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UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF
ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEES ON SEPARATION OF POWERS and
ADMINISTRATIVE PRACTICE AND PROCEDURE
COMMITTEE ON THE JUDICIARY
AND THE

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE

Mr. Chairman and Members of the Subcommittees:

At your request I appear today in connection with hearings on S. 1142, S. 858, and S.J.Res 72 relating to congressional and public access to executive branch information.

S. 1142 proposes a number of procedural and substantive amendments to the Freedom of Information Act, 5 U.S.C. 552, designed primarily to enhance public access to Government information.

S.J. Res. 72 and S. 858 would prohibit refusals on the part of any Federal officer or employee to appear, testify and produce documents before either House or any Committee of the Congress except where the President formally and in writing invokes executive privilege. Whether the invocation of executive privilege before a congressional committee or subcommittee is well taken would be for determination by the full committee and ultimately by the appropriate House (or both Houses in the case of a joint committee).

S. 858, in section 307, also deals with access on the part of congressional committees and by the General Accounting Office to information

under the custody and control of a Federal agency. Subsection (f) would provide for a fund cutoff if the General Accounting Office determines that any information requested by it or by a congressional committee or subcommittee has not been made available within 30 days following the request, and within such period the President has not signed a statement invoking executive privilege.

Of the measures discussed herein, section 307 of S. 858 relates most directly to the functions of the General Accounting Office. Accordingly, I will address my remarks primarily to the provisions of this section in terms of the efforts of our Office to secure access to executive branch information necessary to the full and effective performance of our functions as an arm of the Congress.

One of the most important duties of GAO is to make independent reviews of agency operations and programs and to report to the Congress on the manner in which Federal departments and agencies carry out their responsibilities. The Congress, in establishing GAO, recognized that the Office would need to have complete access to the records of the Federal agencies and provided that basic authority in section 313 of the Budget and Accounting Act, 1921 (31 U.S.C. 53, 54), as follows:

> All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment.

The more important factors underlying the law, the intent of the Congress, and the GAO's policy of insisting on generally unrestricted access to pertinent

records of agencies and contractors in making audits and reviews are:

1. An adequate, independent, and objective examination contemplates obtaining a comprehensive understanding of all important factors underlying the decisions and actions of the agency or contractor management relating to the subject of GAO examinations.
2. Enlightened management direction and execution of a program must necessarily consider the opinions, conclusions, and recommendations of persons directly engaged in programs that are an essential and integral part of operations. Similarly, knowledge of this type is just as important and essential to us in making an independent review and evaluation as it is to management in making basic decisions.
3. Agency internal audits and other evaluative studies are absolutely necessary. They are important tools by which management can keep informed of how large and complex activities are being carried out. Knowledge of the effectiveness with which internal review activities are carried out and the effectiveness with which corrective action where needed is taken is absolutely necessary to GAO in the performance of its responsibilities.
4. Availability of internal audit and other evaluative documents to GAO enables us to concentrate a greater

part of our efforts in determining whether action has been promptly and properly taken by agency officials to correct identified weaknesses, and helps eliminate duplication and overlapping in audit efforts.

From this discussion, I believe it is self-evident that the GAO, as an oversight arm of the Congress, cannot be effective if it does not have full access to records, information, and documents pertaining to the subject matter of an audit or review. The intent of the various laws assigning authority and responsibility to the GAO is clear on this point. The right of generally unrestricted access to records is based not only on laws enacted by the Congress but is a necessary adjunct to the duties and responsibilities of the Comptroller General. Let me quote from two general statutes to make my point doubly clear.

LEGISLATIVE REORGANIZATION ACT OF 1946

Expenditure Analyses by Comptroller General

Sec. 206. The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the Government (including Government corporations) which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Government Operations, to the Appropriations Committees, and to the legislative committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses.

LEGISLATIVE REORGANIZATION ACT OF 1970

Assistance to Congress by General Accounting Office

Sec. 204. (a) The Comptroller General shall review and analyze the results of Government programs and activities carried on under existing law, including the making of cost benefit studies, when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

(b) The Comptroller General shall have available in the General Accounting Office employees who are expert in analyzing and conducting cost benefit studies of Government programs. Upon request of any committee of either House or any joint committee of the two Houses, the Comptroller General shall assist such committee or joint committee, or the staff of such committee or joint committee--

(1) in analyzing cost benefit studies furnished by any Federal agency to such committee or joint committee;
or

(2) in conducting cost benefit studies of programs under the jurisdiction of such committee or joint committee.

