, the Federal Labor

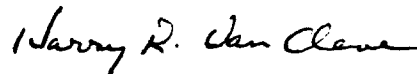
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Relations Authority, and the Equal Employment Opportunity Commission. The Act also establishes a General Counsel to the GAO Personnel Appeals Board to investigate and prosecute allegations of prohibited personnel practices and to investigate labor-management and employment discrimination cases. Thus, the Act incorporates the substantive requirements of the Equal Employment Opportunity laws applicable to executive branch agencies. Moreover, section 3(g)(3) of the Act (31 U.S.C. § 52-2(g)(3)) preserves any right or remedy which may have been granted to GAO employees by those anti-discrimination laws and vests authority for their implementation and enforcement in the GAO Personnel Appeals Board and in the Comptroller General.

It is therefore our view that the Department of Justice is without jurisdiction in these matters insofar as GAO is concerned.

We trust you will find this information responsive to your request and sufficient reason to exempt this Office from coverage under Executive Order 12250. If you have any questions or require further information, please contact Ronald Schneider, Attorney-Adviser, at 275-5422.

Sincerely yours,



Harry R. Van Cleve
Acting General Counsel