

GAO

Testimony

Before the Committee on Rules and Administration
United States Senate

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CONGRESSIONAL
REFORM

Comments on The
Legislative Reorganization
Act of 1994--S. 1824

Statement of Charles A. Bowsher
Comptroller General of the United States



Mr. Chairman and Members of the Committee:

Thank you for requesting our views on the General Accounting Office-related recommendations of the Joint Committee on the Organization of Congress as embodied in S.1824, the Legislative Reorganization Act of 1994. Of greatest importance to GAO is the proposed repeal of its permanent authorization, which would be replaced with reauthorization every 8 years, beginning in 1997.

REAUTHORIZATION WOULD JEOPARDIZE GAO'S INDEPENDENCE

Repealing the General Accounting Office's permanent authorization would be a serious mistake. This change could subject the agency to partisan political pressure, thus jeopardizing its independence and credibility. These are the very characteristics that have made GAO valuable to the Congress, and which clearly distinguish its findings and recommendations from those of the executive branch and from those of private interests.

In fact, the agency's independence and credibility were the primary considerations in its creation by Congress more than 70 years ago. The Budget and Accounting Act of 1921 was drafted to severely limit the extent to which GAO could be subjected to partisan political pressure. This is apparent not only in the Act's provisions regarding the Comptroller General, but also in the debate prior to the Act's passage. For example, the debate repeatedly stressed that GAO and the Office of the Comptroller General were structured ". . . to make them absolutely independent of the Executive in their decisions."¹

Representative Good, a principal sponsor of GAO's original authorizing legislation, voiced a similar theme during floor debate.

"In creating the general accounting office and providing for the comptroller general and the assistant comptroller general, the committee was guided by a single thought, and that was that these two officers should be placed upon a plane somewhat comparable to the position occupied by Federal judges. The positions are semijudicial, and it was the opinion of the committee that we should remove them as far as possible from political considerations."

The authors of the Act were concerned with insulating GAO from political pressures as evidenced by the following exchange:

"Mr. BLAND. Did not the committee contemplate that the comptroller general might not only be brought into conflict with the executive department and with the executive branches of the Government, but sometimes with one side or the other of the aisle in Congress, and possibly both sides, in the impartial discharge of his duties?"

¹H.R. Rep. No. 16, 67th Cong., 1st Sess., at 7 (1921). This quote and others contained in this statement are excerpted from a letter dated February 16, 1994 on the reauthorization issue prepared in response to a Senate Majority Leader request. (See attachment.)

"Mr. GOOD. Absolutely. That department ought to be independent and fearless to criticize wrong expenditures of money wherever it finds them. It ought to criticize inefficiency in every executive department where inefficiency exists, and one of the troubles with our present system is that the auditors dare not criticize. If they criticize, their political heads will come off."

Later debate linked the drafters' concerns regarding political pressure to the limitations on the circumstances under which the Comptroller General can be removed.

"Mr. SIMS. I appreciate the attempt to take this matter away from consideration as a political matter; but does the gentleman think that the President is more likely to act from partisan considerations than would a partisan Congress, where both Houses are of the same political party?"

"Mr. GOOD. That is one of the reasons why we provided in the law the causes for removal, and the only causes are inefficiency, incapacity, neglect of duty, malfeasance in office, or some offense that involves moral turpitude."

Representative Good summed up congressional intent with respect to GAO's independence this way:

"It was the intention of the committee that the comptroller general should be something more than a bookkeeper or accountant; that he should be a real critic, and at all times should come to Congress, no matter what the political complexion of Congress or the Executive might be, and point out inefficiency, if he found that money was being misapplied--which is another term for inefficiency--that he would bring such facts to the notice of the committees having jurisdiction of appropriations."

This concern for independence resulted in a statute that permanently authorized GAO, provided the Comptroller General with a 15-year non-renewable term of office, and set stringent requirements for his removal either by impeachment or by joint resolution of the Congress for specific cause.

GAO has a dual mission as both a legislative branch support agency and as the federal government's independent external auditor. To adequately fulfill these complementary roles it must continue to have the independence of action to examine any program of the executive branch, and to do so without regard to political considerations, and in a way that preserves its credibility in our governmental system.

Both I and Elmer Staats, the Comptroller General from 1966 to 1981, fear that repealing GAO's permanent authorization could destroy the sound legislative foundation created for the agency in 1921. To do so would also move in a direction opposite to that which the government is now pursuing for private sector auditors, where the executive branch and the Congress have been taking actions which would strengthen, not weaken, the independence of the external auditors in corporate oversight.

