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Robert F. Keller, Deputy Comptroller General.

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The administration and enforcement of the Federal Regulation of Lobbying Act of 1946 has proved to be inadequate. Replacing this act by adopting H. R. 1180 should eliminate many of the present difficulties. Instead of the present annual expenditure requirement, the proposed bill specifies a minimum quarterly expenditure that requires organizations to register and report their lobbying activities. The bill also applies to lobbying activities directed toward executive officials as well as toward members of Congress. It would be advisable for the bill's coverage also to extend to indirect or grassroots lobbying activities and to lobbying activities requested by a third party. An additional advantage of the bill is its requirement that both the lobbyist and the retaining organization maintain records relating to the lobbying activities. It is recommended that the lobbyists also be required to furnish a breakdown of their income according to the various lobbied issues. The bill could be improved by stipulating that the Comptroller General has civil enforcement authority. Such a stipulation would place enforcement within the legislative branch and avoid conflict between the Comptroller General and the Attorney General. (LDE)

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STATEMENT OF
ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL
OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ON DISCLOSURE OF LOBBYING ACTIVITIES

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the General Accounting Office on H.R. 1180 as requested in Chairman Rodino's letter to us.

As you may know, on April 2, 1975, GAO issued a report entitled "The Federal Regulation of Lobbying Act--Difficulties in Enforcement and Administration." Since its enactment in 1946, the Federal Regulation of Lobbying Act has been the subject of continual congressional scrutiny and generally has been judged to be ineffective. In our report, we confirmed

this judgment. We found the enforcement and administration of the Act to be woefully inadequate and, in 1975, testified to this effect before this Subcommittee and the Senate Committee on Government Operations. I believe the necessity for change in the present law is now almost universally accepted.

H.R. 1180

Mr. Chairman, we believe that H.R. 1180 constitutes a marked improvement over the current lobbying act, and should eliminate most of the difficulties that have arisen under the present law. I would like to make some comments about suggested changes or areas of the legislation which we definitely believe should be retained.

SCOPE OF COVERAGE

Quarterly Expenditures

The bill would apply to any "organization" that spends in excess of \$1,250 in any "quarterly filing period" to retain another person to engage in certain lobbying activities on its behalf.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report under a new lobbying law, a minimum quarterly expenditure threshold does seem desirable.

Quarterly expenditures are comparatively easy for organizations that lobby to determine and for the administering agency to verify. A quarterly expenditure threshold is also

preferable, in our view, to an annual expenditure requirement. With only an annual expenditure requirement, an organization could delay registration for 1 year simply by delaying payment to the person retained to engage in lobbying. Disclosure of lobbying activities to Congress and the public must be timely to be effective. We think the quarterly expenditure threshold in H.R. 1180 would accomplish this objective.

The disclosure provisions of the bill also apply to an organization that employs "at least one individual who spends 20 percent of his time or more in any quarterly filing period * * *" engaged in prescribed lobbying activities. As indicated earlier, other provisions of the bill establish a quarterly expenditure threshold for organizations that retain rather than employ lobbyists.

It should be recognized, however, that it may be difficult for an organization to determine and for the administering agency to verify when an employee has spent 20 percent or more of his time engaged in lobbying. Further, an organization could employ 20 individuals to spend 19 percent of their time lobbying and escape the bill's registration and reporting requirements. If just one individual, however, were to spend 20 percent of his time lobbying, the employer organization would be required to register and file lobbying reports.

Executive Branch Coverage

H.R. 1180 would also require lobbying organizations subject to the bill to register and report as lobbyists when they attempt to influence high-level executive branch officials with respect to any report, investigation, or rule, with certain exceptions, as well as when they attempt to influence the outcome of legislation. The present law only applies to lobbying that is directed toward the Congress. We think it especially wise that the disclosure provisions of the bill currently cover lobbying directed at activities of the executive branch which, like legislation, directly affects the public. As we testified before this Subcommittee on September 12, 1975, we see no convincing reason why the executive branch is less susceptible than the legislative branch to the pressure of special interest groups seeking favored treatment.

On this point, the bill does not cover lobbying of legislative branch agencies such as the General Accounting Office, Cost Accounting Standards Board, Office of Technology Assessment, Congressional Budget Office, and others. I cannot speak for others but insofar as the General Accounting Office and the Cost Accounting Standards Board are concerned we recommend that they be covered by the bill.

