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FOR RELEASE ON DELIVERY
Expected at 10:00 a.m. EST
July 29, 1976

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STATEMENT OF ELMER B. STAATS

COMPTROLLER GENERAL OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS OF THE HOUSE COMMITTEE ON THE JUDICIARY

ON

[H.R. 3249 - FINANCIAL DISCLOSURE ACT AND RELATED BILLS]

HBE02501

Mr. Chairman and Members of the Committee:

I appreciate your invitation to discuss our views on proposed legislation to establish a financial disclosure system for top-level officers and employees of the three branches of the Federal Government.

Congressional Interest in Financial Disclosure

On Wednesday of last week, July 21, the Senate passed S. 495, the Watergate Reorganization and Reform Act of 1976, which, among other things, would provide for a system of financial disclosure for senior officials of all three branches of the Federal Government. The provisions of that bill are well known to the members of this Committee, and I shall not take time to summarize them.

Several bills pending before this Subcommittee would also carry out this objective. I have attached to my statement a comparative analysis of selected provisions of 38 of those bills. (Attachment I)

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Discussion of H.R. 3249 and Related Bills

H.R. 3249 and several related bills, which are being considered by the Subcommittee, would require annual filing of financial reports with the Comptroller General. Those required to file by H.R. 3249 are the President, Vice President, Members of Congress, candidates for nomination or election to Federal office, officers and employees compensated at the rate in excess of $25,000 per annum, and any member of a uniformed service compensated at an amount equal to or in excess of the amount of pay for pay grade O-6 or higher. In addition, officers or employees who, as determined by the Comptroller General regardless of their rate of compensation, are performing duties of the type generally performed by a GS-16 or higher would also be required to file. Those required to file by the other bills are shown in Attachment I.

The bills being considered would require officers and employees of the executive branch, judicial branch, or legislative branch of the Federal Government compensated at a rate in excess of $18,000, $25,000, or $32,000 per annum to file annual statements. There are currently about 375,000 GS employees who are compensated at a rate in excess of $18,000 per annum; about 160,000 compensated at a rate in excess of $25,000; and about 45,000 compensated at a rate in excess of $32,000. This does not include all those required to file--only GS employees (military at O-6 and above would add about 17,000). H.R. 10009 would set the disclosure level at the basic pay for grade GS-16 of the General Schedule and at pay grade O-7 for members of the uniformed services. This is the same

level as established by S. 495 and would require about 23,350 individuals to file financial statements. A large number would be added if candidates for Federal offices are included.

Responsibility for Administration

The Congress has long looked to GAO to provide objective information and evaluations of how well legislation is being implemented by the executive agencies and to provide it with suggestions for how these programs could be more economical, more efficient, and more effective. In brief, our role is that of an evaluator rather than being responsible for carrying out operating programs. The immediate legislation under consideration would place upon GAO an operating role which would, in our opinion, be inconsistent with its basic role.

I recommend most strongly, therefore, that the responsibility for administering a system of financial disclosure not be placed on the Comptroller General or in the General Accounting Office. Moreover, placing the responsibility for administering H.R. 3249, particularly as it relates to financial disclosure problems of Members of the Congress, could potentially do great damage to the overall effectiveness of the General Accounting Office and endanger the close relationship which this Office must have with Members and committees of the Congress.

I do not believe, as a practical matter, that it would be possible to limit the role of the General Accounting Office to a "ministerial" role of simply prescribing the form of the reports required under the provisions of the bill and checking to determine whether an employee is in fact performing duties in the grade GS-16 level, its equivalent, or higher.

It is inevitable that, given the provisions of existing statutes and past practices, that Members or committees of the Congress and the public would look to the General Accounting Office to investigate charges of nondisclosure or other irregularities which may be charged with respect to an individual financial disclosure statement in the absence of specific contrary language in the proposed legislation. The Senate-passed bill provides that "The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of not more than 5 per centum of the reports filed* * *"; that "The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual* * *"; and further, that "the Comptroller General shall, during each six-year period* * *audit at least one report filed by each Member of the Senate and the House of Representatives during each six-year period." It further authorizes the Comptroller General to require by subpoena the production of books and other records and "to seek an order" in the courts in the event there is failure to respond to such subpoenas.

My concern with respect to placing the responsibility in the General Accounting Office is similar to the concern which I expressed when the Congress was considering placing responsibility in GAO for administering campaign financing regulations involving Members of the Congress. I indicated at that time that I felt that placing this responsibility in GAO held in it the seeds of friction and distrust which could do great

damage to the overall effectiveness of the Office. In short, I do not believe that oversight and investigation of the financial transactions of individual Members of Congress is consistent with our role as a nonpartisan arm of the Congress, called upon for help daily by committees and Members of Congress. Roughly one-third of our entire work now originates with committees or with individual Members of Congress.

