

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



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In Reply
Refer to: B-167015(MGB)

JUN 24 1981

The Honorable Thomas S. Martin
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Martin:

Subject: Luevano v. Campbell
(D.D.C.) Civil No. 79-0271

This is in response to your letter of March 30, 1981, forwarding the proposed consent decree in the above-entitled matter for our consideration as a member of the defendant class.

The proposed decree is incorrect in that it assumes that General Accounting Office (GAO) continues to be under the jurisdiction of the Office of Personnel Management (OPM) and the Equal Employment Opportunity Commission (EEOC) in personnel management matters. It fails to recognize that pursuant to the GAO Personnel Act of 1980, Public Law 96-191, 94 Stat. 27, February 15, 1980, we now operate our own personnel management system which is not subject to regulation or oversight by OPM, EEOC, or any other executive branch agency.

Our concern with the decree is limited to the fact that it requires our reporting to OPM and assumes we are still under the jurisdiction of OPM and EEOC. We do not foresee any major problems in otherwise substantially complying with the decree. Accordingly, after discussions at the staff level with Shirley Huang of your office, it was suggested that a separate memorandum of understanding with plaintiffs be obtained which recognizes our independent status. This would avoid the necessity of revising the language of the decree, while still preserving the independence Congress sought to insure with the passage of the GAO Personnel Act. The purpose of this letter, therefore, is to provide the necessary information relative to the GAO Personnel Act of 1980, and to provide language for the enclosed separate memorandum of understanding.

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The Act authorizes the Comptroller General to establish an independent personnel management system for employees of GAO. Independence from regulation by executive branch agencies is the principal objective of the legislation. This independence was considered necessary because of an increasingly apparent conflict of interest. As a legislative branch agency, with specific responsibility for investigating, auditing and reporting to Congress on the activities of the executive branch, GAO, in personnel matters was also regulated by OPM and EEOC. At the same time, however, GAO was discharging its responsibilities to the Congress by examining, evaluating, and reporting on the programs and financial activities of these agencies. S. Rep. No. 96-540, 96th Cong., 1st Sess. (1979); H.R. Rep. No. 96-494, 96th Cong. 1st Sess. (1979).

To eliminate this apparent conflict of interest, the Act authorized the Comptroller General to establish an independent personnel system. The Act also insures employees many of the same substantive rights and safeguards available to other employees. For example, Section 3(g) provides, in pertinent part:

"(g)(1) The personnel system shall provide that all personnel actions affecting employees or applicants for employment in the General Accounting Office shall be taken without regard to race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition.

"(2) The personnel system shall include a minority recruitment program consistent with section 7201 of title 5, United States Code.

"(3) Nothing in this Act shall be construed to abolish or diminish any right or remedy granted to employees of or

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applicants for employment in the General Accounting Office by section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), by sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), by section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), by sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), or by any other law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition."

* * * * *

Employee rights and safeguards are protected by a system of regulations issued by the Comptroller General pursuant to Section 3 of the Act.

The investigatory and adjudicatory functions formerly performed by the Office of Special Counsel, the Merit Systems Protection Board and the EEOC are vested in the GAO Personnel Appeals Board and its General Counsel as authorized by Section 4 of the Act.

The Board is composed of five members who serve for three-year terms. The Act requires that members of the Board be experienced in adjudication or arbitration, and that they not be current or former employees of GAO. The General Counsel of the Board is selected by the Chair of the Board and appointed by the Comptroller General. The General Counsel serves at the pleasure of the Chair.

The Board is given specific jurisdiction by section 4(h) to hear and decide cases involving adverse action appeals, prohibited personnel practices, prohibited political activities, discrimination complaints, and specified labor relations matters. It may order corrective action

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and the Comptroller General is required to implement the Board's order, if he has the authority to do so. Any final decision of the Board may be appealed to the United States Court of Appeals.

For your information, we are enclosing two copies of the GAO Personnel Act, the House and Senate reports cited above, the interim regulations of the GAO Personnel Appeals Board, and representative samples of regulations issued by the Comptroller General pursuant to Section 3 of the Act. As noted in the Supplementary Information portion of the final regulations published at 45 F.R. 68373, October 15, 1980, enclosed, detailed regulations too voluminous to include herein are published in the GAO Operations Manual System. Copies of these regulations are available upon request.