The provisions of the bill also apply to communications made to influence the award of Government contracts. In our

opinion, these provisions need clarification. As presently drafted, they arguably could be construed to require that a company keep track of routine sales contacts where the communication involved merely relates to a company's performance capabilities.

Grassroots Lobbying

The disclosure provisions of the bill do not, however, extend coverage to organizations whose sole lobbying activity is indirect or grassroots lobbying. Indirect or grassroots lobbying generally means encouraging the general public to communicate to Congress or executive branch policymakers by, for example, mass mailings.

We suggest that this Subcommittee consider extending the bill's coverage to indirect or grassroots lobbying when the total direct expenses of the lobbying exceed a specified dollar amount.

Exempt Lobbying Communications

Certain communications are specifically excluded from H.R. 1180's coverage. For example, communications "made at the request" of a Congressman are exempt from disclosure. Presumably, this exemption is intended to be limited to communications not only made at the request of but also made to the requesting Congressman. If this is correct, we recommend the provision be amended to remove the possibility that an

organization that lobbies Congressmen at the request of another Congressman might escape the bill's disclosure requirements.

LOBBYING RECORDS

H.R. 1180 would require lobbying organizations and persons retained by lobbying organizations to maintain records relating to their lobbying activities. The fact that persons retained by a lobbying organization will also be required to maintain and preserve records should facilitate verification of the lobbying organization's registration and reports, as well as investigations of the organization's lobbying activities. Regulations governing the maintenance of records would be issued by the Comptroller General. And the records would be preserved for a period of at least 5 years. The authority to issue regulations governing the maintenance of records is essential, in our opinion, to establish fair, realistic and necessary recordkeeping requirements as experience is acquired in administering a new lobbying disclosure law.

REPORTS

H.R. 1180 would require lobbyists to file quarterly reports with the Comptroller General and the information required in those reports would be considerably more detailed than the information required for registration.

A report filed under H.R. 1180 would contain a description of the "primary issues" on which the organization spent a "significant amount" of its lobbying efforts. Another bill

pending in the Congress would require a description of the 25 issues on which the organization spent the greatest portion of its lobbying efforts and a general description of any other lobbied issues.

None of the bills, however, require lobbyists to report their total expenditure for each issue they sought to influence. The amount of money expended by a lobbyist on a particular issue may be of interest to Congress and the public, at least where the amount expended exceeds a certain dollar minimum. For example, if a lobbyist organization spent a total of \$50,000 lobbying on 10 separate issues during a quarterly filing period, but \$40,000 was spent on one issue, it seems, in our opinion, that the Congress and the public should be aware that \$40,000 was expended to influence the outcome of just one of the 10 lobbied issues.

POWERS AND DUTIES OF
THE COMPTROLLER GENERAL

H.R. 1180 would designate the Comptroller General as the official with primary responsibility for administering the bill's lobbying disclosure requirements.

The duties imposed on the Comptroller General would include maintaining and making available to the public, for inspection and copying, lobbyist registration statements and reports, and compiling and summarizing the information contained in these

reports in a meaningful and useful way. In addition, the Comptroller General would be empowered to conduct investigations; administer oaths and affirmations; take testimony by deposition; issue subpoenas; initiate civil actions for the sole purpose of compelling compliance with a subpoena; and render advisory opinions concerning the bill's registration, recordkeeping, and reporting requirements.

These administrative powers and procedures should significantly improve the effectiveness of lobbying disclosure and eliminate many of the weaknesses of the current law identified in our report. We do have a reservation, however, about one of the duties the bill would impose on the Comptroller General.

H.R. 1180 only authorizes the Comptroller General to prescribe "procedural rules and regulations." This "procedural" limitation could affect the timely implementation and effectiveness of a new lobbying disclosure law.

If, for example, a general principle concerning H.R. 1180's applicability evolved in a series of advisory opinions and the Comptroller General promulgated a rule embodying this principle, would a court enforce the rule on the theory that it was "procedural" or would the court hold that the Comptroller General had exceeded his authority because the rule had substantive characteristics?

