

July 10, 1979

STATEMENT OF  
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COMPTROLLER GENERAL OF THE UNITED STATES  
BEFORE THE  
SUBCOMMITTEE ON CIVIL SERVICE  
OF THE  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE  
UNITED STATES HOUSE OF REPRESENTATIVES  
on  
H. R. 3339, 96th Congress

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Madam Chairwoman and Members of the Committee:

We appreciate the opportunity to appear here today in support of H.R. 3339, a bill to provide for the employment and compensation of employees of the General Accounting Office (GAO). We thank you for scheduling this hearing to discuss any specific points which may be of particular interest. We would like to point out that this bill was introduced at our request after a thorough analysis of the effects of the Civil Service Reform Act of 1978. Also, we consulted with GAO managers, employees, and employee organizations, and discussed the bill with officials of the Office of Personnel Management. I am pleased to state that we were able to take into account the viewpoints expressed by these individuals and groups, and I believe we have succeeded in developing a bill which fully safeguards the interests of our employees while also achieving institutional objectives.

The broad objective of this proposed legislation is to improve the efficiency and effectiveness of the General Accounting Office and to reinforce the credibility of GAO work. The bill seeks to accomplish this by making GAO more independent of the executive branch to minimize the conflict of interest arising from GAO's unique dual role. GAO is a legislative branch agency responsible to the Congress for auditing and evaluating programs and financial activities of executive branch agencies. However, for organization and employee purposes, GAO is defined as an executive agency (5 U.S.C. 104, 105) and is subject to various executive branch controls; thus presenting an organizational conflict of interest.

This conflict of interest is clearly visible in the area of Federal personnel management. GAO is regulated by executive branch-administered programs that GAO must review and evaluate objectively. This situation has a dangerous potential for adversely affecting, and compromising the integrity of, GAO work. Perhaps more importantly, this situation is easily perceived as actually producing such undesirable results.

We have no specific examples of attempts by the staffs of the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or their predecessor, the Civil Service Commission, to retaliate for GAO reviews and evaluations, or vice versa. For the most part, our relationships have been based on cooperation and assistance. Nevertheless, as Mr. Jule Sugarman, then Vice Chairman of CSC, now Deputy Director of OPM, commented last year on the version of this bill before the 95th Congress, "even the appearance of conflicting relationships could jeopardize GAO's effectiveness in the personnel area."

This is precisely the point.

It is our intent to have legislation that not only will insure against an inherent conflict of interest, but also against an appearance of a conflict of interest between the roles of GAO and the executive branch agencies.

Until approximately 7 years ago this problem was not so acute because GAO devoted relatively few resources to the oversight of Federal personnel management programs. By 1972, the tremendous growth in expenditures for Federal employees demanded a much greater audit effort in this area.

To fill this audit need we established a new division--the Federal Personnel and Compensation Division--to lead our work in this increasingly important issue area and to provide increased GAO audit coverage for the Civil Service Commission. This division's responsibilities now include the review and evaluation of activities of the Office of Personnel Management and the Merit Systems Protection Board, agencies established to replace the Civil Service Commission by Reorganization Plan Number 2 of 1978 and the Civil Service Reform Act of 1978.

That Act, incidentally, perpetuates and intensifies GAO's conflict of interest. It specifically mandates that GAO (1) conduct audits and reviews to assure compliance with laws, rules, and regulations governing employment in the executive branch and the competitive service and to assess the effectiveness and soundness of Federal personnel management; (2) report annually to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management; and (3) review performance appraisal systems to determine whether they meet prescribed requirements and report the results to the Office of Personnel Management and the Congress (5 U.S.C. 2304, 4304, and 4312 (c)(2)).

While most Federal personnel management issues fall primarily within the jurisdiction of the Federal Personnel and Compensation Division, GAO's efforts in this field are by no means limited to those of that organization. The regional offices of the Field Operations Division as well as the overseas branches of the International Division

participate in this work. Other audit divisions are frequently involved in issues which are integral parts of or which affect the acquisition and management of the Federal workforce—issues such as productivity, equal employment opportunity, training and education, and health and safety. The Claims Division adjudicates employees' claims arising from personnel management and related activities in the various executive departments and agencies. Legal issues involving the interpretation and application of personnel management laws and regulations are resolved by the Office of the General Counsel.

Experience over the past 7 years indicates that it was a wise decision to place increased emphasis on reviewing personnel management in the executive branch. Personnel costs have continued to grow and in fiscal year 1980, compensation and benefits for Federal civilian employees, not including the Postal Service, are estimated at more than \$50 billion. The commitment of GAO's resources and time to this area is growing as a result of the enactment of the Civil Service Reform Act and the intense Congressional interest in its implementation. Virtually all aspects of personnel management have been or are being reviewed. Many useful reports have been issued which have brought about substantial savings and improvements.

