094355

United States General Accounting Office

Washington, D.C. 20548

For Release on Delivery
Expected at 9:30 A.M.
June 19, 1979

STATEMENT OF

ELMER B. STAATS

COMPTROLLER GENERAL OF THE UNITED STATES

Before the

SUBCOMMITTEE ON LEGISLATION AND NATIONAL

SECURITY OF THE COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 24, 96th Congress

~~710304~~
094355

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to testify on H.R. 24, the "General Accounting Office Act of 1979". I strongly support most of the bill's provisions and hope that they will be given prompt and favorable consideration by the Congress. With your permission, I would like first to offer our views on the bill as introduced and then, second, our comments on the text of your proposed amendment to H.R. 24.

Comments on H.R. 24

Section 101 of the bill provides GAO authority to audit expenditures authorized by law to be accounted for solely on the approval or certificate of the President or other officials. These are the so-called "unvouchered" or confidential funds provided to a number of Federal agencies. We would be authorized to examine records and other information necessary to determine and advise the cognizant congressional committees as to whether such expenditures were made for authorized purposes.

I believe the Congress should have the means, as provided in this bill, to assure that funds made available on a confidential basis are in fact used for authorized purposes. The bill would not grant us the authority to take exception to payments made pursuant to such certifications, and it protects the essential confidentiality of any underlying information involved by limiting disclosure to certain committees of the Congress. The bill preserves the existing statutory authority to exempt from its audit the financial transactions of the

Central Intelligence Agency and authorizes the President to exempt certain other activities relating to intelligence and counter-intelligence.

In my opinion the bill strikes a good balance between the need for accountability on the part of those who administer unvouchered accounts and the preservation of discretion and confidentiality in their use of unvouchered funds. Parenthetically, I would like to point out that the Congress and the Executive branch adopted an approach similar to section 101 when Pub. L. 95-570 (November 2, 1978) was enacted. That law amended sections 105 and 106 of title 3, United States Code, to provide for the Comptroller General's inspection of records and verification of expenditures accounted for solely on the certificate of the President and Vice President in connection with their entertainment and travel activities and the maintenance costs of the Executive residence at the White House.

Section 102 of H.R. 24 authorizes GAO to seek court enforcement of its legal rights to records of Federal departments and establishments and of non-Federal persons and organizations--including contractors, subcontractors, grantees, and other recipients of Federal assistance.

With regard to records of Federal agencies, the bill would permit the Comptroller General to institute an action in a U.S. District Court against any Federal department or agency which fails to grant us access to its records within

20 calendar days from receipt of a formal request for access. With regard to non-Federal entities, the bill would permit us to issue, and seek judicial enforcement of, subpoenas for the production of records where we currently have access rights by law or agreement.

I would like to emphasize that the enforcement provisions of H.R. 24 do not expand GAO's existing rights of access concerning either Federal agencies or non-Federal entities. Our access to Federal records is provided by section 313 of the 1921 Budget and Accounting Act, which provides:

> "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. * * *"

Access to contractor records also is provided by statute, for example, 10 U.S.C. 2313 (Department of Defense negotiated contracts) and 41 U.S.C. 254 (negotiated contracts covered by the Federal Property and Administrative Services Act of 1949.)

·-cess to grantee records is provided by numerous statutes.

mples of such laws are 21 U.S.C. 1003 (Alcohol and Drug

Abuse Education Act), 49 U.S.C. 1726 (Airport and Airway Development Act of 1970), and 42 U.S.C. 7611 (Air Quality Act of 1967). Our existing access rights generally afford us an adequate legal basis for the accomplishment of our work. The need is for a prompt judicial remedy to assure that those entities with whom we deal comply with their statutory or contractual obligations.

I have prepared for the record an attachment which provides an overview of the types of access problems we encounter and how the judicial remedies proposed in H.R. 24 should help very substantially. I would like to highlight the points made in this attachment.

At the Federal agency level, we encounter access problems which are never resolved. Much more frequently, however, compromises are eventually reached -- often after long and arduous negotiations -- through which we get some form of limited access. Federal agencies resist granting us access for a variety of reasons. Sometimes the agencies raise legal issues or have other specified concerns. Unfortunately, agencies also engage in mere delaying tactics based on vague concerns or, perhaps, on nothing more than indifference or intransigence. Of particular concern are official guidelines issued by some agencies which tend to foster a negative approach to GAO's access needs.