Where the Congress has chosen to limit the scope of GAO's audit responsibilities, it has done so in specific statutes. For example, the GAO does not have responsibility for auditing the activities and operations of agencies such as the Federal Reserve Board and the Comptroller of the Currency, which agencies derive their financial support by contributions from member banks. Likewise, Congress has explicitly provided that certain confidential funds be exempt from GAO scrutiny. In other words, the Congress has chosen to limit GAO explicitly with respect to particular statutes and particular programs. In the absence of such restrictions, we believe that the Congress intended that the basic authority and responsibility of the GAO applies.

I would like to emphasize that we have had generally good cooperation from the executive branch in obtaining access to information needed to carry

out its responsibilities. Generally, there has been a recognition on the part of the executive branch that the GAO must have information if it is to make valid judgments, without adequate information, there is a danger that our conclusions and recommendations will be based upon incomplete or inaccurate data. Therefore, there is a risk that the Congress and the public can be misled and a disservice rendered to the operating agencies unless there can be reasonable confidence that the information on which our conclusions and recommendations have been developed is full and complete.

We in the GAO have long recognized the sensitivity of the role which we play in that we are, as an outside party, issuing reports--mostly public reports--which may be critical of the manner and effectiveness with which executive branch programs are carried out. Recognizing this sensitivity, we have attempted to "lean over backwards" to obtain all of the pertinent facts and to afford the agency an opportunity orally and in writing to state the facts as they see them, together with any differences of opinion as to the conclusions and recommendations contained in our reports.

This effort on our part to adhere to strict standards of objectivity and fairness has been an important factor in obtaining cooperation from agencies which we need to carry out our responsibilities. An example of where such cooperation did not exist was the action of the Secretary of the Treasury in denying access by the General Accounting Office to the records of the Emergency Loan Guarantee Board in December 1971, in which he stated that "the Board concluded at its meeting on November 17 that it was not the intent of Congress that the General Accounting Office review its decisions." He further stated that the Board found nothing in the legislative history to suggest that the Congress intended that GAO should review the work of the

Board, indicating "the Board as constituted by the Congress is uniquely well qualified to make the determinations called for by the Guarantee Act, including the critical finding of whether failure to guarantee a loan would have an adverse effect on the economy."

While the records in this case were subsequently made available, the Treasury did so only because of the intervention of the House and Senate banking and currency committees. In making the records available, however, the Executive Director of the Board stated that "we continue to believe that the GAO does not have the statutory authority to review the Board's internal records relating to its decision-making process." The Board supported this position in its first Annual Report of July 31, 1972.

Treasury also made the argument that the GAO was attempting to seek access to records relating to matters for which a decision has not yet been made. The argument was then extended to encompass all information even where decisions had actually been reached.

I would like to take this opportunity to clarify this point. We do not expect to receive nor do we need to receive access to information relating to decisions not yet made. We do not need nor do we seek authority to obtain such information prior to decision-making to carry out our present responsibilities.

We can fully appreciate the executive branch position of not releasing internal working papers involving tentative planning data until a decision has been reached. Our problems, however, involve the withholding of such information after a decision has been reached. If we are to make intelligent, effective and useful evaluations of management processes and results of on-going programs, it is essential that we have access to the information available to and used by those involved in the decision-making process.

Executive privilege, as such, has not been exercised with respect to providing information to the General Accounting Office directly. The use of executive privilege by the President with respect to information sought by the Congress, however, unquestionably complicates the problem of access to information to the General Accounting Office.

Particularly disturbing is the fact that the departments and agencies have interpreted the President's exercise of executive privilege more broadly than the specific directives of August 30, 1971, relating to military assistance and March 15, 1972, related to the USIA and AID. Our impression is that many officials of the departments and agencies of the executive branch concerned have interpreted the President's directive to be not limited to the specific requests which prompted the exercise of executive privilege but rather as a standing directive that no internal working documents, detailed planning data, or estimates as to future budget requirements will be made available to the Congress or the General Accounting Office without the approval of higher authority. Our concern in this respect is supported by the general directives which were issued to carry out the President's policy. In other words, agencies have become super cautious and want to run no risk that either the letter or the spirit of the directives will be violated on an "across-the-board" basis. My opinion is that the President had no such purpose but the effect has been nevertheless to require additional records screening, additional referrals up the organizational hierarchy, and tremendous delays in making information available to us.

