

GAO

Testimony

Before the Subcommittee on National Parks,  
Forests, and Lands, Committee on Resources,  
House of Representatives

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FEDERAL LANDS

Views on Reform of  
Recreation Concessioners

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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to summarize our work on federal policies and practices for managing recreation concessioners and to provide our views on four bills now before this Subcommittee. My remarks today are based on 32 reports and testimonies we have issued over the past 20 years.<sup>1</sup> Our work has examined concessions activities involving six federal agencies: the National Park Service, Bureau of Land Management, Bureau of Reclamation, and U.S. Fish and Wildlife Service within the Department of the Interior; the U.S. Forest Service within the Department of Agriculture; and the U.S. Army Corps of Engineers within the Department of Defense. However, most of our work has focused on two agencies--the Park Service and the Forest Service--since activities managed by these agencies account for 90 percent of all revenues resulting from concessions.

In summary, our work over the years has shown the following:

- The agencies' concessions policies and practices are based on at least 11 different laws and, as a result, vary considerably.<sup>2</sup>
- More competition is needed in awarding concessions contracts.
- The federal government needs to obtain a better return from concessioners for the use of its lands, including obtaining fair market value for the fees it charges ski operators.

Each of the bills now before this Subcommittee proposes changes to current concessions policies and practices. Overall, the changes proposed in these bills are consistent with our past work and findings, and we therefore support their objectives.

Mr. Chairman, before providing the details, I would like to note that concessioners play a vital role in enhancing the public's enjoyment of the national parks, forests, and other recreation areas. At the same time, the agencies managing the concessioners have an obligation to ensure not only that these concessioners provide healthy and safe services to the public but also that the government receives a fair return for the use of its lands and that the nation's natural resources are adequately conserved so that they can be enjoyed in the future.

I will first describe our earlier work on concessions and then provide our views on the four proposed bills.

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<sup>1</sup>App. I lists these GAO products.

<sup>2</sup>App. II lists these laws.

CONCESSIONS POLICIES AND PROCEDURES  
ARE DERIVED FROM 11 DIFFERENT LAWS

As we reported in June 1991,<sup>3</sup> no single law authorizes concessions operations for all six agencies. Rather, at least 11 different laws govern concessions operations. Many of these laws are specific to an agency and allow the agency broad discretion in establishing policies on the terms and conditions of concessions agreements and on the associated fees, among other things.

With the exception of the Concessions Policy Act of 1965, which prescribes Park Service policy for several key terms and conditions in concessions agreements, the laws allow the agencies wide discretion in establishing concessions policies. As a result, the six agencies have developed policies that differ in the types of concessions agreements, terms of the agreements, or fees associated with these agreements. For example, under the Concessions Policy Act of 1965, concessioners under the Park Service's management have the right to be compensated for improvements they construct on federal lands. This right, called "possessory interest," is unique to the Park Service. The other agencies' concessions agreements do not provide for possessory interest.

The Concessions Policy Act of 1965 also grants existing Park Service concessioners that perform satisfactorily a preferential right of contract renewal when their agreement expires. The Bureau of Land Management also grants a preferential right of renewal; however, this right was established by policy and not by legislation. The Forest Service offers a preferential right of renewal to smaller concessioners with short-term agreements, such as outfitters and guides, but does not extend this right to concessioners with longer-term agreements. The Corps of Engineers, Fish and Wildlife Service, and Bureau of Reclamation grant no preferential right of renewal to any concessioner.

Policies also vary concerning the terms and conditions that agency field personnel can negotiate. The Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service allow their field office managers to negotiate nearly all the terms of concessions agreements, regardless of the size of the contract. Thus, field office managers in these agencies can negotiate the length of the agreement, types of service provided, rates charged to the public, and cash fee or non-cash compensation paid to the federal government. In the Park Service, field managers may also negotiate nearly all the terms of concessions agreements; however, final approval for large agreements (annual revenues over \$100,000)

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<sup>3</sup>Federal Lands: Improvements Needed in Managing Concessioners  
(GAO/RCED-91-163, June 11, 1991).

rests with the Director of the Park Service. Generally, in the Forest Service and the Corps of Engineers, field office managers negotiate only the length of agreements.