I do not mean to suggest that negotiation and consultation with the Executive branch would cease once we have

a judicial remedy. We are sensitive to the need to protect the confidentiality of certain information made available to us, such as law enforcement files, and we will continue to seek arrangements with the agencies to achieve this objective. The benefit of the enforcement remedy here would be to put us on an equal footing with the agencies for purposes of negotiation and to speed up the process. Also, I anticipate that the existence of a judicial remedy would have a deterrent effect and would prevent many of the access problems we now face from arising. In those probably rare instances where legal or other issues simply cannot be resolved satisfactorily by negotiation, we believe that recourse to a judicial resolution of such matters is clearly the best way to settle access disagreements. Without such recourse, the crucial fact is that we have no legal means of effectively resolving access problems. For this reason, we believe that section 102 represents a logical and necessary step in the resolution of our access to records difficulties.

I would like to add that we are aware of the desire of the Executive branch that it be notified prior to the initiation of any litigation by the Comptroller General in which access to records is involved. I have in mind notification to the head of the agency involved, the Attorney General, and the Director of OMB. We have no objection to adding such a notification mechanism to section 102 and would be pleased to work with the committee to draft such language.

Our experience in pursuing access from non-Federal sources is generally similar to our experience at the Federal level. Here again, we expect that the existence of subpoena power would be most beneficial in avoiding the access problems and delays which now occur. As explained in detail in the attachment, this has been our experience with our existing subpoena power under the Energy Policy and Conservation Act and the Medicare-Medicaid Antifraud and Abuse Amendments.

I should also point out that providing the Comptroller General with subpoena power to enforce his right of access to records is consistent with Pub. L. 95-452, the recently enacted law that establishes an Office of Inspector General in many executive departments. Section 5 of that act authorizes each departmental inspector general to subpoena those documents he deems necessary to effectively carry out his duties. Two other Federal agencies--the Departments of Energy and Health, Education, and Welfare--have Inspectors General with subpoena power. (See 42 U.S.C. 7138, and 42 U.S.C. 3525.) The similarity between the duties assigned to the group of Inspectors General and those assigned to the Comptroller General suggests that each should be given equally effective tools to carry out their respective responsibilities. More than 50 departments and agencies of the executive branch have been granted subpoena authority in the performance of their responsibilities.

Section 104 would establish a new mechanism for the appointment of future Comptrollers General and their Deputies. The bill provides for a Commission made up of the congressional leadership and the chairmen and ranking minority members of the House Government Operations and Senate Governmental Affairs Committees which would, after consultation with the President, submit to him the names of not less that three potential nominees for the Office of Comptroller General. The President would select one of these names in making a nomination for Senate confirmation, or he could request the submission of additional names. The bill also provides that future Deputy Comptrollers General be similarly appointed with the addition of the Comptroller General as a member of the Commission.

Mr. Chairman, I can personally attest that having had the support of the Congress has proven to be of immense importance to the General Accounting Office. The Comptroller General, in order to effectively discharge his responsibilities, must enjoy a special relationship with the Congress. For this reason, I believe it is entirely appropriate that congressional officials of both Houses and political parties be given a formal role in the selection of the Comptroller General and his Deputy. With the degree of congressional involvement in the Comptroller General selection process proposed by H.R. 24, I believe steps will have been taken to assure

that future Comptrollers General continue to have the support of the Congress in the execution of their oversight and review responsibilities.

Title II of H.R. 24 requires that the Inspectors General of the Departments of Energy and Health, Education, and Welfare comply with the Comptroller General's auditing standards. The same requirements were included in the recently enacted Inspector General Act of 1978, Pub. L. 95-452. Thus the bill would conform the charters of the DOE and HEW Inspectors General in this regard to the more recent legislation. I might add that the Office of Management and Budget's Circular A-73 requires that internal audit operations of virtually all agencies conform to the GAO standards. Section 202 of the bill also includes requirements for the DOE Inspector General, in the areas of coordinating work with GAO and potential criminal referrals, which likewise conform this Office with other Inspectors General. While I endorse title II of the bill as it is presently written, I hope that this title might be broadened to apply to all governmental internal audit operations. If you agree that such a change is worthwhile, we would be pleased to work with your staff in drafting appropriate legislative language.

Mr. Chairman, the provisions of H.R. 24 described above have my full support. However, I do not believe there is a need to enact into law the remaining provision--section 103.

This section would impose statutory limits on our procedures for getting agency comments on GAO draft reports; I do not think that legislation in this area is necessary or desirable.

