094626

United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 10:00 a.m.
September 12, 1975

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 REGULATION OF LOBBYING

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the General Accounting Office on H.R. 15, H.R. 778, and H.R. 6864, three bills that would repeal the Federal Regulation of Lobbying Act and would substitute an improved law requiring public disclosure of lobbying activities.

As you may know, on April 2, 1975, GAO issued a report prepared for the Senate Committee on Government Operations, 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.

Before discussing the specific provisions of the three bills currently under consideration, I would like to discuss briefly the difficulties that have arisen under the present law and the problems identified in our report.

FEDERAL REGULATION OF LOBBYING ACT

Despite the implication of its title, the Federal Regulation of Lobbying Act was not enacted to regulate lobbying or to restrict the legislative activities of particular persons or organizations. Rather, through registration, recordkeeping and reporting requirements, the Act sought to ensure public disclosure of the identity and financial interests of persons engaged in lobbying.

Under the Act, persons who engage in lobbying for pay or for any consideration are required to file registration statements, in writing and under oath, with the Clerk of the House of Representatives and the Secretary of the Senate. In addition, while a registrant's activities as a lobbyist continue, he must file with the Clerk of the House and the Secretary of the Senate a quarterly report detailing the money received and spent by him.

The Act also requires that quarterly reports be filed with the Clerk of the House by certain persons who receive contributions or expend money for the purpose of influencing legislation.

And persons who solicit or receive contributions for lobbying purposes are required to maintain records of their financial transactions.

WEAKNESSES OF CURRENT LAW

1. Limited Coverage of Lobbying Activities

Much of the criticism of the present lobbying law has been directed at certain limitations on the Act's coverage. For example, under the Act, only those persons and organizations whose "principal purpose" is to engage in lobbying activities, or who receive contributions or expend money "principally to aid" lobbying efforts, are required to comply with the Act's registration, recordkeeping, and reporting provisions. The "principal purpose" limitation has been viewed as a means by which multi-purpose organizations can avoid compliance with the Act. In fact, the limitation has been criticized as so vague and ambiguous that it is not readily ascertainable who must comply with the law's requirements.

A second limitation on the Act's coverage is the narrow definition of "lobbying" adopted by the Supreme Court in United States v. Harriss, 347 U.S. 612 (1954). The Act does not specifically define the types of activities that constitute "lobbying," and in the Harriss case, the Supreme Court limited "lobbying" to direct communication with Members of Congress. Under this definition, communication with Congressional staff

members, rather than Members of Congress, and efforts to generate grassroots support on a legislative issue do not constitute "lobbying" within the meaning of the Act.

Thus, the Federal Regulation of Lobbying Act only covers a small portion of all lobbying activity.

2. Inadequate Authority to Administer Act Effectively

During our review, we also learned that the Federal Regulation of Lobbying Act does not vest in the administering officials--the Clerk of the House and the Secretary of the Senate--the types of investigative and enforcement authority normally given to government agencies charged with the responsibility of administering a law. Under the Act, the Clerk of the House and the Secretary of the Senate serve as mere repositories for the registration statements and quarterly reports required to be filed by lobbyists. These officials have no affirmative responsibility or authority to investigate potential violations of the Act, to inspect records required to be maintained by lobbyists, or to take necessary enforcement actions.

We believe that the lack of adequate authority conferred on the Clerk of the House and the Secretary of the Senate has seriously undermined the administration of the Act. In our review at the Office of the Secretary of the Senate, we found that almost 50 percent of the lobbyists' reports were incomplete and 60 percent were received late. Yet the law confers no

responsibility or authority on the administering officials to bring violators into compliance.

3. Need for More Vigorous Enforcement

A violation of the Federal Regulation of Lobbying Act is subject to criminal penalties, namely, a fine, imprisonment, and a three year prohibition against lobbying activities. Thus, as the agency created by Congress to enforce Federal criminal laws, the Department of Justice has primary responsibility for enforcing the Act through investigation and criminal prosecution.

At present, the Department of Justice enforces the Act on the basis of complaints received. Because the Act does not specifically direct the Department to monitor lobbying activities, the Department does not believe that it is responsible for actively seeking out potential violators. In the Department's view, its responsibility is limited to investigating valid complaints and prosecuting violations if the facts developed warrant prosecution.

