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Testimony before the House Committee on Rules; by Elmer E. Staats, Comptroller General.

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Title II of H.R. 11180, 95th Congress, which proposes a new procedure to have the public debt limit established as a part of the concurrent resolution of the budget, raises serious constitutional questions. One alternative to this procedure would be to integrate congressional action to set the debt limit with its action on the budget resolution. This could be accomplished by changing the rules of the House of Representative and the Senate to require the two measures to be considered either in tandem or with action on the debt limit following immediately upon completion of the second budget resolution. (SC)

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UNITED STATES GENERAL ACCOUNTING OFFICE  
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STATEMENT OF  
ELMER STAATS COMPTROLLER GENERAL  
BEFORE THE  
SUBCOMMITTEE ON THE RULES AND  
ORGANIZATION OF THE HOUSE  
COMMITTEE ON RULES  
HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee:

We are pleased to be here in response to your request for our view on the constitutionality of title II of H.R. 11180, which proposes a new procedure to have the public debt limit established as a part of the concurrent resolution on the budget. You also requested our comments or suggestions on alternative methods of incorporating the public debt ceiling into the budget process. Our views on both these matters were previously furnished the Committee by letter dated April 26, 1978.

Currently the Congressional Budget and Impoundment Control Act of 1974 requires that the first concurrent resolution to the budget contain "the appropriate level of the public debt, and the amount, if any, by which the statutory limit on the public debt should be increased or decreased by bills and resolutions to be reported by the

appropriate committees \* \* \*." Section 310 requires that the second and any subsequent concurrent resolutions on the budget "specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change \* \* \*."

The permanent limit on the public debt is set forth in section 21 of the Second Liberty Bond Act, as amended, while temporary increases in the permanent limit have been provided by other laws.

When H.R. 11180 was considered by the House, an amendment deleting title II of the bill was adopted. Title II of H.R. 11180 would have amended the Budget Act to require that the concurrent resolutions on the budget specify the limit on the public debt, and would amend section 21 of the Second Liberty Bond Act to provide the face amount of obligations guaranteed as to principal and interest by the United States outstanding at any one time shall not exceed the amount specified as the limit on the public debt for such time in the most recently agreed to concurrent resolution on the budget.

Thus the Congress, by virtue of the authority in section 21 of the Second Liberty Bond Act (as proposed to be amended by the bill)

would be authorized to set the limit on the public debt merely by adoption of a concurrent resolution on the budget which is not submitted to the President for approval or veto.

Title II raises serious constitutional questions. Article I, section 8, clauses 1 and 2 of the Constitution enumerate certain congressional powers, i.e., to pay debts of the United States, and to borrow money on the credit of the United States. These clauses do not specify how they are to be exercised. We might point out, however, that the authority of the Congress to pay the debts of the United States is exercisable only through the enactment of appropriation acts since no money may be drawn from the Treasury except pursuant to an appropriation.

The authority to enact legislation is, of course, shared by both the executive and legislative branches of the Government. Article I, section 7, clause 3 of the Constitution--known as "the presentment clause"--provides that before any law can be enacted, it must be presented to the President for his approval, or the bill must be enacted over the President's veto. The fact that the President is willing to waive his future participation in setting the amount of the annual debt limit by signing a law with title II included

may not save the law from unconstitutionality. The Supreme Court was not willing, for example, to permit the President to waive his appointment authority by signing the Federal Election Act, in Buckley v. Valeo, 424 U.S. 1 (1976).

The Fourteenth Amendment of the Constitution states that the validity of the public debt shall not be questioned, but the reference to the public debt is qualified by the phrase "authorized by law." It is our view that a concurrent resolution might not satisfy this provision, since it does not constitute a "law." We therefore believe that there is serious question concerning the ability of title II to withstand a constitutional challenge.

One of the apparent objectives of title II is increased efficiency in the legislative process. At present, Congress must act at least twice on the subject of the debt limit--once in the budget resolution and once on a bill to effect a change in the limit. We are sympathetic with the objectives of minimizing the need for Congress to act more often than necessary on the same issue and we would like to suggest an alternative approach which the Congress may wish to consider. Hopefully, it would permit the same objective to be reached without encountering the problems in title II.

An alternative to title II could be to integrate congressional action to set the debt limit with its action on the second budget resolution. The debt limit bill could be reported, debated and acted upon simultaneously with this budget resolution. The debt bill would retain its separate identity and become a public law upon approval by the President. This would eliminate dual and separate consideration of the issues involved in setting the debt limit and at the same time retain it as a statutory action. In our opinion, this approach could be accomplished through changes in the rules of the House and the Senate which would require the two measures to be considered either in tandem or with action on the debt limit following immediately upon completion of the second budget resolution. This approach could be further facilitated if jurisdiction over the debt limit were assigned to the committees on the budget of the House and Senate, but that would not appear to be essential.

Mr. Chairman, this concludes my prepared statement. We shall be happy to answer any questions that you or other members of the Subcommittee may have.