First, the bill sets a 30-day maximum period for agencies to comment on GAO draft reports unless the Comptroller General determines that a longer period is necessary to insure the accuracy and reliability of the reports. I believe this provision is unnecessary in view of our recent action to minimize the time for getting agency comments and avoid delays in issuing final reports. I have also directed our division directors to rely on oral agency comments whenever feasible since they can be obtained more quickly than written comments. Whether we request oral or written comments depends on such factors as the seriousness of the criticism, the complexity of the subject matter, the sensitivity of the findings, and the urgency of the need to meet reporting deadlines.

When written comments are requested, which is the case only in about half the reports we issue, agencies will normally be allowed no more than 30 days to respond; in exceptional cases the period can be longer but not more than 60 days. Of course, the time allowed for oral comments will be much less than the 30 days normally allowed for written comments. If an agency cannot provide comments within the time allowed the eport will be issued without comments and we will point out efforts and inability to get them.

So that you may appreciate the steps we have taken in this area to improve the timeliness of our reports, I would like to submit for the record a copy of that part of the changes made last December to our policy manual covering report processing and agency comments. In connection with these changes, we wrote to OMB suggesting revisions to Circular A-50 to emphasize the need for agencies to respond to our draft reports within the allowed time periods. A revised circular issued on January 15, 1979, incorporates our suggestions.

These changes should substantially reduce the time for getting agency comments. I believe that they respond to the concerns underlying the proposed time limit in H.R. 24 and thereby obviate the need for legislation along the lines proposed.

I also believe that part of section 103 allowing us only to provide agencies with the facts and conclusions--but not the recommendations--of our reports is undesirable. Our reason for giving affected parties the full text is to assure ourselves that the reports are fair, complete, and objective. Needless to say, agency concurrence with recommendations gives greater credibility to the reports and indicates progress in the resolution of identified problems. Conversely, if agencies take exception to our views, it is important for the Congress to be aware of why we disagree at the time our report is submitted to Congress.

We pride ourselves on the improvements in Government operations that result from our work. Most of these come about by agency actions on our recommendations--to which they are generally receptive. For example, in fiscal year 1978 direct agency response to our reports accounted for $1.9 billion of $2.5 billion in measurable savings attributable to the work of GAO. Early advice to them of our suggested improvements expedites realization of the benefits. Thus, I believe our present practice enhances the usefulness of our reports to the recipients and should be continued.

Finally, I would like to point out that we are currently revising our report processing procedures--to be effective July 1--with regard to significant changes from the draft reports. As I indicated to you, Mr. Chairman, in my letter of June 8, a copy of which I would like to submit for the record, we intend to indicate in our final reports any significant changes between the conclusions and recommendations in draft and final reports resulting from agency comments, together with the reasons for such changes.

In brief, I expect that the actions already taken will overcome the previous problems in obtaining comments on a prompt basis, and will serve to highlight modifications in draft reports. If agencies do disagree or want to refute our report, I want the report itself to defend our position rather than our having to do this through a later separate

ort which few people would have the time or opportunity
o read.

Comments on Proposed Amendment to H.R. 24

As you know, Mr. Chairman, on Friday of last week we were provided with a copy of a proposed amendment to H.R. 24. We believe the new language strengthens the bill and represents an improvement in certain areas.

With regard to section 101, audit of unvouchered expenditures, the proposed amendment explicitly recognizes our authority to audit unvouchered accounts in the White House Office. The new language also allows us to disclose the findings of our audits of unvouchered accounts to the President and the head of the agency concerned. We believe such disclosure, which is not provided in the introduced bill, is entirely appropriate if the Executive branch is to be expected to take timely corrective action should our audits identify irregularities in an unvouchered account.

The amendment changes section 102, enforcement of access to records, in two beneficial ways. First it provides for notice to the Attorney General before we initiate any litigation to compel an agency to provide us with records. As I stated earlier, we think notice should also be given to the agency head and the Director of OMB. Second, the amendment allows us to apply for a court order against a Federal agency to compel access to its records.

Such language effectively allows us to proceed as though a subpoena was issued to the agency. This change is worthwhile for it permits expedited resolution of access to records difficulties involving Federal agencies. I also support that part of the amendment that provides that failure to comply with a court order to produce records would be treated as contempt of court.

Regarding section 103, availability of draft reports, the amendment allows us to provide agencies with the full text of our draft reports. (The introduced bill prevents us from giving agencies our draft recommendations.) We believe this is an improvement because it allows agencies to react to the complete product of a GAO audit including our proposed recommendations to overcome identified problems. The amendment also allows committees and members of Congress who have requested GAO audits to obtain copies of our draft reports upon request. Drafts of self-initiated reports would similarly be made available, upon request, to the House Government Operations and Senate Governmental Affairs Committees. As I stated to you in my letter of June 8, Mr. Chairman, we have already initiated changes to our internal report processing procedures to make drafts of our self-initiated reports available to you upon your request. In addition, we also intend to identify significant changes between the conclusions and

recommendations in draft and final reports. This latter area is legislated by the proposed amendment.