A proposed memorandum of understanding is enclosed. Our review of the decree leads us to anticipate that the GAO Personnel Act and the memorandum of understanding would, as a practical matter, affect our compliance with the decree in the following manner. The impact is procedural, not substantive.

-- Use of all practicable efforts. The proposed memorandum of understanding is intended to make it clear that GAO is not bound by any of the OPM or EEOC regulations referred to in the decree. For example GAO would not be required to comply with the bilingual hiring provisions in FPM Chapter 332 [paragraph 16(b), page 27], or any other OPM requirement concerning the programs described in paragraph 16. However, GAO does have the authority to establish comparable programs and has some currently in effect. Accordingly, while not under OPM's jurisdiction, our compliance with this aspect of the decree will not be substantially affected.

-- Enforcement of the decree. The enforcement provisions at paragraphs 17-19, pages 30-38, will not be affected by the GAO Personnel Act or the memorandum of understanding with one exception. The exception concerns the notice to be given to complainants in discrimination cases at the administrative level. See paragraph 17(i), page 35. In lieu of the OPM and EEOC form referred to

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in the proposed decree, GAO will devise its own notice modeled on that form and provide such notice to complainants pursuant to paragraph 17(i) in cases arising under GAO's independent complaint process.

--Monitoring, Recordkeeping and Reporting. Paragraphs 23-30. pages 40-44 contain several provisions which require defendant agencies to report data to OPM. At present, GAO intends to report such data to OPM. However, the memorandum of understanding gives GAO the right to report such data directly to the Department of Justice or the plaintiffs if such a procedure is deemed to be more appropriate in view of our independent status under the GAO Personnel Act.

Although other portions of the language in the proposed decree do not accurately reflect GAO's status under the GAO Personnel Act, we are aware of no other substantive matters in the proposed decree which would be affected by the memorandum of understanding. The memorandum seeks only to clarify GAO's independent status under the 1980 Personnel Act and does not intend to otherwise affect GAO's substantive compliance with the decree.

We trust the above information is sufficient and that our problem with the proposed decree can be satisfactorily resolved with the plaintiffs before final approval of the decree is given by the court. If you have any questions, please contact Lyn Blatch at 275-6404.

Sincerely yours,

MILTON J. SOCOLAR

Milton J. Socolar
Acting Comptroller General
of the United States

Enclosures

MEMORANDUM OF UNDERSTANDING

Luevano v. Campbell
(D.D.C.) Civil No.79-0271

On February 15, 1980, Congress enacted the General Accounting Office Personnel Act of 1980, Public Law 96-191, 94 Stat. 27. The Act required the establishment of an independent personnel management system effective October 1, 1980. Since that date, the General Accounting Office (GAO) has operated under a personnel management system which is self-contained and not subject to regulation or oversight by the Office of Personnel Management, the Equal Employment Opportunity Commission, or other executive branch agencies. This independence was the principal objective of the legislation. See H.R. Rep. No. 96-494, 96th Cong., 1st Sess. (1979); and S. Rep. No. 96-540, 96th Cong., 1st Sess. (1979).

In view of the unique status of GAO under that Act, and in lieu of revising the language of the consent decree in the above-entitled matter, the parties have reached the following understanding as to the manner in which the consent decree will apply to GAO. It is recognized that GAO is not bound by any of the regulations of the Office of Personnel Management and the Equal Employment Opportunity Commission referred to in the decree. With respect to enforcement of the decree, comparable notice to complainants in discrimination cases at the administrative level will be provided in cases arising under the independent complaint process system of GAO in the manner prescribed in the decree. Further, it is acknowledged that in lieu of reporting the statistics and data referred to in Part I of the decree to the Office of Personnel Management, GAO retains the right to report such statistics and data directly to the Department of Justice or to the plaintiffs. In other respects, to the extent consistent with the GAO Personnel Act of 1980, and to the extent required by the decree, GAO will comply with the provisions of the decree in the manner comparable to the compliance required of the other defendant class members listed in Appendix B.

By _____
Attorney for Plaintiffs

By _____
Attorney for Defendants

Date _____

Date _____