A far more common problem arises from a practice which might be characterized as "department" or "agency privilege" whereby executive officials

refuse to furnish us particular records or documents which they do not consider appropriate for our review. Such refusals do not purport to represent assertions of executive privilege; and we are unaware of any legal authority which even arguably supports the arrogation of such discretion on the part of agency officials. In addition, this practice appears to be in conflict with the President's 1969 memorandum "Establishing a Procedure to Govern Compliance with Congressional Demands for Information." This memorandum--which is apparently still in effect and, I am sure, is familiar to all of you--states in part:

> The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest, this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive privilege will not be used without specific Presidential approval. ***

The memorandum goes on to specify procedural steps to be followed by agency heads when they believe that compliance with a request for information from a congressional agency raises a substantial question as to the need for invoking the privilege. The effect of the memorandum would seem to require compliance with congressional requests for information--including requests by GAO--except when executive privilege is formally invoked upon approval by the President. However resort to the procedures set forth in the President's memorandum appears to be the exception rather than the rule in terms of non-compliance with requests by our Office.

An additional obstacle to our efforts in securing information--perhaps an outgrowth of the practice described above--consists of laborious internal

agency review and clearance processes which are applied to our requests for certain types of information. Examples of this practice include "screening" of files and referrals to Washington of requests made by our auditors at overseas locations. Such practices do not of themselves amount to denials of access. However, the delays which they occasion can have a crippling effect upon the conduct of our audits and reviews, and present a serious practical impediment to the efficient accomplishment of our work.

We believe that enactment of S. 858--particularly section 307--would go far in ameliorating the access to records difficulties which I have described in two major respects. First, it would enact into law the apparent thrust of the President's memorandum that executive branch information may be denied only by invocation of executive privilege upon personal approval of the President. Any doubt which might exist concerning the comprehensive effect of the memorandum and its application to our Office would also be resolved by the proposed statutory language. In addition, the requirement that the President's approval be evidenced in writing should serve to eliminate any ambiguity which might otherwise arise as to whether requirements have been followed. The experience which had developed under the President's 1969 memorandum serves to recommend the desirability of this approach. See in this connection the recent study of executive privilege by the Library of Congress published in the Congressional Record for March 28, 1973, at pages H2242-46.

Secondly, and of equal significance from an operational viewpoint, section 307 would impose specific time limits for compliance with requests for information or formal invocation of executive privilege. The ultimate

30-day limit would be enforceable by a fund-cutoff provision. This approach would, of course, have a substantial impact upon the delaying tactics which now confront us.

The language of subsection (c) of proposed section 307 accords a general right of access to information "relating to matters within the jurisdiction" of congressional committees and the General Accounting Office and, therefore, will not necessarily resolve this problem. Subsection 307(b) contains a very limited definition of the term "agency" as used in section 307. We suggest that the term "agency" be defined to mean an executive department, an independent agency, an independent establishment, a Government corporation, the military departments, and the government of the District of Columbia.

As I have already stated, the bill in its present form would have a substantial and salutary effect upon many of our current difficulties. I might state at this point that our Office has had under consideration for some time possible legislative proposals which would relate directly to our access to records difficulties. Draft statutory language, attached, (Attachment No. 1) would authorize the Comptroller General to institute a civil action in the U.S. District Court for declaratory relief when, in his opinion, information to which he is legally entitled is not made available to him. Assuming favorable action by the courts, the Comptroller General would then be permitted, after having the matter lie before the Congress for 30 days, and absent contrary congressional action, deny funds for that part of the agency involved in the audit.

Mr. Chairman, this concludes my prepared statement. I am attaching (Attachment No. 2) a more complete statement of some of the serious access to information situations with which we have been concerned. I would be glad to answer any questions.

ATTACHMENT NO. 1

ACCESS TO RECORDS BY THE GENERAL ACCOUNTING OFFICE

Sec. Section 313 of the Budget and Accounting Act, 1921 (31 U.S.C. 54), is amended to read as follows:

"Sec. 313. (a) Except where otherwise specifically provided by law including the authority contained in section 291 of the Revised Statutes (31 U.S.C. 107), all departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, organization, transactions, operations, and activities of their respective offices as he may from time to time require of them; and the Comptroller General or any of his duly authorized representatives shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers or records of any such department or establishment.