#### MORE COMPETITION IS NEEDED

Our work has shown the need for greater competition in awarding concessions contracts. As early as 1975,<sup>4</sup> we reported that the preferential right of renewal is not in the government's best interest because it impedes competition.

Because existing concessioners are granted the right to match any better offer for a new concessions contract, the preferential right of renewal does not promote competition in awarding contracts. The Concessions Policy Act of 1965 requires the Park Service to provide concessioners with a preferential right of renewal. However, this legislation also requires the Park Service to give the public the right to compete for concessions contracts. Recognizing that the preferential right of renewal impedes competition, the Park Service has tried to address this matter administratively. Specifically, in October 1992 the Park Service regulations regarding the preferential right of renewal were modified. Under these regulations, prospective concessioners must respond to a Park Service prospectus on concessions operations. However, existing concessioners who perform satisfactorily still have the right to match or better the best offer received.

The Park Service believes that providing the public with an opportunity to bid on a concessions contract through a prospectus outlining the terms and conditions of the new contract will attract bidders, thus introducing competition. Nonetheless, the Park Service acknowledges that since the current concessioners maintain a preferential right to renew their contract by matching or bettering the best offer, competition continues to be impeded.

In our opinion, the Park Service's efforts, while limited by the provisions of the Concessions Policy Act of 1965, are a step in the right direction. However, a change in the 1965 act is needed to eliminate the preferential right of renewal.

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<sup>4</sup>Concession Operations in the National Parks--Improvements Needed in Administration (RED-76-1, July 21, 1975), Better Management of National Park Concessions Can Improve Services Provided to the Public (CED-80-102, July 31, 1980), and Federal Land: Little Progress Made in Improving Oversight of Concessioners (GAO/T-93-42, May 27, 1993).

THE GOVERNMENT NEEDS TO OBTAIN  
A BETTER RETURN FROM CONCESSIONERS

We have reported that the concessions fees paid to the government appear to be low. In our June 1991 report,<sup>5</sup> we reported that the six agencies received about \$35 million in fees from gross concessions revenues of \$1.4 billion--an average return to the government of about 2.4 percent. Since that report, we have updated these figures for the Park Service and the Forest Service. These figures are shown in appendix III. Concessions revenues now exceed \$2 billion and fees are approaching \$50 million; the return remains at about 2.4 percent.

In 1991 and 1992,<sup>6</sup> we testified that it was difficult to determine whether the federal government was receiving a fair return from Park Service concessioners because in addition to the cash fees it received, the Park Service was receiving various types of compensation from sources other than cash fees. Non-cash compensation generally consists of concessioners' repairs, maintenance, improvements, or construction of government-owned facilities--either in lieu of or in addition to paying a cash fee. The Park Service has a detailed system for calculating cash fees, but, to date, it has not determined what types of non-cash compensation are appropriate and how they should be valued. In addition, while such compensation results in needed improvements, the Park Service does not have sufficient controls over the documentation of and accounting for this compensation to ensure that the required work is adequately performed. The Park Service is in the process of developing such controls.

Forest Service Is Not Receiving Fair  
Market Value From Ski Operators

As you requested, Mr. Chairman, I would now like to briefly comment on the fees paid by ski operators for the use of Forest Service lands. You asked us to comment on these fees because one of the bills before the Subcommittee would change the method used to calculate ski fees. The Forest Service currently calculates the ski fees using the Graduated Rate Fee System (GRFS), which the Forest Service developed in 1965. Under GRFS, fees are calculated by applying a selected rate to gross sales in nine business categories--restaurants and lodging, for example. The calculations

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<sup>5</sup>GAO/RCED-91-163.