In this, as well as other audit work, GAO has been and undoubtedly will continue to be critical at times of the manner in which the executive branch discharges its responsibilities. Most criticism has been directed at the agencies of the executive branch having primary responsibility

for Government-wide personnel management programs. To have the widest impact, we will continue to evaluate personnel programs across agency lines, concentrating on policy and control agencies, such as the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. These agencies also have a conflict of interest in their relations with GAO which could adversely affect their work, or appear to do so. On the one hand, they regulate personnel management in GAO. At the same time, they are subject to GAO's evaluation as to how effectively they carry out this responsibility. However, there is one significant difference in these relationships. These executive agencies have authority to make decisions which GAO must implement, while, as a general rule, GAO is limited to recommending changes in executive operations which the agencies may or may not implement.

To minimize these conflicts of interest, the proposed legislation will exempt GAO from executive branch-administered laws and regulations relating to matters such as appointments, promotions, reassignments, details, classifying and grading positions, compensation, adverse actions, reductions in force, and appeals. The legislation will also provide GAO personnel authority similar to other legislative agencies. Although the Office of Technology Assessment, the Congressional Budget Office, and the Library of Congress have much more flexibility in personnel management matters than does GAO, we have the greatest need for independence because of our auditing role.

It should be emphasized, however, that this bill provides adequate safeguards for the rights of employees and applicants. Under its provisions, GAO must establish a personnel management system which adheres to principles of merit in existing provisions of law. We will continue to pursue equal employment opportunity with affirmative action. Preference eligibles' rights will be preserved. Appointments and position changes will be based solely on fitness and merit. Compensation will be based on principles of equal pay for work of equal value and on the quality of performance. Adverse actions will be taken only for unacceptable performance or conduct. Appeals, complaints, and grievances will be adjudicated fairly and impartially in accordance with specified and published procedures. In short, this bill is designed to afford employees and applicants at least as much protection as they now have under the law and, of course, they will retain the right to appeal to the courts. Moreover, GAO employees will continue to have rights and benefits enjoyed by other Federal employees including but not limited to the following: annual, sick, and other paid leave, coverage under the civil service retirement system, compensation for work injuries, unemployment compensation, health and life insurance, training, incentive awards, backpay, severance pay, waiver of overpayments, and travel and transportation expenses. In addition, GAO employees will, after a year's service, be eligible for appointments to competitive service positions for which they possess the required qualifications.

The bill would also resolve a particularly critical concern in the equal opportunity area. We had assumed, and operated as if, we were covered by the provisions of the Civil Rights Act of 1964, as amended. In October 1977, in a civil suit filed by a former GAO employee, the U.S. District Court for the District of Columbia ruled that GAO is not covered by the Act. The Justice Department appealed that ruling to the U.S. Court of Appeals for the District of Columbia. A 3-judge panel heard the case in December 1978. We are awaiting their decision. Regardless of that decision, we believe it is essential to eliminate any question about Congressional intent and employee protection. This proposed legislation includes an amendment to the Civil Rights Act which will achieve these objectives.

The proposed legislation authorizes 10 additional positions in the GS-16 to GS-18 range, bringing our allotment to 100 positions in these grade levels. Our current authorization for 90 positions was established in 1969—10 years ago. Since then, we have evaluated our needs, requested, and Congress has authorized other types of upper level positions. For example, in 1971, 5 positions at pay rates not to exceed Executive level IV were authorized. In 1974, Congress approved 10 experts at pay rates not to exceed Level V to be used only for program review and evaluation work. In 1975, 10 experts or consultants were authorized at pay rates not to exceed GS-18 for periods not in excess of 3 years. In sum, 25 additional upper level positions were authorized over the 10-year period.



However, it must be understood that there are limitations on 20 of these positions. Ten are reserved for program review and evaluation work, restricting management flexibility. Another 10 are limited to 3-year terms and, therefore, are not available for recruiting and retaining career managers. Thus, during the past 10 years, GAO has actually been authorized only 5 additional upper level positions wherein the Comptroller General has discretion in determining where and how to use them.

During this decade, our workload continued to grow. The second session of the 95th Congress alone resulted in more than 400 public laws. Sixteen (16) laws, committee reports and House and Senate resolutions contained specific requirements for GAO audit and evaluation work. Several other acts created or expanded programs, generating increased pressures on GAO's mandate to assist the Congress by examining essentially all activities of the Federal Government. In fiscal year 1978, for example, we completed more than 1100 reports and responded to 989 requests from committees and 2,745 requests from Members for specific work. Since January 1978, when we came forward with our fiscal year 1979 appropriations request, our workload—which we will have to perform this year—has increased by 350 staff years.