If you'll allow me to reflect for a moment, when I first came before the Senate for confirmation well over a decade ago, I spoke as an individual with substantial experience in

the executive branch in both the Johnson and Nixon administrations, as well as in a large public accounting firm. I had a healthy respect for both GAO's mission and its success in serving the Congress and the American people, and I was eager to take on the challenge of maintaining and building upon its past success. But I did not fully realize the difficulty that an agency like GAO has in effectively serving the information needs of an institution like the Congress--an institution that by its very nature is divided on nearly every issue, not only by party, but by committee jurisdiction, procedural differences, regional concerns, and economic interests.

It is a difficult task for any organization to serve the needs of such strongly opposing factions. Thus, it is a tribute to the foresight of the Congress that it anticipated this difficulty and created the GAO with a statute which charged it with an important job, while allowing it the ability to guard its independence and credibility. It is with this background in mind that I conclude that periodic reauthorization for GAO is not in the best interest of the Congress. Independence and indeed the mere perception of independence are critical to any auditor's credibility, and this is particularly true for GAO given its pivotal role in serving the Congress.

To sum up then, periodic reauthorization could:

- expose GAO to strong partisan political pressures, and/or create the appearance that one faction or another in the Congress could hold the agency hostage in order to discourage it from taking, or encourage it to take, a particular position;
- give the executive branch too large a role in influencing GAO's activities by subjecting the GAO reauthorization bill to a potential presidential veto or to other political pressure from the White House. A veto would mean that opponents comprising only one-third of the vote in the Senate or the House could prevent reauthorization; and finally
- allow a small number of Senators (or a single Senator for that matter) to threaten to delay action on a reauthorization measure until some concession were granted by either a future Comptroller General or the Senate leadership.

During the Joint Committee's deliberations we were told that reauthorization would force more systematic oversight. As a legislative agency, GAO is already subject to extensive oversight by the Congress through both the annual appropriations process and from its current authorizing committees. We welcome the oversight role of these committees. Nonetheless, as I noted in my letter to the Senate Majority Leader, I would support a requirement for biennial oversight hearings by our oversight committees as a desirable alternative to the repeal of GAO's permanent reauthorization. This could provide for more formal scrutiny of our operations on a predictable schedule by those committees which currently have jurisdiction. It would also avoid adding a fifth and possibly sixth committee to GAO's oversight process, and creating a mechanism that could threaten GAO's legislative mandate. Biennial oversight by the Governmental Affairs Committee would also be consistent with the desire of the Joint Committee to require each committee of the Congress to more systematically carry out oversight for those agencies under its jurisdiction.

I strongly urge you to delete the provision for periodic reauthorization, and I would be happy to discuss this issue personally with any member of the Committee.

OTHER ISSUES

Section 332(d) would require GAO and the other "instrumentalities" of the Congress to provide, at the end of each calendar year, a report detailing the cost of the support provided to each Committee of the Senate and each Senator. As you know, the House members of the Joint Committee explored a similar proposal and rejected it based upon the concerns raised by a number of committee chairs.

With some minor caveats, GAO presently has a time charge system which would allow us to report such costs. The first caveat is that small efforts of a few hours or a few days are not charged in a way that would allow us to identify the committees or Senator who asked for the work. However, the bulk of our resources go to larger identifiable tasks which are charged to specific job codes and which in turn are linked to specific requests.

The other caveat is that when two or more members or committees request our assistance on a single task, it would be impossible to logically break out the amount of effort allocable to each of the individual requestors.

Although the Senate bill neither describes a specific system nor mandates the use of vouchers by committees requesting assistance from the support agencies, Section 332(e) does say that the feasibility of instituting such a system should be explored.

A voucher system would create many complex problems for the congressional leadership in both political parties. For example, who would decide on the method for allocating vouchers to committees? To what would the bearer of a voucher be entitled? Would each voucher have dollars associated with it or simply the right to make a request?

One would have to assume that prior to the beginning of a new fiscal year and once the GAO appropriation was approved, some mechanism would be used to allocate vouchers to each congressional committee. Questions would then arise such as: Do all committees in both the House and Senate receive the same number of vouchers or are they allocated based upon historical usage? Do the Senate and the House split the portion of GAO resources available for request work? How would vouchers be allocated within committees to chairs and ranking minority members? Would each subcommittee get the same number of vouchers from the full committee?