<sup>6</sup>Recreation Concessioners Operating on Federal Lands (GAO/T-RCED-91-16, Mar. 21, 1991) and National Park Service: Policies and Practices for Determining Concessioners' Building Use Fees (GAO/T-RCED-92-66, May 21, 1992).

are further complicated because the fees are based on sales from ski area operations not only on Forest Service lands but also on private lands. When we last reported on ski fees,<sup>7</sup> 143 permittees had ski areas either entirely or partly on Forest Service lands. Of these 143 permittees, 112 had their annual fees calculated under GRFS. The gross sales of these 112 permittees amounted to about \$737 million. After making adjustments reflecting the revenues generated from federal lands, the permittees paid \$13.5 million in fees to the federal government, or about 2.2 percent of the total revenues generated.<sup>8</sup> The remaining permittees either paid flat fees or were not operating.

In our 1993 report, we concluded that the fees generated under GRFS do not ensure that the Forest Service receives fair market value for the use of its lands. When GRFS was put in place 30 years ago, it was intended that the rates would be adjusted periodically to reflect the current economic conditions, but that has not happened. We recommended that the Forest Service develop a simplified fee system that ensures that the government receives fees that are based on fair market value.

At the time of our 1993 report, the ski industry had proposed a simplified fee system. The industry proposed a progressive fee system based on the gross sales from all ski lifts and ski school operations. However, this proposal did not ensure that the fees collected from ski areas represent fair market value. Ski industry officials said that in developing their system they did not attempt to determine fair market value but instead aimed to generate fees comparable to the total fees generated under GRFS.

The Forest Service, as was the case at the time of our report, is developing a new fee system that agency officials have said would represent fair market value. Forest Service officials would like to implement this new fee system for the 1996-1997 ski season.

#### COMMENTS ON PROPOSED LEGISLATION

We would now like to discuss the four bills currently before this Subcommittee. While these bills differ, each proposes significant reforms in federal concessions policy. H.R. 2028, the most comprehensive, would bring the six agencies' management of concessioners under one law. H.R. 773 and title V of H.R. 721 propose significant changes in concessions policy for the Park

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<sup>7</sup>Forest Service: Little Assurance That Fair Market Value Fees Are Collected From Ski Areas (GAO/RCED-93-107, Apr. 16, 1993).

<sup>8</sup>The \$13.5 million in fees from ski operations is part of the \$35 million figure mentioned earlier for revenues generated by all concessioners.

Service. H.R. 1527 proposes a new fee system for ski areas on Forest Service lands. Overall, the changes proposed in these bills are consistent with our past work and findings. Thus, overall we support their objectives.

### Making Policies Consistent

Our work has shown the need for one law to establish common concessions policies so that similar concessions operations are managed consistently throughout federal recreation lands.

As noted earlier, one policy difference among agencies concerns their treatment of possessory interest--the concessioners' right to be compensated for improvements constructed or acquired on federal lands. Possessory interest was established by the Concessions Policy Act of 1965, which affects only Park Service concessioners. Possessory interest is not offered to concessioners operating on lands administered by the other agencies. H.R. 2028 would encourage the private sector to build and maintain concessions facilities but would not grant possessory interest for these facilities. Under the bill, the head of an agency could direct the concessioner, at the end of the term of a concessions contract, to either remove the facilities and restore the site or sell the facilities to the next concessioner at a price established by an independent appraisal.

H.R. 773 and title V of H.R. 721 take a different approach to possessory interest. Under both of these proposed bills, the Park Service would gradually extinguish possessory interest. As existing contracts expired, the new contracts would contain language directing the concessioner to depreciate the value of its possessory interest over an extended period of time. Once the possessory interest was fully depreciated, the structure would be owned by the government.