We do not know precisely what effect the "procedural" limitation may have on the Comptroller General's ability to

effectively implement a new lobbying disclosure law. Thus, we recommend that the "procedural" limitation be deleted from the bill.

There is one other limitation on the Comptroller General's rule-making authority that we wish to mention. All proposed rules must be transmitted to the Congress before they may take effect. The bill provides that either House of the Congress may veto the regulation within a prescribed time period. These veto provisions could prevent the timely implementation of the bill as well as the issuance of urgently needed regulations.

ENFORCEMENT

Finally, we would like to discuss the enforcement provisions in H.R. 1180. The methods of enforcement contemplated by H.R. 1180 should eliminate many of the enforcement weaknesses identified in our report.

Under the bill, the Comptroller General would have investigative authority and limited authority to go to Court to enforce a subpoena, a matter we alluded to earlier.

It is the Attorney General, however, who would have the exclusive authority to enforce the substantive provisions of the bill through civil and criminal enforcement proceedings. In addition, the Attorney General would be empowered to defend all civil declaratory actions that challenged advisory opinions rendered by the Comptroller General on the applicability of the bill's registration, recordkeeping, and disclosure requirements.

We believe the administering agency should be given civil enforcement authority and we question whether H.R. 1180's present allocation of authority between the Comptroller General and the Attorney General would prove to be workable or effective. Disputes undoubtedly would arise between the Comptroller General and the Attorney General. The bill establishes no procedure for resolving such disputes. Moreover, although the Comptroller General would have primary responsibility for implementing the law, the Attorney General would have ultimate control because he alone would have authority to go to court to compel compliance.

Similarly, advisory opinions issued by the Comptroller General could be rendered meaningless if the Attorney General failed to defend a declaratory action filed by a lobbyist against the Comptroller General. In short, H.R. 1180 would place the Comptroller General in the awkward position of having his actions effectively overruled by the Attorney General.

Mr. Chairman, it is for these reasons that we have consistently stated before this Subcommittee and the Senate Committee on Government Operations that the agency responsible for administering a new lobbying disclosure law should be given civil enforcement authority. This should, of course, include the authority to go to court to defend civil challenges to the Comptroller General's advisory opinions and to compel

compliance with the civil provisions of any new lobbying disclosure law.

There is ample statutory precedent for authorizing the Comptroller General to go to court in his own right or on behalf of the Congress. Specifically, the Energy Policy and Conservation Act directs the Comptroller General to collect energy information for the Congress and empowers him, through attorneys of his own selection, to institute a civil action to collect civil penalties or enforce subpoenas he issues under the Act. Similarly, the Federal Energy Administration Act of 1974 authorizes the Comptroller General to institute a civil action to compel compliance with subpoenas he issues under that Act. And the Impoundment Control Act of 1974 authorizes the Comptroller General to bring a civil action in Federal court, again through attorneys of his own selection, to compel release of impounded budget authority.

In short, we believe that vesting civil enforcement powers in the Comptroller General will not only place the enforcement of the legislative branch's information gathering power within the legislative branch where it should be, but would, in our view, eliminate potential conflict between the Comptroller General and the Attorney General.

We do not believe, however, that the agency responsible for administering a new lobbying law should be given criminal enforcement powers. As a general principle, enforcement of

the Federal criminal laws through formal criminal proceedings is a function of the Attorney General. We can see no reason for departing from this principle in the proposed lobbying legislation.

Alternatives to vesting complete civil enforcement powers in the Comptroller General have been proposed in the past, most recently by S. 2477, a lobbying disclosure bill passed by the Senate during the 94th Congress. S. 2477 contained a provision authorizing the Comptroller General to institute a civil action in Federal court whenever, after notifying the Attorney General, the Attorney General failed to bring a civil suit within a specified period of time. Although adoption of this alternative would conceivably strengthen the enforcement provisions of H.R. 1180, it would also enable the Comptroller General to second-guess and effectively overrule the Attorney General, and like the provisions of the present bill, could cause needless friction between the Comptroller General and the Attorney General.

We recommend, therefore, that H.R. 1180 be amended to vest in the Comptroller General civil enforcement powers, including the authority to file civil enforcement actions and to defend civil challenges to advisory opinions.

Mr. Chairman and Members of the Committee, this concludes our statement. We will be glad to respond to any questions you have.