On balance, we believe that section 103, as it would be amended, still represents legislation that is both unnecessary and undesirable in view of the steps we have already taken and our continuing need to retain a degree of discretion in the processing, disclosure, and issuance of GAO reports. However, we recognize your concern in this area, Mr. Chairman, and would not object to handling the issues raised by section 103 (as introduced or in the amendment) through the vehicle of a committee report. We would be pleased to work with the committee in drafting appropriate report language.

Concerning section 104, the proposed amendment would remove the requirement that the President must select a Comptroller General and a Deputy Comptroller General from the list of names submitted by the congressional commission. I am aware that the executive branch has raised some question about the constitutionality of a requirement that the President must make a selection from the list of names submitted to him. I think the proposed amendment would overcome that concern and I support it.

Finally, the amendment retains the language of title II of the bill as introduced. As I stated earlier, we

think the objectives of this title are sound and could well be applied to all governmental internal audit operations as a matter of law.

This concludes my prepared statement, I would be pleased to respond to any questions you may have at this time.

THE FOLLOWING MATERIAL IS

SUBMITTED FOR THE RECORD

OVERVIEW OF ACCESS TO RECORDS EXPERIENCE

On a number of occasions over the years the General Accounting Office has encountered difficulty in obtaining from Executive branch agencies and other organizations records to which we have a right of access by law or agreement. The following recent examples serve to illustrate this problem.

Difficulties with Federal Agencies

1. Within the past year, we encountered serious access to records difficulties at the White House in connection with two audits requested by congressional sources. In one case the Chairman of the Subcommittee on Energy and Power of the House Commerce Committee had asked us to review Federal planning efforts in relation to the mid-winter coal strike that occurred during 1977-1978. The development and evaluation of unemployment estimates by the Council of Economic Advisers (CEA) was a key aspect of the audit. The White House refused our request for specific CEA records on this matter and we were forced to issue our report without the information. The refusal was said to be based on a Justice Department memorandum challenging our access rights. In fact, the Justice Department memorandum merely suggested that additional study might well provide a basis for the President's invoking "executive privilege"

in response to our request. "Executive privilege" was never invoked. Following issuance of our report and on the day before a Subcommittee hearing on the matter, CEA provided most of the records that had previously been denied to us.

The second case involved a request by Congressman Eldon Rudd that we review whether United States Metric Board members were appointed from segments of the concerned communities as required by statute. Despite repeated followup inquiries, we received no response to our request for access to the necessary records for several months. Finally the White House denied this request on the basis of the same Justice Department memorandum. Thus we were unable to perform the audit. Again the Justice Department suggested a claim of "executive privilege" but, to the best of our knowledge, it was never invoked.

These cases illustrate the full range of our access problems. We encountered long delays in obtaining any response to our access requests. When the responses finally arrived in the form of denials, the legal basis was not articulated. In the Metric Board matter, the response alluded to areas of concern which might have been accommodated, but no serious effort was made to seek an accommodation. In the CEA matter, most of the information was provided after issuance of the report with no explanation as to why it could not have been furnished months earlier.

2. Pursuant to the requests of over 30 Members of Congress we initiated a review of the circumstances surrounding a grant by the Department of Labor to the United Farmworkers of America. Our initial requests for access to agency documents in connection with this review were denied. At one point, we were told that the grant in question had not been awarded. Later we were told, after the actual selection of the United Farmworkers had been made, that GAO access to all grant-related materials was being denied in order to maintain the confidentiality of the negotiations. A week later our request for access was once again denied by the Director, Office of National Programs of the Employment and Training Administration, and a representative of the DOL Solicitor's Office. To break this impasse, we finally had to write to the Secretary of Labor setting forth our difficulties and views on the matter. It was not until five weeks later that the Secretary responded and gave us full access. As a result of this impasse our work was delayed about two months.

3. On a number of occasions we have been denied access to records of military departments on sweeping and general grounds, such as the records are "internal working papers" that should not be released to the GAO or are not "official" agency documents. In one instance (February 1978) the Air Force refused to give us copies of certain

briefing documents. The denial was based on the fact that the documents were prepared in connection with the Fiscal Year 1980 budget which had not gone to Congress.

