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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, DC 20548

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STATEMENT OF
MILTON J. SOCOLAR, SPECIAL ASSISTANT TO
THE COMPTROLLER GENERAL
UNITED STATES GENERAL ACCOUNTING OFFICE
BEFORE THE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
CONCERNING THE PROPOSED
PROGRAM FRAUD CIVIL PENALTIES ACT (S. 1780)



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UNCLASSIFIED

Mr. Chairman and Members of the Committee:

We are here at your request to comment on S. 1780, entitled the "Program Fraud Civil Penalties Act."

Fraud in Government operations and programs undermines the integrity of the Federal Government. Unfortunately, many now believe that individuals can commit fraud against the Government with little or no fear of Federal reprisal. The sad truth is that often they are right; crime against the Federal Government often does pay.

Recently, there has been increased concern in Government about its susceptibility to fraud, and consequently, an increased desire for greater accountability. This is evidenced by a number of actions the Government has already taken such as the establishment of fraud hotlines in several agencies, and the Office of Management and Budget's recent issuance of its circular on internal control systems.

S. 1780 would provide agencies with a mechanism to impose civil penalties against those who knowingly make false claims or statements for money, property, or services provided by the Federal Government. The proposed bill would strengthen the Government's ability to recover funds lost due to fraud and if aggressively implemented, its penalty provisions should serve as a deterrent to the commission of fraud. Enactment of this legislation would be a positive step toward providing the tools necessary for effectively combatting fraud against the American taxpayer. The

use of civil money penalties has been increasingly recognized as an effective mechanism to enforce a wide variety of Government program requirements.

GAO'S 1981 FRAUD REPORT

In May 1981 we issued Volume I of a three-volume report to the Congress entitled, "Fraud In Government Programs: --How Extensive Is It? --How Can It Be Controlled?". That report disclosed the results of a statistical analysis of over 77,000 cases of fraud and other illegal activities identified by 21 Federal agencies over a 2-1/2 year period. We pointed out that the Department of Justice, for a number of reasons, often declined criminal or civil prosecution. We also pointed out that Federal agencies in some cases took administrative action focusing on recovery of the moneys lost as a result of fraud without assessment of any penalties. We recommended that Congress consider the enactment of legislation to authorize agency assessment of civil monetary penalties against persons and organizations who commit fraud against Federal programs.

Every year about 200,000 cases of all types of Federal crime, including fraud, are referred to the Justice Department for prosecution. With limited resources, the Justice Department is forced to concentrate on those cases which it perceives to be of greatest importance and likely to attract public attention. Over the 2-1/2 year period covered by our review we projected that Justice declined to prosecute about 7,800 cases or 61 percent of the

nearly 13,000 fraud cases agencies referred for prosecution. Lack of prosecutive merit or jury appeal and insignificance of the Government's financial loss were the reasons most frequently cited by Justice for declining prosecution.

We recognize that the Justice Department cannot prosecute every fraud case Federal agencies refer. For this very reason we consider it important that Federal agencies be authorized to levy civil money penalties and assessments in those fraud cases which Justice elects not to prosecute. The proposed act would be a useful tool for discouraging attempts to defraud the Government.

Mr. Chairman at this point I would like to note that at your request we are currently conducting at selected agencies a detailed review of the effectiveness of administrative actions taken to (1) recover funds lost due to fraud and (2) penalize those who committed the fraud. We believe the results of this current review should further support the need for this legislation.

SPECIFIC COMMENTS ON PROPOSED ACT

I would like now to address several specific features of the bill.

First, section 801(a) indicates that the proposed act would apply specifically to the Postal Service, to all agencies with statutory inspectors general authorized by the Inspector General Act of 1978 and to the executive departments designated in section 101 of Title 5 of the United States Code. This might be read to

exclude the military departments as they are specifically designated as such in section 102 of Title 5. The Committee should consider clarifying this aspect of the bill.

Second, section 802(b) discusses the liability for false claims and statements. It provides for civil penalties of not more than \$10,000 for each false claim or statement and assessment of not more than double either (1) the amount of money paid or the value of the property or services received as a result of the false claim, or (2) the amount of damage sustained by the United States including consequential damages and the cost of investigating the false claim or statement. We think the bill should be clarified to show that the term "consequential damages" is intended to cover all costs incurred by the Government, including such items as the cost of any administrative expenses incurred in documenting a false claim or statement.

Third, section 806 provides that the authority head may initiate proceedings upon approval by the Attorney General, or may initiate proceedings if the Attorney General takes no action within 120 days after receipt of the written notice of intent to initiate a proceeding. We think a waiting period of 120 days is too long given the need for prompt action in these cases. Something on the order of 60 days would, in our view, be reasonable.

BETTER INTERNAL CONTROLS NEEDED

While we support the proposed legislation as a useful measure toward changing perceptions regarding our tolerance of fraud, it is important to recognize that other approaches should be vigorously pursued as well. In our May 1981 report on fraud and in congressional hearings we have emphasized that a major element in the fight against fraud lies in strengthening systems of agency internal controls. Fraud and related illegal acts are better dealt with through prevention than through after the fact actions seeking recoveries and the assessment of penalties, criminal or civil.

Internal controls will not guarantee that fraud will not occur. But sound controls make fraud difficult to perpetrate and we are pleased to acknowledge the increasing emphasis directed toward this important aspect of fiscal integrity. Legislation, which GAO supports, has been passed in the House (The Federal Managers Accountability Act (H.R. 1526)) and a bill has been reported out of this Committee (Financial Integrity Act (S. 864)) to strengthen systems of internal controls in the Federal Government.

Though in the long run the best way to prevent fraud and related acts is through effective internal control systems, there is no question but that funds lost through fraud should be recovered, and that perpetrators of fraud should be penalized. Because it is impossible as a practical matter for every fraud case to be prosecuted by the Justice Department, Federal agencies need independent authority to take meaningful administrative action. S. 1780 would provide that authority.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other members of the Committee may have.