It is not only the rapidly increasing size of the Federal budget or the rising volume of laws, reports, studies and requests that cause our compelling need for additional managerial positions. We have also experienced a correspondingly substantial increase in the complexity, diversity and scope of our work. To meet this challenge, we have striven to expand GAO's expertise to evaluate the increasingly complex programs.

We are seeking and developing individuals with varied backgrounds and levels of competence. It is essential that we continue our hard-earned reputation for objectivity, accuracy, and high professional standards.

We believe the record justifies our need for 10 additional upper level positions. They would enable GAO to attract and retain the high caliber talent that is essential for the effective discharge of the added responsibilities.

With this requested increase, GAO's proportion of upper level positions will still be far below that of the Office of Management and Budget, a smaller but somewhat comparable agency. Budget estimates for FY 1980 indicate that nearly 15.7% of OMB's positions (95 of 606) will be in grade GS-16 or higher. In contrast, less than 2.2% of GAO positions (118 of 5,523) are at that level. With the additional positions, this proportion will increase only slightly to approximately 2.3% (128 of 5,523).

The legislation before you would provide the Comptroller General the discretion to treat incumbents of GAO managerial positions similarly to those in the Senior Executive Service. GAO is excluded from SES coverage for two reasons. First, if we were included, the executive branch would determine the number of upper level positions to be allotted to GAO. Since 1951 the Congress has made this determination, and we believe that it should continue to do so. Secondly, at the time we were asked for our views as to whether GAO should be included, SES, as then proposed, appeared to contemplate considerable interagency mobility.

We felt that any significant movement of senior executives back and forth between GAO and the executive branch would have a severely disrupting effect on our operations and would only compound the conflict of interest problem we are trying to minimize with this proposed legislation. As a result of the exclusion from SES, GAO will soon be at a serious disadvantage in attracting and retaining the best managerial talent because we will be unable to match the SES compensation package. In addition to the potential disparity in base pay, current SES benefits, such as bonuses, unlimited accumulation of annual leave, and sabbaticals, are not available for GAO managers. We believe the so-called "risks" referred to by supporters of the SES are just as real in GAO as they are, or will be, in any executive branch agency.

The proposed legislation will provide the Comptroller General the flexibility to adopt or adapt those parts of SES most appropriate for GAO's unique role as an arm of the legislative branch. Further, it will enable GAO to be fully competitive with the executive branch for the best available talent.

This bill, by reducing conflicts of interest and giving GAO greater independence and flexibility, will give force and effect to the long-standing fundamental policy of the Congress and all Comptrollers General since 1921 that GAO audits be free from control by the executive branch. The degree to which this policy can be effectuated obviously depends upon the extent to which GAO has control over the two basic resources it must have--people and money. There presently exists the anomalous situation in which GAO's budget is not subject to review by the executive branch,

although its personnel management activities are regulated by that branch. We know of no valid reason why the rationale for excluding the GAO budget from executive branch oversight does not apply with equal force to the acquisition and management of GAO human resources.

As a matter of comparison, the policy of insulating principal auditing organizations from executive control has been adopted in other countries. The Australian and Canadian Governments, for example, have recently taken action to remove their Auditor General's Offices from such controls over personnel selection and advancement.

In closing, we assure the Committee that we will continue to cooperate with the Office of Personnel Management and other executive agencies in pursuing our common interest in improving the Federal personnel management program. But our efforts should not be tainted by any suspicion, in the Congress or elsewhere, that GAO's findings, conclusions and recommendations have been compromised. The American public and Federal employees should be assured that our relationship with the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission or other executive branch agencies will not jeopardize GAO's ability to perform our statutory responsibilities with independence and objectivity.

We strongly recommend the enactment of H.R. 3339. It would radically reduce the conflict of roles. It would provide a statutory basis for an independent personnel management program for GAO. It would resolve any question about Civil Rights Act coverage. It would also reaffirm GAO's proper role as an oversight arm of the legislative branch.

This concludes our prepared statement. We shall be pleased to take any questions the Committee may have at this time.

## Addendum to Mr. Staats' Statement

Since the preparation of this statement and, of course, the proposed bill, we have been in further consultation with GAO managers, employees and employee organizations. As a result of these discussions, in particular with the Equal Employment Opportunity Advisory Council, the Career Level Council, and the Handicapped Advisory Committee, we propose additions to the legislation before you. These additions would include in the law the establishment of an appeals authority whose decisions would be binding on GAO, include a saved pay provision similar to that in the Civil Service Reform Act, and include language that would eliminate any question about equal opportunity protection because of age, sex and handicapping condition.

I might add that the consultations that led to these additions are indicative of the process GAO management is committed to when we begin drafting the regulations which will implement the legislation after enactment.