Given the fact that power and decision making in Congress are diffused among the leadership and the committees and subcommittees, it is unclear how a voucher program would work. A voucher system would, therefore, most probably be administratively difficult, if not impossible, to operate.

Finally, a voucher process could, if crafted incorrectly, jeopardize the independence that is vital to GAO's mission as an independent auditor. This could happen if the process in any way limited a future Comptroller General's ability to undertake work on his or her own initiative. Thus, if the decision were made to adopt such a voucher system, some mechanism would be needed to preserve this particularly vital aspect of GAO's independence. Doing otherwise would be tantamount to "muzzling the auditor," which has had disastrous consequences in both the private and public sectors.

The last issue I'd like to address is committee oversight of federal programs and agencies. Section 381 charges each standing committee of the House of Representatives and the Senate to prepare a long-term oversight agenda for laws, programs, or agencies under its jurisdiction, and, to the extent practicable, to do this in coordination with other committees having similar jurisdictions.

Much of GAO's value to the Congress is its assistance to Congress in oversight of the executive branch. We believe that GAO could be more useful to the Congress in exercising its oversight responsibility if the committees of jurisdiction were encouraged to hold comprehensive oversight hearings on all major agencies annually or, as provided for in this bill, once during each Congress.

Such hearings could utilize agency Chief Financial Officers' annual reports, audited financial statements, and their annual reports on the adequacy of internal controls, as well as evaluation and investigative work performed by GAO, the other congressional support agencies, and the Inspectors General. Federal agencies could also report on their progress against specific goals and provide information on the kind of performance measures envisioned in the Government Performance and Results Act.

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Mr. Chairman that concludes my prepared statement. I'd like to thank you for asking for our views on this important legislation. My colleagues and I would be happy to answer any questions you or other members of the committee may have at this time.



**Comptroller General
of the United States**

Washington, D.C. 20548

February 16, 1994

The Honorable George J. Mitchell
Majority Leader
United States Senate

Dear Senator Mitchell:

Thank you for requesting our views on a recommendation of the Joint Committee on the Organization of Congress to repeal the permanent authorization for GAO and mandate reauthorization every 8 years.

I believe periodic reauthorization would be a serious mistake. Independence and the perception of independence are critical to any auditor's credibility. Periodic reauthorization would make GAO subject to partisan political pressures and compromise our credibility. Our legislative history clearly shows that protecting the agency's independence and assuring its credibility were critical considerations when the agency was created. GAO was permanently authorized and the Comptroller General was given a nonrenewable 15-year term to help assure these objectives.

Reauthorization would impair GAO's independence by giving the executive branch too large a role in GAO's activities, subjecting any GAO reauthorization bill to a presidential veto. A veto, in turn, would mean that opponents comprising only one-third of the vote in the Senate or House could prevent reauthorization.

As a legislative agency, GAO is already subject to review by the Congress through both the appropriations process and our oversight committees. I welcome the oversight role of these committees, and would strongly support a requirement for biennial oversight hearings.

I hope you will oppose periodic reauthorization, and I would be happy to discuss this matter with you personally. In the meantime, I have enclosed a staff paper discussing the issue in greater detail.

Sincerely,

A handwritten signature in cursive script that reads "Charles A. Bowsher".

Charles A. Bowsher
Comptroller General
of the United States

Enclosure

ASSURING GAO'S INDEPENDENCE AND CREDIBILITY

GAO is a legislative branch agency and the federal government's independent auditor whose operations and ways of accomplishing its basic mission are subject to congressional review and oversight in numerous ways. Recent proposals to subject the agency to more direct and immediate control, including periodic reauthorization discussed in this paper, risk significant damage to the value of GAO in assisting the Congress in its oversight of governmental operations.

Independence was the primary consideration when GAO was created by the Congress.

An essential purpose underlying GAO's creation by the Budget and Accounting Act of 1921 was to limit the extent to which the agency would be subject to partisan political pressure from either the executive branch or the Congress. Both the Act's provisions and its legislative history reflect this core purpose.