"(b) (1) Each recipient of Federal assistance pursuant to grants, contracts, subgrants, subcontracts, loans or other arrangements, entered into other than by formal advertising, shall keep such records as the head of the department or establishment involved shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The head of such department or establishment and the Comptroller General, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking

referred to in paragraph (1) of this subsection, have access for the purpose of audit and examination to any books, documents, papers and records of such recipients which in the opinion of the head of the department or establishment or the Comptroller General may be related or pertinent to the grants, contracts, subgrants, subcontracts, loans or other arrangements referred to in paragraph (1) of this subsection."

Sec. (a) If any information, books, documents, papers or records requested by the Comptroller General from any department or establishment under section 313(a) of the Budget and Accounting Act, 1921, as amended, or any other authority, has not been made available to the General Accounting Office within a period of twenty calendar days after the request has been delivered to the office of the head of the department or establishment involved, the Comptroller General may institute a civil action in the United States District Court for the District of Columbia for declaratory relief in accordance with subsection (b) of this section. The Attorney General is authorized to represent the defendant official in such action. The Comptroller General shall be represented by attorneys employed in the General Accounting Office and by counsel whom he may employ without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and IV of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Actions instituted pursuant to subsection (a) of this section shall be for the purpose of declaring the rights and other legal relations of the parties, in accordance with section 2201 of title 28, United States Code,

concerning the Comptroller General's request for information, books, documents, papers, or records and no further relief shall be sought by the parties or provided by the court. Such actions shall be heard and determined by a district court of three judges. Immediately upon the filing of a complaint under subsection (a) of this section the matter shall be referred to the chief judge of the United States Court of Appeals for the District of Columbia Circuit, who shall designate three judges, at least one of whom shall be a circuit judge, to sit as members of the court to hear and determine the action. Actions under this subsection shall be governed by the rules of civil procedure to the extent consistent with the provisions of this section, and shall be expedited in every way.

(c) Any party may appeal directly to the United States Supreme Court from a declaratory judgment under subsection (b) of this section. Such appeal shall be taken within thirty days after entry of the judgment. The records shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(d)(1) Subject to paragraph (2) of this subsection, if after a declaratory judgment sustaining the Comptroller General's right to all or any information, books, documents, papers, or records requested becomes final such information is not made available to the General Accounting Office, no appropriation made available to the bureau, office or unit of the department or establishment which the Comptroller General identifies as being under review shall be available for obligation unless and until such information is made available to the General Accounting Office.

(2) Paragraph (1) of this subsection shall not become operative unless:

(A) the Comptroller General determines to invoke the provisions thereof and files with the Committees on Government Operations of the Senate and the House of Representatives notice of his determination, together with identification of the bureau, office or unit under review and the appropriations available thereto; and

(B) during thirty calendar days (excluding the days on which either House is not in session because of adjournment of more than three days to a day certain or an adjournment of the Congress sine die) following the date on which the Comptroller General files such notice, neither House has passed a resolution stating in substance that it does not favor invocation of such provision.

(e) Where the conditions set forth hereinabove are satisfied paragraph (1) of subsection (d) shall become operative on the day following expiration of the thirty-day period specified in subsection (d)(2)(B).

ATTACHMENT NO. 2

INTERNATIONAL ACTIVITIES

We have been experiencing increasing difficulties in obtaining access to information needed in our reviews and evaluations of programs involving our relations with foreign countries and United States participation in international lending institutions. The Departments of Defense, State, and Treasury have employed delaying tactics in preventing our access to necessary records. Information and records have been withheld on the basis that they were internal working documents or that they disclosed tentative planning data. The most serious interference has resulted from restraints placed upon agency officials which require them with more and more frequency to refer to higher authority for clearance before making records available to our staff.

On August 30, 1971, the President invoked executive privilege to withhold information which had been requested by the Senate Foreign Relations Committee relating to the Military Assistance Program. The President determined that it would not be in the public interest to provide to the Congress the basic planning data on military assistance that was requested by the Chairman of the Senate Foreign Relations Committee, and he directed the Secretary of State and the Secretary of Defense not to make available to the Congress any internal working documents which would disclose tentative planning data on future years of the Military Assistance Program which are not approved executive branch positions.

