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United States General Accounting Office

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m. EST
Wednesday, December 9, 1981

STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS
OF THE
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
ON
H.R. 316
LIMITATION ON GOVERNMENT RECORDKEEPING REQUIREMENTS
AND ACTIONS ACT OF 1981
AND ON
POTENTIAL IMPACT OF NATIONAL ARCHIVES
AND RECORDS SERVICE BUDGET REDUCTIONS



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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our views on the Limitation on Government Recordkeeping Requirements and Actions Act of 1981 (H.R. 316). As you requested, we will also provide our views on Federal records retention policies, including the potential impact of proposed budget reductions at the National Archives and Records Service (NARS).

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H.R. 316 would provide a uniform 4-year limit on the time an agency could require a person to retain records. Also, it would preclude an agency from requiring, or enforcing any law or regulation which requires, a person to maintain, prepare or produce any record (other than a record relating to a dangerous material), more than 4 years after the date of the transaction or event which is the subject of the record.

The bill would also preclude an agency from taking legal action against any person:

- for enforcement of a law or regulation, or
- for collection of civil fine, penalty or forfeiture, more than 4 years after the date of the act or failure to act which is the subject of the action.

These provisions would not apply when the Internal Revenue Code of 1954 or its implementing regulations provide otherwise.

Mr. Chairman, we believe the broad scope of the bill as presently drafted would create serious problems in a variety of areas. For example, although past legislative history indicates that the bill is not intended to apply to those persons dealing directly with the Government by contract, grant, or loan, as presently drafted it would have this effect. In general, we believe the problem of controlling unnecessary records retention requirements can best be dealt with by effective implementation

of the relevant provisions of the Paperwork Reduction Act of 1980 which became effective on April 1, 1981.

I would now like to address some of the specific problems we see with the bill.

Recordkeeping Provisions

As I stated, the bill would provide a uniform 4-year limit on the time that any agency could require a person to retain records. While we believe that reducing records retention requirements is a desirable goal, we do not believe that imposing a single maximum retention period is the best way to achieve that goal. We believe the approach recently adopted by the Congress in the Paperwork Reduction Act of 1980 is a better way to work toward that goal. The act requires the review and coordination of records retention requirements imposed on the public. The Office of Management and Budget (OMB) is required to conduct studies and develop standards for these retention requirements. The General Services Administration (GSA) is required to assist OMB in this effort because of its expertise in developing standard Federal retention requirements and reviewing non-standard requirements. We believe this process, if effectively implemented by OMB and GSA, can contribute greatly to reducing unnecessary records retention requirements.

We are not aware of OMB's plans for implementing its specific responsibilities for developing records retention standards. However, in recent testimony before the Subcommittee

on Legislation and National Security, we stated that OMB had made little progress in the general area of records management. We are hopeful that the "stimulation" provided during that hearing, together with this Subcommittee's efforts will produce results in this important area.

As required by the Paperwork Reduction Act, OMB has begun to require agencies to submit their recordkeeping requirements for review and approval. In connection with this review process, OMB required agencies as of July 1, 1981, to specify retention periods for such records. This data could serve as the basis for establishing uniform Federal retention requirements for various types of records.

Records which would be affected by the proposed legislation contain evidence of financial and legal commitments that must be preserved to protect the legal and property rights of citizens. For example, the Department of Labor relies on private records to enforce truth-in-disclosure requirements for pension systems in accordance with the Employee Retirement Income Security Act. If the bill were enacted, the Department might require that private pension plans furnish the records to the Government in order to preserve the rights of employees under pension plans. Therefore, the present recordkeeping requirement would become a reporting requirement. In addition, Federal records storage costs would increase. Added reporting requirements could be imposed in connection with Federal contracts in order to preserve the Government's, and indirectly the public's rights.

We do not recommend that a uniform retention period be established. However, should the Subcommittee decide that a uniform retention period is desirable, there are several changes that we recommend.

The bill measures the 4-year retention period from the date of the "transaction or event" which is the subject of the record. However, the bill does not define what is meant by "transaction or event."

If one interprets the "transaction or event" as the negotiation or award of a Government contract, this bill would seriously curtail GAO's post-award audit capabilities as well as agency audit efforts, especially when contracts are of long duration.

We recommend that records relating to Government contracts be exempted from the provision of this bill. As an alternative, the bill should be amended to provide that, with respect to Government contracts, the "transaction or event" refers to the time when final payment is made under the Government contract or when the program to which the contract relates is completed.

Limitation On Bringing Actions

The bill would establish a uniform 4-year limitation period on the bringing of actions by the Government to enforce laws or regulations or to collect fines, penalties or forfeitures. This provision conflicts with other statutes.

We are opposed to enactment of a law which would impose a 4-year limitation on the bringing of all actions by the Government. Such a law would adversely impact ongoing efforts to collect an estimated \$15 billion in delinquent receivables that were identified by Federal agencies as of September 30, 1981. To illustrate, over \$1.3 billion in delinquent amounts have been referred to the Justice Department for collection, and we understand that almost all these debts involve transactions more than 4 years old.

Dangerous Materials

While one section of the bill excludes records relating to dangerous materials, another does not. Consequently, while persons could still be required to retain records related to dangerous materials for more than 4 years, their value for Government litigative and law enforcement purposes would be reduced.

Also the definition of "dangerous material" in the bill includes hazardous waste as defined by the Resource Conservation and Recovery Act of 1972. While this definition includes dangerous substances found in industrial waste products, it does not include dangerous substances produced for use and application in the environment (such as toxic chemicals found in pesticides).