During our review, we found the enforcement of the present lobbying act to be virtually non-existent. Between March 1972 and February 1975, only five complaints were made to the Justice Department. Two complaints were filed by Members of Congress, and three were filed by journalists. One case, referred by a Senator, was closed when the lobbyist complied voluntarily with the Act. At the time our report was issued, the other four cases were still under investigation.

H.R. 15, H.R. 778, AND H.R. 6864

Mr. Chairman, we believe that the three bills presently under consideration--H.R. 15, H.R. 778, and H.R. 6864--are a great improvement over the current lobbying act. These bills would repeal the Federal Regulation of Lobbying Act and would substitute a clarified and strengthened law. We believe that, with few exceptions, the bills would eliminate the difficulties that have arisen under the present law.

Each bill would eliminate the current act's "principal purpose" limitation. Instead, the bill would define a "lobbyist" or "agent" in terms of a specific dollar amount received or expended for lobbying purposes during a prescribed filing period. We believe this is a workable approach to the problem of determining who must comply with the bills' disclosure requirements. In addition, the bills' definitions attempt to exclude from coverage those whose impact on the legislative or executive policymaking process is likely to be insignificant or only incidental.

All three bills also would expand the definition of "lobbying" or, as defined in H.R. 6864, "covered communication." The present law only applies to lobbying directed toward the Congress. These bills, however, would extend coverage to policymaking and other activities in the executive branch. While we have not studied this matter in depth, we generally support the proposed extension. The executive branch makes decisions on a daily basis that greatly

affect public and private interests, and we see no convincing reason why the executive branch is less susceptible than the legislative branch to the pressure of special interests seeking favored treatment.

In this regard, H.R. 15 does contain one provision not in the other bills. Section 7 of H.R. 15 requires that high ranking executive agency officials and employees log each oral or written communication from outside parties seeking to influence the policymaking process.

In preparation for hearings on lobbying reform legislation held by the Senate Committee on Government Operations in April 1975, we were asked to gather data on the logging procedures presently employed by the Department of Justice, Federal Trade Commission, Federal Energy Administration, and Consumer Product Safety Commission. We did not have sufficient time, however, to evaluate the procedures or determine their effect on the efficiency of agency personnel. Thus, we cannot state whether a logging requirement would impose an undue burden on executive branch officials or would be difficult to monitor.

The bills also would expand the definition of lobbying in other ways. As defined in the bills, lobbying subject to public disclosure would no longer be limited to direct communication with Members of Congress. Each of the bills would broaden the definition to include communication with Congressional staff members.

One of the bills, however, does not extend coverage to an important type of lobbying activity. H.R. 6864 would limit coverage to "direct communication," defined in the bill as "all methods of direct address" to legislative and executive officials. Thus, the public disclosure requirements of this bill would not apply to indirect or grassroots lobbying. We believe that Congress should carefully consider whether this limitation is necessary or desirable.

Although the methods of administration and enforcement contemplated in the bills are substantially different, each should eliminate the weaknesses identified in our report. All three bills specifically would provide the investigative authority, including subpoena power, and the enforcement procedures that are needed to make the law effective.

Two of the bills, H.R. 15 and H.R. 6864, place responsibility for administration in the Federal Election Commission. The third bill, H.R. 778, would place the responsibility in a new Federal Lobbying Disclosure Commission, an independent establishment in the executive branch. We have no special information bearing on the advantages of transferring the administration of lobbying disclosure to the Federal Election Commission. With respect to the establishment of a Federal Lobbying Disclosure Commission, we have reservations as to whether the task warrants the establishment of a new agency solely for the purpose of regulating lobbying activities.

Finally, we would like to mention the enforcement provisions in the bills. H.R. 15 and H.R. 778 would divest the Attorney General of virtually all civil and criminal enforcement powers and would grant those powers to the administering agency. H.R. 6864, on the other hand, would give the administering agency limited authority to go to court to enforce a subpoena issued by the agency. Under this bill, the Justice Department would have exclusive authority to enforce the substantive provisions of the bill through civil and criminal proceedings.

We believe that the administering agency should be given civil enforcement authority. 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 is a function of the Attorney General, and we can see no reason for departing from this principle in the proposed lobbying legislation. We believe that the Justice Department's inactivity in enforcing the present lobbying law has been caused, in large part, by weaknesses in the law and by judicially imposed limitations on the law's application. In any new law that is enacted, these problems should be eliminated, thereby allowing the Justice Department to vigorously investigate and prosecute violators of that law.

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