Removing possessory interest in concessions facilities, as proposed in H.R. 773 and title V of H.R. 721, would provide the Park Service with greater control over these facilities and would allow greater flexibility in managing concessioners. For example, when possessory interest is provided for, the Park Service would have to seek appropriations to buy out the possessory interest of a nonperforming concessioner. If possessory interest were eliminated, the Park Service could terminate the contract of a nonperforming concessioner--and acquire that concessioner's facilities--without having to seek appropriations.

However, acquiring these facilities could be costly. If the Park Service acquired a concessions facility during the term of the contract, the fees it received would likely be lower because the concessioner would probably not give up its ownership interest in a park facility without some form of compensation in return. This result becomes more significant if, as these two bills propose, the



fees are to be returned to the parks. While the Park Service would gain ownership of the facilities, it could be getting less, and possibly substantially less, in fees during the acquisition period.

In addition, once the Park Service owns these facilities, it is responsible for maintaining them. The Park Service currently has a multibillion dollar backlog of deferred maintenance. If the concessioners' possessory interest is eliminated and the Park Service acquires additional facilities that need to be maintained, its workload will increase. While the Park Service could require the facilities to be maintained as part of the concessions contract, such a requirement may lead to some reduction in the fees it receives.

### Increasing Competition

In our opinion, any effort to reform concessions policy should include greater competition in the awarding of concessions contracts. Competition could improve both the return to the government and the quality of visitor services. H.R. 2028, H.R. 773, and title V of H.R. 721 encourage greater competition and limit the preferential right of renewal.

H.R. 2028 establishes a competitive selection process for awarding concessions contracts. It also proposes that no concessioner have a guaranteed preferential right of renewal. However, a concessioner could acquire a limited preference on the basis of its performance over the term of the contract. By linking a limited preference to performance, the bill would provide concessioners with a performance incentive while still providing a competitive environment in the awarding of new contracts.

H.R. 773 and title V of H.R. 721 establish a competitive selection process for awarding the Park Service's concessions contracts. However, both guarantee a preferential right of renewal for concessioners generating less than \$500,000 annually--which constitute about three-quarters of all current park concessioners. While removing preference for the largest concessioners is a good start toward creating a competitive environment in the awarding of concessions contracts, we continue to believe that a preferential right should not be guaranteed for any park concessioner.

### Improving Return to the Federal Government

H.R. 2028, H.R. 773, and title V of H.R. 721 each propose expanding competition in awarding concessions contracts. This competition will likely result in a better return to the government from the concessioners.

These bills propose that the fees collected from the concessioners would be available for use by the collecting agency.

We have previously testified before this Subcommittee<sup>9</sup> that providing greater revenues by returning concessions fees and other fees to the parks was an option available to the Congress to address the deterioration of visitor services and the lack of sufficient scientific data for sound resource management. Other federal land management agencies would also likely benefit from returned concessions fees. Thus, returning concessions fees to the local level could, if properly managed and accounted for, help improve the condition of visitor services in the national parks, forests, and public lands. However, the benefit would only be realized if these funds are used to supplement and not supplant existing funding.

#### Reflecting Fair Market Value in Fees for Ski Areas

H.R. 1527 amends the National Forest Ski Area Permit Act of 1986 to prescribe a new fee system for ski areas on Forest Service lands. The proposed fee system is much simpler than the existing fee system. Currently, the fees for ski areas are based on GRFS, a complex system requiring numerous calculations based on the level of sales, source of sales, and level of a ski area's investment in facilities and equipment. Calculations under GRFS include sales from nine different business categories and assign multiple fee rates for each category.

In contrast, fees under H.R. 1527 would be calculated using a progressive rate structure under which a ski area's fees would increase as the sales increased. The sales subject to fee calculations under this system would fall into two categories: (1) lift ticket and ski school operations and (2) all business activities located on Forest Service lands (e.g., restaurants, ski rental shops, and overnight lodging).