These are not merely ad hoc denials made by lower level officals, but reflect formal agency policy guidelines which can serve to engender a negative approach to GAO access. For example, Air Force regulation 11-8 (10 February 1978) acknowledges GAO's statutory right of access but then prescribes detailed procedures for handling requests for sensitive information or denials of GAO requests. Concerning Air Force regulation 11-8, we have repeatedly contacted Air Force to share with them our concern over its unjustified restrictions on GAO access. We recently received from Air Force a draft of the new regulation. Our initial reaction to the draft is that Air Force is finally considering modifications to the regulation to accommodate our statutory rights and legitimate working needs, and to foster a positive working relationship between GAO and Air Force.

4. Even more recently (November 13, 1978) we were distressed to learn that the Deputy Assistant Secretary of Defense (Installations and Housing) issued guidelines sharply restricting access by non-Defense personnel to records regarding base closures. This instruction states that prior clearance by the Office of the Secretary of Defense will have to be obtained before giving materials

to GAO staff. Like Air Force regulation 11-8, this instruction engenders a negative view of GAO records requests and could well serve to delay our ultimate reciept of requested documents.

5. Air Force regulation 11-8, referred to above, adversely impacted on our review of the EF-111A Tactical Jamming System. In that review we encountered serious delays and, in some cases, outright denials of our requests for access to records, based upon the regulation. In this instance, the Air Force refused to provide us with daily flight reports on the basis that the records were preliminary test reports insulated from disclosure pursuant to paragraph 18k of regulation 11-8, and should not be released outside of DOD. Thus, while we visited EF-111A test sites, development and operational test officals would not give us any test results or even discuss them.

6. In connection with our review of the World Wide Military Command and Control System (WWMCCS) we have experienced three types of access to records difficulties: outright denials of access to records; delayed access to records; and denial of access to principal responsible officials. The goal of this congressionally requested review is to assess the ability of the WWMCCS system to satisfy military command and control requirements during a time of crisis. We began our work in early September 1978 when initial contact was made

with the Office of the Joint Chiefs of Staff (JCS). In response to repeated written requests for access, JCS wrote that there were problems in releasing the requested information to GAO---in fact, that certain information was possibly not disclosable at all.

In summary, we have encountered outright denials of access as well as delays in getting documents. For example, one set of materials was not received until 36 days after our request; another records request took 44 days before we received the documents. And, in one case, over 100 days have elapsed and we still have yet to receive requested materials. Other documents have been denied on the basis they are "draft" documents since they were yet to be approved by JCS. The Command and Control Technical Center approved the "draft" on August 21, 1978, and the document is available to other U.S. Government agencies upon request.

We also have been flatly denied access to the comments of command participants during exercises. We sought these materials to see how the WWMCCS data processing systems supports the needs of the decision makers. On December 20, 1978, JCS told us the request was denied because the comments are considered internal documents and represent the opinion of the participants.

7. An access problem with NASA arose in July of 1978. Initially NASA would not grant us full access to the records

of the NASA Council which we need to effectively perform two assignments. One of these assignments is a survey of NASA's planning and selection of projects to meet national needs. The other is to respond to a request from the Chairman, Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, to review civil agencies' progress in implementing OMB Circular A-109. NASA officials stated that they were reluctant to grant us full access to the records because they did not want to prematurely expose "pre-decisional material," and because of the need to preserve uninhibited freedom of expression by NASA personnel. In recognition of NASA's concerns we agreed to attempt performing our assignments with less than full access to needed records. We found that our restricted access to records was not satisfactory. In his letter of November 9, 1978, the NASA Administrator, proposed a solution to GAO's problem under which NASA would (1) screen material prior to its release to GAO, and (2) withhold "informal" materials such as that prepared by "working-level" personnel if release of such would damage mechanisms for the internal communication of candid personal viewpoints.

By letter of December 12, 1978, we informed the NASA Administrator that his November 9 proposal was unacceptable. Our letter (1) reaffirmed GAO's right to examine planning and budgetary data, (2) explained GAO's policy of judicious

handling of such data, and (3) rejected NASA's proposal that GAO accept information which had been screened. The letter also asked for a prompt resolution of all data requests made by GAO on the two assignments. We received a response by letter from the Administrator dated January 18, 1979, indicating that the requested documents would be provided. Although we ultimately obtained the materials in March 1979, we encountered a delay of about 9 months between our initial request and actual receipt of the materials.