Subsequent to this action we noted a general increase in the volume of documents that operating officials were referring to higher authority

for approval for release to our auditors. This practice added to the delays in obtaining access to documents that had hampered our audit efforts in the past. Although absolute denial of access to a document is quite rare, our reviews have been hampered and delayed by the time-consuming processes employed by the various organizational elements within and between the executive agencies. These delays occur in screening records and in making decisions as to whether such records are releasable to GAO. It is not unusual for our staff people to request access to a document at an overseas location and to be required to wait several weeks while such documents are screened through channels from the overseas posts and through the hierarchy of the departments involved.

The increasing concern of the Comptroller General, especially with actions within the Department of Defense that were having the effect of denying GAO access to information and documents needed to carry out our responsibilities for review of international activities of the Department of Defense, in particular military assistance activities, prompted him to write to the Secretary of Defense on October 13, 1971. He cited examples of our access problems and pointed out specific DOD instructions and directive which, we believed, had created an atmosphere that was discouraging overseas agency officials from cooperating with GAO personnel. In reaching for a solution to this complex problem, the Comptroller General summarized his position to the Secretary of Defense as follows:

> I am most interested, as I am sure you are, in establishing a mutual accommodation within which we can carry out our respective responsibilities, with due regard to the sensitivities of the matters under review.

I believe you can appreciate the depth of my concern at what appears to be an increasing effort within the Department of Defense to restrict the General Accounting Office's capability to carry out its responsibilities to the Congress in the field of international matters.

To clear the air and set the stage for joint efforts to establish better working relationships I believe that a personal expression of your views communicated to your representatives in Washington and overseas would be extremely helpful. We would then be glad to work with the Assistant Secretary of Defense (Comptroller), or others that you designate, in the interest of accomplishing mutually acceptable working arrangements.

On January 27, 1972, the Secretary of Defense replied, stating:

At the outset, let me assure you that neither the Assistant Secretary of Defense (ISA) nor myself condone any actions which could be interpreted as restricting your auditors from carrying out their responsibilities in the field of international matters or discouraging overseas officials from cooperating with your auditors in the performance of their statutory responsibilities.

He also indicated a need and intent to continue to screen the files of the Department before making them available for our review and stated:

Papers in these files originate within as well as outside the Department, including The White House, and Department of State. I am sure that you appreciate that merely because such papers are in our files we cannot release them to GAO without the express approval of the originator. Fortunately, however, it is only on rare occasions that GAO auditors actually need access to such papers to complete their audits or reviews. The matter of access to such papers must, I believe, continue to be handled on a case-by-case basis. In the future, when the question of access to sensitive documents in the international affairs area arises, I have asked the Assistant Secretary of Defense (ISA), when he believes that access to a particular document should be denied, that he consult with the Assistant Secretary of Defense (Comptroller) and the General Counsel prior to refusing access.

Since then we have experienced some tightening up on our access to documents. For example, the Agency for International Development on March 23, 1972, instructed its operating personnel as follows:

* * * * *

> In order to carry out the President's directive, A.I.D. Country Field Submissions should not be disclosed to representatives of the Congress or the General Accounting Office. Likewise, disclosure should not be made of any other document from an A.I.D. Assistant Administrator, A.I.D. Office Head or A.I.D. Mission Director to higher authority containing recommendations or planning data not approved by the Executive Branch concerning overall future budget levels for any fiscal year for any category of assistance (e.g., Development Loans, Technical Assistance, Supporting Assistance, or PL-480) for any country.
>
> In lieu of the disclosure of such documents, the President has directed that Congress be provided with "all information relating to the foreign assistance program and international information activities" not inconsistent with his directive. Ordinarily, the substantive factual information contained in these documents should be disclosed through means of oral briefings, testimony, special written presentations and such other methods of furnishing information as may be appropriate in the circumstance.
>
> The General Counsel should be advised of any Congressional or GAO requests for any document described in [the first paragraph] above or for files or records containing such a document. The General Counsel should also be advised of requests for other documents which raise Executive Privilege questions, whether under the rationale of the President's March 15 directive or otherwise, and a decision should be obtained from the General Counsel concerning the availability of the document for disclosure before the document is disclosed.

On May 8, 1972, the Under Secretary of State issued a memorandum to all Agency Heads, Assistant Secretaries, and Office Heads on the subject of executive privilege. This memorandum cites the Presidential Directive of March 15, 1972, and contains instructions similar to those put out by AID.