Since ski areas are frequently a mix of both private and federal lands, both GRFS and the fee system proposed in H.R. 1527 would determine the percentage of private and federal lands involved, called the slope-transport-feet percentage. This percentage is used to determine the portion of sales that would be subject to fee calculations.

In our 1993 report on ski fees,<sup>10</sup> we recommended that ski fees be simpler and that they reflect fair market value. The fee system in H.R. 1527 would be simpler to administer than GRFS. This simplicity would benefit both the Forest Service and individual ski areas. However, the fee system proposed in H.R. 1527 has the same rates as those the ski industry proposed in 1993. As we reported

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<sup>9</sup>National Park Service: Difficult Choices Need to Be Made on the Future of the Parks (GAO/T-RCED-95-124, Mar. 7, 1995).

<sup>10</sup>GAO/RCED-93-107.

at that time, those rates were not designed to reflect fair market value but to generate fees comparable to the fees collected under GRFS. Forest Service officials acknowledge that they do not know whether the fees collected under GRFS reflect fair market value. As such, any fee system designed to collect comparable fees will likewise not ensure that fair market value is received as required by the Ski Area Permit Act of 1986.

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Mr. Chairman, this concludes our statement. We would be glad to respond to any questions that you or other members of the Subcommittee may have.

PERTINENT GAO  
REPORTS AND TESTIMONIES

National Park Service: Difficult Choices Need to Be Made on the Future of the Parks (GAO/T-RCED-95-124, Mar. 7, 1995).

National Park Service: Better Management and Broader Restructuring Efforts Are Needed (GAO/T-RCED-95-101, Feb. 9, 1995).

National Park Service: Activities Outside Park Borders Have Caused Damage to Resources and Will Likely Cause More (GAO/RCED-94-59, Jan. 3, 1994).

Federal Lands: Improvements Needed in Managing Short-Term Concessioners (GAO/RCED-93-177, Sept. 14, 1993).

Federal Land: Little Progress Made in Improving Oversight of Concessioners (GAO/T-RCED-93-42, May 27, 1993).

Forest Service: Little Assurance That Fair Market Value Fees Are Collected From Ski Areas (GAO/RCED-93-107, Apr. 16, 1993).

Natural Resources Management Issues (GAO/OCG-93-17TR, Dec. 1992).

National Park Service: Policies and Practices for Determining Concessioners' Building Use Fees (GAO/T-RCED-92-66, May 21, 1992).

Federal Lands: Oversight of Long-Term Concessioners (GAO/RCED-92-128BR, Mar. 20, 1992).

Bureau of Reclamation: Land-Use Agreements With the City of Scottsdale, Arizona (GAO/T-RCED-91-74, July 11, 1991).

Bureau of Reclamation: Federal Interests Not Adequately Protected in Land-Use Agreements (GAO/RCED-91-174, July 11, 1991).

Federal Lands: Improvements Needed in Managing Concessioners (GAO/RCED-91-163, June 11, 1991).

Forest Service: Difficult Choices Face the Future of the Recreation Program (GAO/RCED-91-115, Apr. 15, 1991).

Recreation Concessioners Operating on Federal Lands (GAO/T-RCED-91-16, Mar. 21, 1991).

Changes Needed in the Forest Service's Recreation Program (GAO/T-RCED-91-10, Feb. 27, 1991).

Parks and Recreation: Resource Limitations Affect Condition of Forest Service Recreation Sites (GAO/RCED-91-48, Jan. 15, 1991).

National Forests: Special Recreation Areas Not Meeting Established Objectives (GAO/RCED-90-27, Feb. 5, 1990).

Management of Public Lands by the Bureau of Land Management and the U.S. Forest Service (GAO/T-RCED-90-24, Feb. 6, 1990).

Parks and Recreation: Maintenance and Reconstruction Backlog on National Forest Trails (GAO/RCED-89-182, Sept. 22, 1989).