Perhaps the most frequent delay situations we encounter, and the most difficult to deal with, are those in which it is unclear whether a real access problem even exists. We may get no specific response to a request for access within a reasonable time. Follow-up inquiries may elicit that the request is being processed through various channels within the agency or there may be vague allusions to "possible problems" which are under consideration. Unlike situations in which the agency at least articulates specific objections or concerns, we have nothing to respond to here in terms of attempting a resolution. In all probability the records will be provided eventually; but in the meantime assignments have been set back for unclear reasons or, perhaps, for no reason other than indifference or foot-dragging.

We anticipate that the existence of a judicial enforcement remedy would have a very substantial and beneficial

impact on each type of delay discussed above. The deterrent effect alone should instill in agencies a greater sensitivity to the need for prompt responses to our access requests, thereby generally speeding up the process. It should also encourage agencies to quickly focus upon and articulate any real problems which do exist, so that they can at least be approached in a constructive manner.

We recognize that agencies may have sincere and legitimate concerns for the protection of sensitive information. We have always respected these concerns, and we have not hesitated to seek accommodations which afford maximum protection to the agency's information while assuring that our audit responsibilities are carried out effectively. Enactment of the judicial enforcement remedy would not change this fundamental approach. It would, however, effect more subtle changes by placing us on an equal footing with the agencies for purposes of negotation. While this will probably result in some differences from current practice in the substance of access arrangements, we anticipate that the most significant effect will be to reduce substantially the time required for the negotiation process.

Difficulties with Non-Federal Organizations

The previous discussion centers on our access experiences with Federal agencies and the anticipated effects of a judicial enforcement remedy. Generally, this discussion

applies as well to access problems involving non-Federal organizations, such as contractors and grantees, and to the proposed subpoena authority which would provide the remedy here.

While cooperation is quite good as a general rule, access problems do arise in the form of challenges to GAO's legal authority, delays due to the informal resolution of stated issues, and delays involving uncertain factors. One possible difference in approach is that non-Federal organizations tend to be less familiar with GAO's functions and authorities. Issues are more likely to arise concerning the basis and scope of our legal access rights, and, in effect, our access rights are more varied than at the Federal level. Also, State laws and procedures may come into play.

As a result, we have encountered delays caused merely by the need to provide organizations--particularly grantees--with detailed statements of our authority. For example, the grantee (or its attorneys) may be entirely willing to cooperate, but may still insist on a formal statement of authority for its own protection in releasing information to us. Thus in a non-Federal context, the presence of a subpoena power on the statute books should be most useful as a means of avoiding access delays at the outset, particularly where the potential problem is lack of familiarity with GAO rather than a desire to resist.

At the risk of stating the obvious, our overriding interest in dealing with non-Federal organizations (as it is, of course, with Federal agencies) is to obtain the access necessary to accomplish our functions as promptly as possible. This can best be achieved by approaching such organizations in a non-adversary manner, but with the necessary legal remedies to support our access authority and evidence our ability to pursue access.

Our experience under title V of the Energy Policy and Conservation Act, 42 U.S.C. §§6381 et seq., illustrates the success of this approach. Title V grants GAO subpoena authority in the conduct of verification examinations of energy information. Since the statute was enacted in December 1975, we have obtained company information under title V from 68 different energy companies and conducted on-site audits of certain books and records of 32 companies. All of this has been accomplished without the need to issue a single subpoena. Some companies have been defensive about our involvement and sensitive about complying with our requests for information, especially where we sought proprietary or competitive data. Nevertheless, voluntary compliance has enabled us to obtain the necessary information to complete our reviews. We are convinced that the existence of our title subpoena authority is, in large measure, responsible for these results.

Two title V reviews in particular illustrates the importance of having subpoena power. One involved a review of coal operators' books and records supporting coal reserve estimates on public lands. This review involved the top 20 leaseholders of Federal coal and required access to information which was of a very confidential and proprietary nature. Our requests initially drew resistence from several of the companies. Officials of several companies acknowledged that the only reason they would give us the information is because they knew that through our enforcement powers we would, in all likelihood, obtain it in the long run. In another instance, we requested access to management and financial information regarding the construction of the trans-Alaskan pipeline. Although Alyeska--the service company representing several major petroleum companies--never acknowledged our rights under title V, they did give us the information we requested. Again, it appears, this was because of our enforcement powers and the company's interest in avoiding a court battle.