However, it goes a bit further in broadening the field of applicability by stating:

> It will be noted that the President's directive is not strictly limited to Country Program Memoranda and Country Field Submissions, but applies also to other, similar internal working documents in the foreign assistance and international information fields which would disclose tentative planning data and which are not approved positions. Undoubtedly, specific questions will arise in the future as to whether or not the President's directive applies to particular congressional requests for disclosure. Such questions should be resolved in consultation with the Office of the Legal Adviser.

There is evidence that the executive agencies may try to satisfy GAO's need for access to records by providing the required information by means other than direct access to the basic documents, especially in cases where such documents are considered to be internal working documents. This would not be acceptable unless we are able to satisfy ourselves that the data provided to us is an accurate presentation of the substantive information contained in the basic documents.

In summary, our access to the records and documents or other materials we need to carry out our responsibilities for reviewing programs relating to international activities has been increasingly difficult. It is a matter of degree, but it has seriously interfered with the performance of our responsibilities. The most serious interference is in the restraints which have been placed upon agency officials overseas and which require them more and more to refer to Washington for clearance before making documents available to our staff. Although these are not termed refusals, they come close because of the interminable delays that result from having to refer routine matters through channels to Washington.

In addition to the unnecessary cost and waste of time this involves, there is the increased risk of our making reports without being aware of significant information and the increased risk of our drawing conclusions based on only partial information.

We are seriously concerned with the increasing restrictions that have been imposed on overseas officials in particular, that take away a large measure of their discretion for dealing with GAO personnel, and we have conveyed this to the agencies.

INTERNATIONAL LENDING INSTITUTIONS

Beginning in the fall of 1970, we undertook to study U.S. participation in international lending institutions--the World Bank, International Development Association, Inter-American Development Bank, and Asian Development Bank. During our initial survey and in our later reviews relating to specific institutions, we encountered difficulties in obtaining information from the Treasury Department.

We experienced long delays in obtaining certain information. For example, access to monthly operations reports and to loan status reports for one of the institutions that we requested in December 1970 was not granted until August 1971 and then only after repeated requests.

We were refused access to several categories of documents by Treasury Department officials. These included the recorded minutes of the meetings of the institutions' board of directors, periodic progress reports on the status of projects being financed by the institutions, and a consultant's report on management practices of one of the institutions. Also, although Treasury officials advised us that they

had refused access only to internal documents which they received in confidence from the institutions, we were refused access to certain documents which, as far as we could determine, were not documents furnished by the institutions but rather were documents prepared by U.S. officials for use by other U.S. officials.

We were not auditing the records of the Inter-American Development Bank as such but only those documents that had been provided by the Inter-American Development Bank to the Executive Director and were available for his use in the exercise of his management responsibilities. We believe that these records should have been available to us in our review which was on the U.S. system for appraising and evaluating Inter-American Development Bank projects and activities. Any report on this subject would necessarily be lacking to the extent to which information used by the United States in evaluating Bank projects was not made available to us during our examination. We see no valid basis for Treasury's refusal to provide access to the records we requested.

INTERNAL REVENUE SERVICE

GAO's review efforts at the Internal Revenue Service had been materially hampered, and in some cases terminated, because of the continued refusal by IRS to grant GAO access to records necessary to permit an effective review of IRS operations and activities.

Without access to necessary records, GAO cannot effectively evaluate the IRS administration of operations involving billions of dollars of annual gross revenue collections and millions of dollars in appropriated

funds. Such an evaluation, we feel, would greatly assist the Congress in its review of IRS budget requests and in its appraisal of IRS operations and activities. Without such access, the management of this very important and very large agency will not be subject to any meaningful independent audit.

GAO has taken every opportunity to impress upon IRS officials that it is not interested in the identity of individual taxpayers and does not seek to superimpose its judgment upon that of IRS in individual tax cases; rather, GAO is interested in examining into individual tax transactions only for the purpose of, and in the number necessary to serve as a reasonable basis for, evaluating the effectiveness, efficiency, and economy of selected IRS operations and activities. GAO has, in general, directed its efforts toward those areas where it believed that improvements in current operations would bring about better IRS administration of programs, activities, and resources.

It is the position of IRS that no matter involving the administration of the internal revenue laws can be officially before GAO and therefore we have no audit responsibility. The Commissioner of IRS, in a letter to the Comptroller General dated June 6, 1968, stated:

> * * * I must note that the [Chief Counsel, IRS] opinion holds that the Commissioner of Internal Revenue is barred by Sections 6406 and 8022 of the Internal Revenue Code from allowing any of your representatives to review any documents that pertain to the administration of the Internal Revenue Laws. Thus, federal tax returns and related records can be made available to you only where the matter officially before GAO does not involve administration of those laws.