Parks and Recreation: Problems With Fee System for Resorts Operating on Forest Service Lands (GAO/RCED-88-94, May 16, 1988).

Parks and Recreation: Park Service Managers Report Shortfalls in Maintenance Funding (GAO/RCED-88-91BR, Mar. 21, 1988).

Maintenance Needs of the National Park Service (GAO/T-RCED-88-27, Mar. 23, 1988).

Parks and Recreation: Limited Progress Made in Documenting and Mitigating Threats to the Parks (GAO/RCED-87-36, Feb. 9, 1987).

Parks and Recreation: Recreational Fee Authorizations, Prohibitions, and Limitations (GAO/RCED-86-149, May 8, 1986).

Corps of Engineers' and Bureau of Reclamation's Recreation and Construction Backlogs (RCED-84-54, Nov. 25, 1984).

The National Park Service Has Improved Facilities at 12 Park Service Areas (RCED-83-65, Dec. 17, 1983).

Information Regarding U.S. Army Corps of Engineers' Management of Recreation Areas (RCED-83-63, Dec. 15, 1983).

National Parks' Health and Safety Problems Given Priority: Cost Estimates and Safety Management Could Be Improved (RCED-83-59, Apr. 25, 1983).

Increasing Entrance Fees--National Park Service (RCED-82-84, Aug. 4, 1982).

Facilities in Many National Parks and Forests Do Not Meet Health and Safety Standards (CED-80-115, Oct. 10, 1980).

Better Management of National Park Concessions Can Improve Services Provided to the Public (CED-80-102, July 31, 1980).

Concession Operations in the National Parks--Improvements Needed in Administration (RED-76-1, July 21, 1975).

ELEVEN DIFFERENT LAWS GOVERN CONCESSIONS OPERATIONS

<u>Law</u>	<u>Agency affected</u>
Concession Policy Act of 1965 (Oct. 9, 1965)	National Park Service
Federal Water Project Recreation Act of 1965 (July 9, 1965)	Bureau of Reclamation Corps of Engineers
National Forest Ski Area Permit Act of 1986 (Oct. 22, 1986)	Forest Service
16 U.S.C. 497 (Act of Mar. 4, 1915)	Forest Service
Granger-Thye Act (Apr. 24, 1950)	Forest Service
Recreation and Public Purposes Act (June 14, 1926)	Bureau of Land Management
Federal Land Policy and Management Act of 1976 (Oct. 21, 1976)	Bureau of Land Management
Public Park and Recreation Facilities at Water Resource Development Projects (Dec. 22, 1944)	Corps of Engineers
Water Resources Development Act (Nov. 17, 1986)	Corps of Engineers
Refuge Recreation Act (Sept. 28, 1962)	Fish and Wildlife Service
National Wildlife Refuge System Administration Act (Oct. 15, 1966)	Fish and Wildlife Service

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**GAO** Concessions Agreements,  
Revenues, and Fees
 

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Agency	Number of concessions agreements	Concessions <sup>a</sup> revenues (in millions)	Concessions <sup>a</sup> fees (in millions)
Forest Service	5,322 <sup>b</sup>	\$1,205.0 <sup>b</sup>	\$26.0 <sup>b</sup>
Park Service	1,942 <sup>b</sup>	657.0 <sup>c</sup>	18.6 <sup>c</sup>
Corps of Engineers	631	102.2	1.9
Bureau of Land Management	1,413	33.8	0.8
Bureau of Reclamation	23	8.9	0.3
Fish and Wildlife Service	428	4.5	0.2
<b>Total</b>	<b>9,759</b>	<b>\$2,011.4</b>	<b>\$47.8</b>