We endeavor to remain completely nonpartisan and free from any type of political influence in carrying out the functions vested in our Office. While the enactment of the bill would not in and of itself involve our Office directly in partisan matters, we are fearful of being placed in a position in which we could easily be criticized, however unjustly, of being improperly influenced by such considerations.

I strongly urge, therefore, that consideration be given to having these functions performed elsewhere. One possibility would be to place the responsibility in the House of Representatives with the Clerk of the House, the House Committee on Standards of Official Conduct, the House Committee on Administration, or a special committee established for this purpose. Similarly, in the Senate the responsibility might be placed with the Secretary of the Senate, the Senate Ethics Committee, the Senate Committee on Rules and Administration, or a special committee.

While my concerns do not apply equally to reports filed by the executive branch employees, presidential appointees currently file their financial disclosure statements with the Chairman of the Civil Service Commission and it would be logical to require other executive branch

officers and employees--if they are required to make public financial disclosure statements--to file their statements with the Commission or, alternatively, with the head of the agency under rules and regulations prescribed by the Commission. Other senior officials of the executive branch now file financial statements with agency heads under rules and regulations of the Civil Service Commission and the agencies concerned.

Executive Order No. 11222 of May 8, 1965 (as amended April 23, 1971), prescribes standards of ethical conduct for Government officers and employees, and requires reporting of financial interests by specified officers and by such subordinate employees as the Civil Service Commission may designate. The order authorizes and directs the Civil Service Commission to issue regulations and instructions implementing its provisions. Regulations and instructions were promulgated by the Commission and published in 5 C.F.R. #735, dated November 9, 1965 (revised July 1969). They require the head of each agency to prepare implementing regulations for his agency. Both the Executive order and the Commission's regulations and instructions provide for disclosure of financial information as the Chairman of the Civil Service Commission or the head of the agency may determine, for good cause shown.

While the financial information now required by Executive Order 11222 is not the same as that which would be required under # H.R. 3249, effective administration and oversight of existing regulations, would go a long way to meeting the objectives of the proposals under consideration

insofar as officers and employees of the executive branch of the Government are concerned.

Judges currently file a Public Report of Extra-Judicial Income with the Judicial Conference of the United States, with a copy retained and made public by the clerk in each district court. In our opinion, this arrangement would seem to be a generally satisfactory one.

We believe that if disclosure reports were filed within each of the three branches, the objectives of this bill could be achieved with minimal disruption and costs and could be merged with existing systems in each branch. Such a system would also enable the responsible officers of each branch to review the reports to determine whether apparent or potential conflicts of interest occur with the employees' official duties. Such reviews are extremely important and are currently required to be performed by each agency in the executive branch.

This arrangement would permit each branch to review the statements within a reasonable period of time to assure that no conflicts exist before making the reports public. In the executive branch, the Civil Service Commission could require the agencies to make such reviews before submitting the statements to them. It is essential that the agency head continue to be held accountable for any questionable interests. Agency heads, also, are in a better position to know and to make judgments as to what specific financial interests and employee should <u>not</u> have, based on his current responsibilities.

Consideration should also be given to designating by statute an agency or official in each branch of Government to be responsible for developing consistent procedures, rules, and regulations for implementing, administering, and enforcing the financial disclosure system, and for rendering formal advisory opinions and counsel on potential conflict-of-interest matters. The General Accounting Office could then be given specific responsibility for maintaining oversight of these systems.

I believe these changes would result in a more effective system of disclosure and review. I offer these suggestions in the interest of both eliminating unnecessary duplication of reporting requirements and because, as a practical matter, the responsibilities to be assumed by our Office under this bill would create an unnecessary increase in our workload and conflict with our basic responsibility of monitoring Federal agency operations.

Related Issues and Problems in Administering Financial Disclosure

It should be emphasized that disclosure of financial interest of individuals at the GS-16 and higher levels in no sense resolves the concern which we in GAO have with respect to conflicts of interest in the Federal Government. Individuals at much lower levels frequently are in a position to have conflicts just as great if not greater than individuals at the grades included in the bill. It is important that all three branches of Government recognize this and take appropriate actions to deal with these situations. In general, we believe that the appropriate officers in each of the three branches are in a better position to make these judgments than the General Accounting Office would be.