Under the provisions of 26 U.S.C. 6103, tax returns are open to inspection only on order of the President and under rules and regulations prescribed by the Secretary of the Treasury or his delegate and approved by the President. Regulations appearing in 26 CFR 301.6103(a)-100-107 grant several Government agencies specific right of access to certain tax returns. Our Office is not included among those agencies. The regulation applicable to our Office, 26 CFR 301.6103(a)-1(b)(f), provides that the inspection of a return in connection with some matter officially before the head of an establishment of the Federal Government may be permitted at the discretion of the Secretary or Commissioner upon written application of the head of the establishment.

IRS has permitted Federal agencies, States, individuals, contractors, and others to have access to tax returns and records. GAO has been given access to individual tax returns only when the return is needed in connection with another matter in which GAO is involved or when we have made reviews at the request of the Joint Committee on Internal Revenue Taxation. Otherwise we have been denied records requested for reviews of IRS operations. The reviews of IRS conducted at the request of the Joint Committee have been made pursuant to an arrangement whereby GAO and the Joint Committee agreed on certain priority matters involving the administration of the internal revenue laws. Under this arrangement we, in effect, make reviews for the Joint Committee, and we have had the complete cooperation of the Service.

ECONOMIC STABILIZATION PROGRAM

Another access to records problem arose when GAO attempted, pursuant to a congressional request, to review the effectiveness of IRS activities in monitoring prices. IRS did not formally deny GAO the right to review records of the Economic Stabilization Program. Rather, the General Counsel of the Treasury Department submitted a proposed "memorandum of understanding," which was to be signed by himself, the Comptroller General, and the Commissioner and Chief Counsel of IRS, as a condition precedent to permitting GAO to perform the review.

In our opinion, the memorandum of understanding would have negated GAO's independence and limited GAO's right to records to such an extent that any work undertaken would not have provided a basis to properly perform the audit. Accordingly, the General Counsel of the Treasury Department was advised that the memorandum of understanding was not acceptable to GAO. Subsequently, we advised the Treasury Department in January 1973 that, since Phase II of the Economic Stabilization Program was being phased out, there was no practical purpose in pursuing the matter.

FEDERAL DEPOSIT INSURANCE CORPORATION

The long and involved history of controversy between GAO and the Federal Deposit Insurance Corporation over GAO's right of access to certain of the Corporation's records appears in the published hearings of the House Committee on Banking and Currency of May 6 and 7, 1968. Those hearings resulted in the introduction of H.R. 16064, 90th Congress, a bill to amend

the Federal Deposit Insurance Act with respect to the scope of audit of FDIC by GAO.

Essentially what is involved in this dispute is that although our Office is required by section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) to conduct annual audits of the Corporation, we have been unable to fully discharge our responsibilities because FDIC has not permitted us unrestricted access to examination reports, files and other records relative to the banks which it insures.

It is the position of the Corporation that our right of access to its records is limited to those administrative or housekeeping records pertaining to its financial transactions. It is GAO's position that, because the financial condition of the Corporation is inseparably linked with the manner in which it supervised the banks which it insures, we cannot report to the Congress on the financial condition of the Corporation without evaluating the significance of its contingent insurance indemnity obligation for the banks.

At the time section 17 was being considered by the Congress, it developed that, although GAO and FDIC had agreed on the language included therein, divergent views were held by GAO and FDIC as to its meaning. Each made its position known to the House Committee on Banking and Currency, but the matter was not resolved. This difference of opinion still exists with both the Corporation and GAO feeling that the present law supports their respective positions. Repeated efforts to resolve the matter administratively have failed, and, for this reason, the Comptroller General in his testimony of March 6, 1968, before the House Banking and

Currency Committee, recommended that the Federal Deposit Insurance Act be amended to specifically provide for an unrestricted access to the examination reports and related records pertaining to all insured banks.

EMERGENCY LOAN GUARANTEE BOARD

The Emergency Loan Guarantee Board, established by the Emergency Loan Guarantee Act (Pub. L. 92-70), through its Chairman--the Secretary of the Treasury--has taken the position that it was not the intent of the Congress in establishing the Board to grant GAO authority to review Board activities. The Board was established to make guarantees or to make commitments to guarantee lenders against loss of principal or interest on loans to major business enterprises whose failures would seriously and adversely affect the economy or employment of the Nation or a region thereof.