The legislative history of the 1921 Act repeatedly emphasized that the GAO and the Office of the Comptroller General were structured in order "to make them absolutely independent of the Executive in their decisions." H.R. Rep. No. 16, 67th Cong., 1st Sess., at 7 (1921). Representative Good, a principal sponsor of the legislation, reiterated this theme during floor debate:

"In creating the general accounting office and providing for the comptroller general and the assistant comptroller general, the committee was guided by a single thought, and that was that these two officers should be placed upon a plane somewhat comparable to the position occupied by Federal judges. The positions are semijudicial, and it was the opinion of the committee that we should remove them as far as possible from political considerations." 59 Cong. Rec. 8610 (1920).

As the following colloquies illustrate, the authors of the Act were also concerned with insulating GAO from political pressures emanating from Congress:

"Mr. BLAND. Did not the committee contemplate that the comptroller general might not only be

brought into conflict with the executive department and with the executive branches of the Government, but sometimes with one side or the other of the aisle in Congress, and possibly both sides, in the impartial discharge of his duties?

"Mr. GOOD. Absolutely. That department ought to be independent and fearless to criticize wrong expenditures of money wherever it finds them. It ought to criticize inefficiency in every executive department where inefficiency exists, and one of the troubles with our present system is that the auditors dare not criticize. If they criticize, their political heads will come off." 58 Cong. Rec. 7252 (1919).

"Mr. SIMS. I appreciate the attempt to take this matter away from consideration as a political matter; but does the gentleman think that the President is more likely to act from partisan considerations than would a partisan Congress, where both Houses are of the same political party?

"Mr. GOOD. That is one of the reasons why we provided in the law the causes for removal, and the only causes are inefficiency, incapacity, neglect of duty, malfeasance in office, or some offense that involves moral turpitude." 59 Cong. Rec. 8612 (1920).

Representative Good later summarized the congressional intent with respect to the independence of the Comptroller General as follows:

"It was the intention of the committee that the comptroller general should be something more than a bookkeeper or accountant; that he should be a real critic, and at all times should come to Congress, no matter what the political complexion of Congress or the Executive might be, and point out inefficiency, if he found that money was being misapplied--which is another term for inefficiency--that he would bring such facts to the notice of the committees having jurisdiction of appropriations." 61 Cong. Rec. 1090 (1921).

These congressional concerns are reflected in key provisions of the 1921 Act. It establishes GAO as "an instrumentality of the United States Government independent of the executive

departments." 31 U.S.C. § 702(a). It provides for the appointment of the Comptroller General by the President, with the advice and consent of the Senate. Id., § 703(a).

The Comptroller General serves a 15-year term of office, and cannot be reappointed. 31 U.S.C. § 703(b). The only means provided for removal of the Comptroller General are by impeachment or by joint resolution of Congress, after notice and opportunity for a hearing, on the grounds of permanent disability, inefficiency, neglect of duty, malfeasance or conduct involving moral turpitude. Id., § 703(e). The provisions governing the Comptroller General's annuity are similar to those applicable to federal judges. Id., § 772.

Independence from partisan political influence remains vital to GAO's credibility and continued effectiveness.

GAO's independence from partisan political influence has served the agency, the Congress and the public well. In fact, during the years since 1921 the Congress has enhanced GAO's role in auditing, investigating and evaluating government programs, making even more important the need for GAO to be, in the words of Representative Good, a "real critic no matter what the political complexion of Congress or the Executive might be."

In its early days, GAO's work consisted largely of reviewing the legality of federal expenditures through the audit of individual vouchers. In this context, the agency's independence served to assure that the executive branch expended appropriations as the Congress intended. The importance of this independence is perhaps typified by the statement attributed to President Cleveland about his Comptroller of the Treasury: "[I]f I cannot change the opinion of my comptroller, I can change my comptroller." 61 Cong. Rec. 982 (1921).

The modern GAO serves the Congress through audits, investigations and program evaluations with far greater immediate relevance to the legislative and congressional oversight process than was the case in 1921.¹ GAO has no

¹Attached is a copy of an address by former Assistant Comptroller General Harry S. Havens examining in detail the changes in GAO's organization and work over the last 30 years, and discussing, among other topics, GAO's

(continued...)

direct power over government programs and activities. The value of its work to the Congress is entirely dependent upon the credibility of GAO's reports and testimony. That credibility is, in turn, dependent upon the agency's reputation for independence, objectivity and accuracy. In recognition of this, the Congress has continued to reaffirm the importance of GAO's independence. For example, in 1980 the Congress separated GAO's personnel system from executive branch authorities, thereby eliminating the possibility that GAO's independence could be compromised through control of its personnel system when GAO reviews the activities of executive branch authorities.