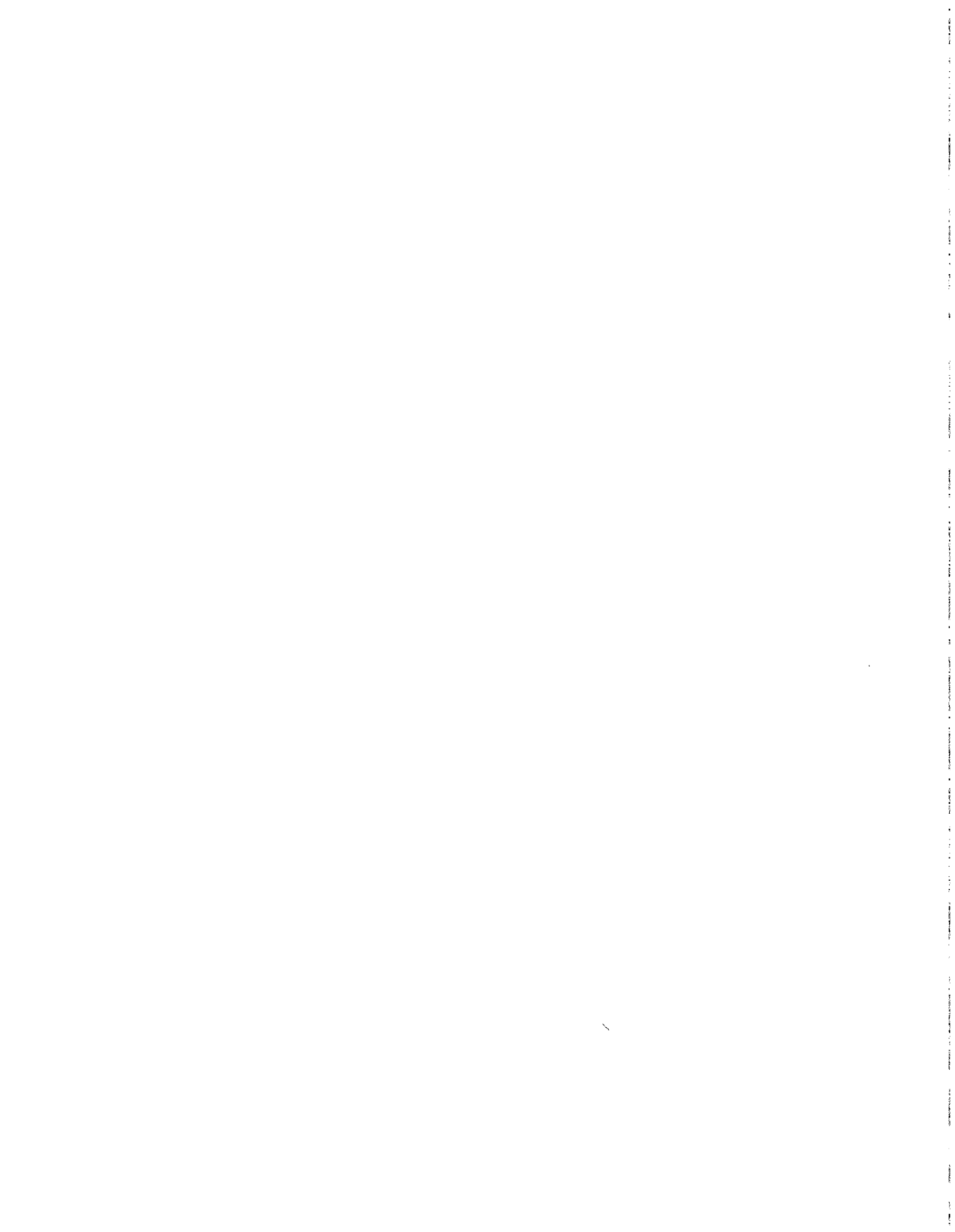
<sup>a</sup>Excludes agreements for which agencies did not have complete financial data.

<sup>b</sup>1994 data.

<sup>c</sup>1993 data.

Source: Data supplied by the agencies. All data are for 1989 except where otherwise noted.

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