Moreover, there are other types of conflict beyond those of a financial nature, such as memberships and directorships in organizations and family or social relationships, which would be dealt with in appropriate rules and regulations. To accomplish this, the Congress may wish to consider establishing a definitive code of conduct for Federal officers and employees or requiring the employing agency or enforcement office in each branch to establish such a code, including a definition of what constitutes a conflict of interest.

The Senate considered an amendment to S. 495 that would have required the Civil Service Commission to establish standards of ethical conduct for all employees with respect to financial conflicts of interest and to establish guidelines to assist heads of agencies in determining whether a conflict of interest exists or appears to exist.

In our opinion, this is a highly desirable objective that is worthy of further consideration, particularly as it relates to the need for a definition of financial conflicts of interest.

While the Senate did not adopt the amendment, it did accept an amendment that would require the Civil Service Commission and the Department of Justice to analyze current financial conflict-of-interest regulations and procedures and recommend to the appropriate committes of Congress such legislation as may be necessary.

A similar requirement for the judicial and legislative branches might be desirable.

We have, frankly, not had an opportunity to think through all of the problems involved in administering legislation along the lines of the Senate-passed S. 495 or the immediate proposal. There is little or no precedent for making audits of personal financial reports filed by large number of individuals. We believe, therefore, that whoever is given the responsibility for administering such legislation would need considerable latitude to define the nature, scope, and objectives of the audits contemplated and to determine how the reports should be prepared and distributed. We would be glad to work with the Committee in the formulation of statutory language to accomplish this objective.

Illustrative of our concerns is the problem of valuating assets and determining what supporting records should be included in financial disclosure statements. S. 495 deals with this problem by defining assets as other than household furnishings or goods, jewelry, clothing or any vehicle owned solely for the use of the individual, his spouse, or any of his dependents. Also, S. 495 would not require that the specific amount or value of each asset, liability, transaction, purchase, or sale be reported on an authoritatively appraised basis. Rather, it establishes categories or ranges of amounts or values:

"(a) not more than $5,000
(b) greater than $5,000, but not more than $15,000
(c) greater than $15,000, but not more than $50,000
(d) greater than $50,000, but not more than $100,000
(e) greater than $100,000."

We can see many advantages to this approach.

Should part-time consultants and experts be included in the requirements for financial disclosure, how long a period of service and what type of relationship should the individual have with the Government in order to bring him under the purview of the statute? S. 495 deals with this problem by providing that individuals would not file financial statements unless they have occupied an office or position for a period in excess of 90 days during the calendar year. We are not certain that this accomplishes the broad objectives of the statute, and we recommend that the administering agency, in consultation with the appropriate agency officials, be given latitude to define the appropriate period of service as it relates to disclosure of potential conflicts of interest.

We perceive many complicated auditing issues in determining the relationship of financial interest to potential conflicts of interest. For example, income from syndicates, banks, trusts, law firms, consulting organizations, and so on, may be difficult to trace. A law firm or a consulting firm,for example, may deal with many clients, some of whom may have relationships with the Federal Government; but these may not be obvious from the financial disclosure statement and will require investigations. How far should such relationships be pursued?

Financial records of individuals may not be complete and there may be willful omissions. A determination as to whether there are omissions could conceivably represent prolonged investigations. The administering agency should be given latitude to act on the basis of allegations or complaints, in his discretion, where it is not practical to pursue all business relationships which could conceivably involve a conflict of interest where these are not readily available from the individual's own record. Moreover, the auditor would be faced with the problem of determining a direct or potential relationship between a financial interest and a job responsibility which could involve an actual or potential conflict. These are difficult judgments to make, and I believe the auditor would be faced with a situation where he would in many instances have to rely upon the judgment of the agency head involved.

Because of the absence of experience in audits of this type and the complicated problems which would face the auditor, we believe that the estimated cost for S. 495 included in the Congressional Record of July 20 is unrealistically low. The cost estimate prepared by the Congressional Budget Office for fiscal year 1977 was $1.7 million and increased to $2.1 million in 1981. Our own estimate is that the costs required would be at least $5 million. It could be much higher, depending on the depth of investigations and the number of court cases involved and the number of requests received from committees and Members of Congress for investigations.

Balancing Privacy Considerations and Information to be Disclosed in Financial Statements

Obviously, the Congress faces a difficult delemma in seeking to accomodate the public policy considerations underlying requirements for public disclosure of personal financial information and the right of personal privacy which affects all of us. This dilemma is somewhat the same as is inherent in the public policy aims of the Freedom of Information Act and the Privacy Act of 1974--the one promoting openness in Government administration and the other carefully spelling out the basis upon which "private" information in the hands of the Government may be used and disclosed.