GAO was also given subpoena power relating to social security programs by the Medicare-Medicaid Antifraud and Abuse Amendments, 42 U.S.C. §1320a-4. We have not developed as much experience under this subpoena provision. We believe that it will prove to be equally useful. Likewise, we are confident

that affirmative results could be obtained if GAO is provided general subpoena power to enforce its existing access rights by law or agreement to records of non-Federal organizations.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

JUN 8 1979

The Honorable Jack Brooks
House of Representatives

Dear Jack:

This letter will confirm the agreements reached at our May 31 meeting regarding (1) the weekly submission to you of a list of draft reports sent to agencies for comment and (2) discussion in our final reports of any significant changes from the conclusions and recommendations that were contained in the draft reports submitted to agencies.

With respect to the weekly list of draft reports, we will have this procedure in place by July 1. After that date, we will each Friday place in the mail to you a list of the draft reports, based on our self-initiated work, that were sent to the agencies during that week. As agreed, copies of these reports will be sent to you at your request.

Also effective the same date, our procedures will be revised to require that any significant changes between the conclusions and recommendations in draft and final reports which were based on agency comments be described in the latter documents together with the reasons for such changes. Since there are reports already in process, it will be a month or two before our final reports are all cast in this fashion. This procedure will apply to all reports--self-initiated and request--which are submitted to the agencies for written comment.

I trust that these actions are responsive to your concerns.

Sincerely yours,

(Signed) Elmer

Comptroller General
of the United States

EXTRACT OF U.S. GENERAL ACCOUNTING OFFICE REPORT

MANUAL: CHAPTER 6, PAGES 6-9 and 6-10, AS AMENDED

DECEMBER 1978

Letters transmitting report drafts to either government agencies or parties outside the Federal Government (agencies) for review and comment should contain a specific date by which the comments should be provided. Because the time needed to comment may vary with the complexity of the report and with the dispersal of an agency's activities, the specific time considered reasonable must be determined for each report. The normal time frame should be 30 days, although the division director can specify a shorter or longer period if considered appropriate in a particular case. In no event should this period exceed 60 days. The letter transmitting the draft report should request the agency to notify the assistant (or team) director if comments will not be provided by the requested date.

If the comments have not been received by 5 days before the due date or if the agency notifies us that it will not meet the due date, the assistant (or team) director should discuss with the agency when the comments could be furnished. If the comments will not be ready until more than 15 days beyond the due date, the division director (or deputy) should contact an appropriate high level agency official to see whether the comments can be expedited and received within the 15-day grace period. If not, the director should tell the agency that the report will be issued without written comments, and should also request a meeting within the 15-day grace period to at least get oral comments.

FEDERAL DEPARTMENTS, AGENCIES, OFFICES, COMMISSIONS, AND INDEPENDENT ESTABLISHMENTS WITH AUTHORITY TO ISSUE AND SIGN SUBPOENAS

Agency/Activity	United States Code
Agriculture (Department of)	
Pesticides and environmental pesticide control	7 U.S.C. §136d
Packers and stockyards	7 U.S.C. §222
Perishable agricultural commodities	7 U.S.C. §499m
Tobacco inspection	7 U.S.C. §511n
Seed inspection	7 U.S.C. §1603
Cotton research and promotion	7 U.S.C. §2115
Potato research and promotion	7 U.S.C. §2622
American Indian Policy Review Commission	25 U.S.C. §174 note
Civil Aeronautics Board	49 U.S.C. §1484
Civil Rights Commission	42 U.S.C. §§1975a, 1975d
Civil Service Commission	
Political activities of State and local employees	5 U.S.C. §1507
Enforcement of Voting Rights Act of 1965	42 U.S.C. §1973g

Agency/Activity	United States Code
Commerce (Department of)	
Weather modification	15 U.S.C. §330c
Flammability standards	15 U.S.C. §1193
Interstate land sales	15 U.S.C. §1714(c)
Shrimp fisheries log books	16 U.S.C. §1100b-5
Port safety	33 U.S.C. §1223
Shipping	46 U.S.C. §1124
Commission on Security and Cooperation in Europe	22 U.S.C. §3004
Consumer Products Safety Commission	
Hazardous substances	15 U.S.C. §1262 note
General	15 U.S.C. §2076
Council on Wage and Price Stability	12 U.S.C. §1904 note
Detention Review Board	50 U.S.C. §819
Energy (Department of)	
General	Pub. L. No. 95-91, title VI, §645
Powers of Secretary (formerly powers of Federal Energy Administration)	15 U.S.C. §772
Administration of Atomic Energy Act (formerly Energy Research and Development Agency)	42 U.S.C. §5814 (42 U.S.C. §2201(c))
Consumer Products (formerly Federal Energy Administration)	42 U.S.C. §6239