The inconsistent exclusion of records relating to "dangerous materials" from the application of the bill's provisions and the narrow definition of "dangerous materials" for the purpose of the bill, will limit the Government's ability to recover cleanup

costs and damages from polluters of the environment under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Thus, the Subcommittee may wish to consider broadening the definition of "dangerous materials" and including the exception for "dangerous materials" in both the recordkeeping and limitation on actions provisions of the bill.

Mr. Chairman, at the request of the Chairman of the full Committee, we prepared and submitted detailed comments on H.R. 316. If the Subcommittee agrees, I would like to submit these detailed comments for the record.

I would now like to discuss issues relating to the proposed budget cuts at NARS.

NARS Budget Reductions

The Administrator of GSA has Government-wide records management responsibilities which have been assigned to NARS. NARS' role is to guide agencies and to help them with their records creation, maintenance, use, and disposition programs. NARS' functions--which cover the entire life cycle of records--include developing and improving records management standards, procedures, and techniques; operating Federal records centers; and evaluating the effectiveness of agency records management practices. Except for Federal records center functions, NARS' Office of Records and Information Management carries out these functions.

Because of Government-wide budgetary reductions, the Archivist of the United States, head of NARS, created a task

force to evaluate its records and information management programs. NARS' Office of Records and Information Management is targeted for a \$1.8 million reduction in its fiscal year 1983 budget. This reduction is over 50 percent of its 1981 budget which was \$3.4 million.

We are concerned that these cuts, if implemented, will have an adverse effect on NARS' ability to maintain its cost reduction efforts and to effectively carry out its mandate under the Paperwork Reduction Act. The budget cuts might also eventually require the Federal Government to store more records.

NARS Produces Government-wide Savings

Improved records management practices can result in significant savings to the Federal Government. NARS' fiscal year 1980 report on records management studies conducted for agencies showed one-time savings or cost avoidances of \$1.5 million and over \$1.6 million per year in recurring savings. NARS' field offices reported \$575,000 in one-time savings and about \$200,000 in recurring savings for fiscal year 1980. As a result of NARS' Government-wide study of agencies' mail management practices, Federal agencies have reported over \$26 million in reduced mail costs.

The savings which are reported may be only a small part of the actual benefits resulting from NARS' records management activities. NARS does not receive reports on the results of all the studies it conducts for agencies. Further, the benefits derived from NARS' guidance and training are not measured.

The Paperwork Reduction Act of 1980

The Paperwork Reduction Act assigns key responsibilities to GSA, the performance of which will be adversely affected by the substantial reduction proposed for NARS' records and information management program. Three sections of the act specifically affect the functions and responsibilities of NARS' Office of Records and Information Management and one section affects the Office of Federal Records Centers.

The first section requires the OMB Director to review, with the advice and assistance of the GSA Administrator, each agency's information management activities at least once every 3 years. The second requires the OMB Director to coordinate records management policies and programs with related information programs such as information collection, statistics, and automatic data processing. The third requires that the GSA Administrator report to OMB as well as congressional appropriations and oversight committees on the results, including agency actions, of NARS' records management assistance work and inspections of records management programs. Finally, the GSA Administrator is required to assist OMB in establishing retention periods for records that agencies require the public or State and local governments to maintain.

Unfortunately, the budget situation will limit the resources committed to these functions, which are critical to the effective implementation of the Paperwork Reduction Act. NARS

and GSA task forces have analyzed the Paperwork Act responsibilities. The studies are continuing at this time and final staffing/funding decisions have not been made. However, budget cuts at the levels proposed will not permit NARS to devote adequate resources to the new responsibilities assigned by the Paperwork Act while fulfilling its present responsibilities.

Records Storage Costs

Mr. Chairman, you have indicated that the Subcommittee is concerned as to whether the arrangement for the Archivist to maintain and pay for the storage of records encourages the retention of records beyond their useful life. We do not believe that it does. The storage costs, although expensive, are not a significant enough part of total operations of the various agencies to provide agencies an incentive to reduce records retention periods. Since NARS pays for the storage, it has some clout, as well as the incentive, to persuade agencies to reduce retention periods.

By widely advertising its free services for records storage and retrieval, NARS has been able to convince most agencies to send their inactive records from high-cost office space to relatively low-cost records center space. As a result, 14.4 million cubic feet of records, or 39 percent of the Government's 36.8 million cubic feet, are now stored in records centers at an estimated annual savings of \$141 million. This policy, although successful in getting agencies to store their records

in centers, has contributed, in some cases, to records which may be retained too long, or are not scheduled for disposal.

In 1973, GAO reported that about 30 percent of the records stored in three NARS' centers visited, lacked definite disposal dates. Since that report, NARS has become more aggressive in encouraging agencies to revise the schedules which control their records disposal, and to establish definite disposal dates where none previously existed. As a result, since 1978, the volume of records lacking disposal dates in NARS' centers has decreased from about 4 million cubic feet, or 30 percent, to 2.5 million cubic feet, or 17 percent. Thus, it appears that NARS' program to operate low-cost records centers and to review agencies' records disposal practices has been successful in terms of Government savings, and in controlling records storage practices.

Summary

Mr. Chairman, in summary, we believe that any actions which substantially reduce NARS' records management program and staff could severely hinder NARS' records management improvement efforts and the resulting Government-wide savings. These savings far outweigh the relatively modest funding required to maintain NARS' efforts at a viable level. The proposed budget reductions in NARS' records and information management program would also severely constrain the role Congress intended for NARS in implementing the Paperwork Reduction Act.

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