There should be a better way to reconcile these conflicting aims than to adopt one fully as against the other. In the case of Freedom of Information Act requirements versus those of the Privacy Act, a mutual deference is built into the laws. Information ordinarily subject to disclosure may be withheld if such disclosure would constitute an unwarranted invasion of privacy, while the right to privacy is dealt with largely on the basis proscribing the use of information for a purpose other than that for which it was collected.

Here the primary concern is promoting confidence in public officials through full disclosure of their personal financial status. Aside from any philosophical or ethical objections which might be voiced against such disclosure, there are difficult problems that need to be considered--

problems which, to my mind, are avoidable without undermining the overall objective being pursued.

Should there not be, for example, restrictions on who may have access to such information and the purposes for which it may be used? The Senate bill, in section 306(c), addresses this aspect by making it unlawful, under pain of civil penalty, for any person to inspect or obtain a copy of a financial report for any unlawful or commercial purpose or for use in soliciting money. And the Comptroller General is authorized to require any person receiving a copy of such report to supply his name, address, and the name of any person or organization on whose behalf the request was made. The problem the Senate bill thus addresses is obvious, but I wonder if this legislative provision will do much to alleviate the improprieties covered. At the least, it seems that provision should be made to require notice to the individual involved that disclosure of his financial report has been made and to whom. And should not the requester be required to state his intended use of the information in the file?

In the event legislation is enacted requiring public disclosure by Federal employees of personal financial information, I strongly recommend that it allow for promulgating regulations under criteria permiting a reasonable degree of latitude in dealing with such important issues. I would like to suggest to this Committee that consideration be given to a system of disclosure that would serve to accomplish the desired aims while

at the same time providing greater protection against unnecessary invasions of the privacy of Federal employees.

The need to balance financial disclosure requirements and privacy as fairly and objectively as possible is more than a theoretical or ethical question. We need to consider the effects of public financial disclosure requirements on our ability to obtain and retain career and appointive officials of the highest caliber in the upper levels of our system of Government. I am speaking both of full-time employees and those serving in a part-time or consulting capacity. Some of the latter, of course, do so strictly as a public service; and they, in particular, might be unwilling to do so if there financial interests must be disclosed to any curious person.

In all the circumstances, I would suggest that the Congress consider two alternative approaches, always with the twin objectives of accountability and privacy in mind: first, modify the legislation under consideration to (1) authorize the administering agency to issue regulations limiting access to pertinent information in the context of these statements to a conflict of interest or potential conflict of interest situation (e.g., interests, gifts or other relationships of officials of the regulatory agencies in companies regulated or affected by their regulations), and (2) eliminate provisions requiring the identification of all personal property assets held by the employee except as gifts specified in (1) above. Such disclosures constitute a potential "shopping list" for thieves. We see no compelling reason for general and full disclosure of personal property holdings.

A second and preferable alternative, in my judgment, would be to enact, as an alternative to public financial disclosure, more rigid provisions for internal disclosure within each agency under rules and regulations prescribed in each branch--such regulations to made public, with the General Accounting Office having authority and responsibility for audits of executive branch agencies--together with a requirement that GAO make public individual instances where either adequate regulations have not been provided or where, in the opinion of the Office, actual conflicts do exist.

Another possibility which might be explored is to consider enacting legislation requiring full-public disclosure by all employees in all branches of Government by the employing agency or to a central point in each of the three branches, with provision for waiver of disclosure for individuals or groups--or even categories of information--by the agency head for publicly disclosed reasons. Here again, GAO could be given oversight and monitoring responsibility.

In concluding, I would like to briefly summarize my general and basic concern regarding the relationship between these conflict-of-interest bills and the type of concerns reflected in congressional enactment of the Privacy Act of 1974. The inherent conflicts between our accountability goals on the one hand and the right of privacy on the other represent one of the difficult dilemmas confronting the Congress in these uncertain times. On the one hand, the wake of Watergate and other more recent

disclosures, it is easy to understand congressional concern with accountability and avoidance of conflict-of-interest. Clearly, existing law and practice in the general area of accountability need improvement.

On the other hand, however, the right of an individual to privacy is deeply ingrained in our system of Government and our society. Congress is currently considering legislation restricting access to IRS-related information, and a Privacy Protection Commission Study is currently holding hearings exploring further steps in this direction. I strongly urge that any revisions in financial disclosure requirements enacted by the Congress give the most careful consideration as to how we can balance our twin goals of accountability and privacy as fairly and objectively as possible.

This concludes my prepared statement.