Independence of the auditing function has also been embraced by state and local governments and the private sector. For the former, states assure independence by statutory provision; for the private sector, the Securities and Exchange Commission has issued regulations to achieve the same result.

If GAO's independence--or even the perception of its independence--is seriously compromised, so too would its value to the Congress and the public. Indeed, even GAO's critics do not dispute the importance of the agency remaining free from partisan political influence.

Periodic reauthorization would impair GAO's independence and could disrupt its operations by giving the executive branch and partisan political interests substantial influence over future GAO activities.

Reauthorization would do much to impair GAO's independence by creating a major role for the executive branch in GAO's continued activities. The President would have the power to veto reauthorization legislation and thereby seek political compromises or even the elimination of GAO. A veto would mean that opponents with a narrow political interest could prevent reauthorization with only one-third of the vote in the Senate or House of Representatives. Consequently, any number of political factions or interests could exercise leverage and exact concessions through the reauthorization

¹(...continued)

institutional credibility. The Evolution of the General Accounting Office: From Voucher Audits to Program Evaluations (GAO/OP-2-HP, Jan. 1990).

process. Further, delays in the reauthorization process, brought on by political impasses, could cause temporary lapses in GAO's authorities and attendant disruption to its operations.

Reauthorization is inconsistent with the permanent nature of GAO's function.

Statutory "sunset" and similar provisions requiring periodic reauthorization are not unusual for specific programs and activities, or for agencies created to carry out a mission that is expected to be temporary or evolve over time. The basic concept of such provisions is to force reexamination of whether the program, activity or agency has completed its mission or accomplished its objectives and, therefore, should terminate, or whether statutory modifications are required in order to achieve success. Because of the permanency of their roles and programs, agencies such as the Departments of Treasury and Justice as well as their central functions of tax collection and law enforcement are not subject to periodic reauthorization. Similarly, it is difficult to see how the concept applies to a permanent agency of the government whose basic mission--assisting congressional oversight through auditing of the operations of government--has continued for over 70 years. Periodic "reauthorization" of such a permanent agency seems incongruous, if not wholly unprecedented.

Clearly, the authors of the Budget and Accounting Act of 1921 envisioned the permanency of GAO and its activities. Congress has on many occasions since creation of the agency added particular audits, investigations, and evaluations to GAO's responsibilities, and those additional functions have been directly related to the agency's original purpose. Indeed, just as none of GAO's critics has questioned the importance of its independence, none has challenged the need for the continued existence of the agency or its mission.

Periodic reauthorization is unnecessary as a means to provide oversight of GAO and to effect changes in its operations.

GAO is a legislative branch agency currently subject to oversight by the Congress in many ways. In fact, most of its activities are performed at the request of committees and Members of Congress who provide constant feedback on the value and effectiveness of GAO's work. Under current law,

GAO submits annual reports to the Congress and to designated committees covering a wide range of subjects. Of course, GAO's operations also are intensely scrutinized every year through the appropriations process in the Senate and House of Representatives.

GAO is subject to oversight by its authorizing committees in the Senate and House, which have periodically conducted broad oversight hearings of agency operations. The Senate Committee on Governmental Affairs has commissioned a study of GAO by the National Academy of Public Administration that is now ongoing, and the House Committee on Government Operations recently conducted two days of oversight hearings on GAO. In testimony presented during the latter hearings, the Comptroller General discussed a number of recent changes made in GAO policies and practices to reinforce and demonstrate the agency's strong commitment to objectivity and nonpartisan assistance to the Congress. These changes, many of which responded to concerns raised by minority Members, provide tangible evidence of GAO's continual efforts to improve its responsiveness to the Congress and, thereby, to maximize the value of its work to the Congress and the public.

Finally, over the course of GAO's existence, the Congress has enacted numerous statutes effecting changes in the nature and scope of the agency's audits and evaluations as well as the processes by which GAO does its work. Just a few examples are: the Accounting and Auditing Act of 1950, the Legislative Reorganization Act of 1970, the Congressional Budget and Impoundment Control Act of 1974, and the General Accounting Office Act of 1980. Through these and many other enactments, the Congress addressed how GAO accomplishes its basic mission. It is hard to imagine how a mandate for periodic reauthorization could produce more active and effective oversight of the agency.

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