Agency/Activity	United States Code
General	
Secretary of Department for which Coast Guard is operating (investigations of safety and environmental quality of ports, harbors, and navigable waters)	33 U.S.C. §1223
Secretary of Department administering Export Regulation Act	50 U.S.C. (App.) §2406
General Accounting Office	
Department of Energy Organization Act and Federal Energy Administration Act of 1974 (upon the adoption of a resolution by the appropriate congressional committee)	Pub. L. No. 95-91, title II, §207, 91 Sta 565, 574; 15 U.S.C. §7
Energy Policy and Conservation Act	42 U.S.C. §§6382, 6384
Medicare-Medicaid Antifraud and Abuse Amendments	42 U.S.C. 1320A-1
Health, Education and Welfare (Department of)	
Old-age survivors and disability insurance benefits	42 U.S.C. §405(d)
Housing and Urban Development (Department of)	
Interstate land sales	15 U.S.C. §1714
Discriminatory housing practices	42 U.S.C. §3611
Immigration and Naturalization Service	
Immigration	8 U.S.C. §1225
Naturalization	8 U.S.C. §1446(b)
Indian Claims Commission	25 U.S.C. §70c

Agency/Activity	United States Code
Interior (Department of)	
Coal mines	30 U.S.C. §813
Public lands	43 U.S.C. §102
Internal Revenue Service	26 U.S.C. §§7602-7603
Interstate Commerce Commission	
Explosives transport	18 U.S.C. §835
Common carriers	49 U.S.C. §§12, 46
Motor vehicles	49 U.S.C. §305(d)
Joint Federal-State Land Use Planning Commission for Alaska	43 U.S.C. §1619(d)
Labor (Department of)	
Workmen's compensation	5 U.S.C. §8126
Farm labor contractors	7 U.S.C. §2046
Fair labor standards	29 U.S.C. §209
Longshoremen	33 U.S.C. §927
Government contracts	41 U.S.C. §39
Law Enforcement Assistance Administration	42 U.S.C. §3754
National Commission on Electronic Fund Transfers	12 U.S.C. §2404(d)
National Credit Union Administration	
Examination of insured credit unions	12 U.S.C. §1784

Agency/Activity	United States Code
National Labor Relations Board	
Determination of bargaining units; investigations into the fairness of elections; and unfair labor practices	29 U.S.C. §161
National Mediation Board	
Mediating disputes between carriers and their employees	45 U.S.C. §157
Pension Benefit Guaranty Corporation	29 U.S.C. §1303
President	
Enforcement of Defense Production Act	50 U.S.C. (App.) §2155
Railroad Retirement Board	
Railroad unemployment insurance claims	45 U.S.C. §362
Securities and Exchange Commission	
Security Exchange Act	15 U.S.C. §78u
Public utility holding companies	15 U.S.C. §79r
Investment companies	15 U.S.C. §80a-41
Small Business Administration	
Assistance recipients	15 U.S.C. §634
Investment company licensing	15 U.S.C. §§687a, 687b
Tariff Commission	19 U.S.C. §1333

Agency/Activity	United States Code
Technology Assessment Board	2 U.S.C. §473
Transportation (Department of)	
Safety standards	15 U.S.C. §1401
Tolls in navigable waters	33 U.S.C. §506
Transportation Safety Board	49 U.S.C. §1903(b)
Treasury (Department of)	
Marijuana investigations	21 U.S.C. §§198a, 198b, 198c
Enforcement of narcotics laws	31 U.S.C. §1034
United States Railway Association	45 U.S.C. §713
War Production Board	
Audits of defense contractors	50 U.S.C. (App.) §643a
Procurement and repair of naval vessels	50 U.S.C. (App.) §1152(

EXPIRED AUTHORITY

Agency/Activity	United States Code
Commission on Consumer Finance	15 U.S.C. §1601 note
Commission on Food Marketing	7 U.S.C. §1621 note
Commission on the Organization of the Government for the Conduct of Foreign Policy	22 U.S.C. §2824

Agency/Activity	United States Code
Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance	18 U.S.C. §2510 note
Commission on the Review of the National Policy toward Gambling	18 U.S.C. §1955 note
Public Land Law Review Commission	43 U.S.C. §1398
Subversive Activities Control Board	
Investigations on communist-action-front groups or infiltrated organizations*/	50 U.S.C. §792
Transportation (auto insurance investigation)	49 U.S.C. §1653 note

*/ The Board's funding ceased on June 30, 1973. See 50 U.S.C. 791.