GAO believes that it has the responsibility and authority to review the Board's activities including decisions of the Board in approving, executing, and administering any loan guaranteed by the Board. The Board's position, as indicated, is that there is nothing in the Emergency Loan Guarantee Act or its legislative history which would provide for a GAO review of all Board activities and that the Congress might need to pass additional legislation to make it clear that GAO has this authority. The main thrust of the Board's position is that the congressional review of loan guarantee matters is carefully spelled out in the guarantee act; GAO is directed to audit the borrower and to report its findings to the Board and to the Congress; and the Board is directed to make a "full

report" of its operations to the Congress. It is our position that, as an agency of Government, the Board is clearly subject to audit examination by GAO and that the records of the Board are required to be made available to GAO under its basic authorities. Those authorities are section 312 of the Budget and Accounting Act, 1921 (31 U.S.C. 53); section 206 of the Legislative Reorganization Act of 1946 (31 U.S.C. 60); subsections 117(a) and (b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(a), (b)); and section 204 of the Legislative Reorganization Act of 1970 (84 Stat. 1140).

It is our view that under these basic authorities GAO has responsibility for auditing the activities of the Board and thus has attending right of access to such information and documents as the Board uses in reaching its decisions. Further, it is our view that neither the failure to spell out explicitly that GAO has such responsibility and right of access nor the fact that under Pub. L. 92-70 GAO was given explicit authority to audit the borrower diminishes in any way the basic audit authorities that we rely upon.

While the records in this case were subsequently made available, the Treasury did so, however, only because of the intervention of the House and Senate Banking and Currency Committees. In making the records available, however, the Executive Director of the Board stated that "we continue to believe that the GAO does not have the statutory authority to review the Board's internal records relating to its decisionmaking process." The Board supported this position in its first Annual Report of July 31, 1972.

COUNTERVAILING DUTY STATUTE

In 1971, pursuant to a congressional request, GAO sought to review the Department of the Treasury's administration of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), which requires the Secretary of the Treasury to levy a countervailing duty on any dutiable product imported into the United States for which the producing nation has provided a production or export grant or bounty.

In January 1973, we decided that our efforts to obtain the necessary records to make the review were unsuccessful.

EXCHANGE STABILIZATION FUND

By Public Law 91-599, approved December 30, 1970, the Congress directed that the administrative expenses of the Exchange Stabilization Fund, established by section 10 of the Gold Reserve Act of 1934, be audited by the General Accounting Office and provided certain access to records authority. The legislative history made it clear that the audit should start with fiscal year 1972, and the GAO started efforts to obtain access in the Spring of 1972. After a long period of refusals and delays, the Treasury Department finally agreed in March 1973 to provide GAO access to all financial records and relevant supporting information on the administrative expenses of the Exchange Stabilization Fund for 1972. The audit has been started.

CORPORATION FOR PUBLIC BROADCASTING

The Public Broadcasting Act of 1967 provides that the Public Broadcasting Corporation shall be audited by the General Accounting Office in accordance with the principles and procedures applicable

to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In attempting to comply with our responsibility under this Act, we have requested such documents as minutes of the meetings of the Board of Directors and files relating to a long-term lease for office space entered into by the Corporation. In both instances we were initially denied access to this data. Subsequently, this information was made available to us and enabled us to more properly evaluate certain operations of the Corporation.

On August 10, 1972, an internal Corporation memorandum advised Corporation officials that if GAO wished "to examine documents setting forth policies or procedures or to pursue a detailed examination of how decisionmaking takes place or analyzing program expenditures to determine the proportion received by various recipients or any of a variety of tasks they might pursue along this line, I believe you should simply state you feel such requests are beyond the scope of their activity and that you decline to pursue the matter with them." On August 22, 1972, the Comptroller General advised the Acting President of the Corporation that the GAO's responsibility for auditing the Corporation included audits which could lead to an identification of needed management improvements together with suggestions as to courses of action which should be considered to correct management deficiencies or otherwise strengthen the management of the Corporation.

Although we have had no written reply to the August 22 letter, the Acting President of the Corporation advised us orally on September 25, 1972,

that the Board of Directors and its Chairman felt that it was not clear as to our right of access to information of other than a financial nature. Since that date we have not been formally refused information necessary to perform our work although we have had some difficulty in obtaining needed data in a timely manner.