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Testimony before the House Committee on the Judiciary: Administrative Law and Governmental Relations Subcommittee; by Robert F. Keller, Deputy Ccmptrcller General.

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During the past 3 years, GAO has issued 23 reports concerning Federal agency financial disclosure systems. These reports have revealed serious weaknesses in these systems, due, in part, to a lack of enforcement authority and effective monitoring. As a result of these reviews, GAO recommended that the President establish an executive branch office of ethics with strong enforcement powers. Among its responsibilities, the Office of Ethics should: issue uniform and clearly stated ethical standards of conduct and financial disclosure regulations; develop financial disclosure forms so that all relevant information is obtained concerning employee interests needed to enforce conflict-of-interest matters; make periodic audits of the effectiveness of agency financial disclosure systems on a sample basis to see that they include appropriate procedures for collecting and reviewing statements and followup procedures to preclude conflicts of interest; establish a formal advisory service to render opinions on matters of ethical conduct so that all agencies are advised of such opinions; provide criteria for positions requiring disclosure statements; administer the financial disclosure system for Presidential appointees under section 401 of Executive Order 11222; report annually to the President and the Congress on the effectiveness of the ethics program; and investigate and resolve ethical conduct matters unresolved at the agency level. (SC)

SUMMARY OF TESTIMONY
OF
ROBERT F. KELLER
DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES

During the past 3 years GAO has issued 23 reports concerning Federal agency financial disclosure systems. These reviews have revealed serious weaknesses in these systems, due, in part, to a lack of enforcement authority and effective monitoring. As a result of our reviews we recommended that the President establish an executive branch office of ethics with strong enforcement powers.

The Comptroller General believes that Title I of H.R. 9 as amended reflects GAO's recommendations and the President's proposals, and its enactment as part of H.R. 9 would establish an effective financial disclosure system.

The House Select Committee on Ethics has reported H.R. 7401--the Legislative Branch Disclosure Act of 1977--and we assume this bill will become Title II of H.R. 9. Many bills to establish financial disclosure systems for the Congress give administrative and/or audit authority to the General Accounting Office. The Comptroller General has stated on many occasions that he strongly opposes giving GAO such authority as it could potentially do great damage to GAO's effectiveness by endangering the close relationship which GAO must have with Members and committees of the Congress.

H.R. 7401 would require GAO to conduct, on a regular basis, a study of the effectiveness of the House and Senate financial disclosure systems. The Comptroller General fully supports this type of audit authority for GAO and recommends that H.R. 7401 be included as Title II of H.R. 9.

We also believe that the Congress must consider an individual's right to privacy when developing financial disclosure legislation.

FOR RELEASE ON DELIVERY
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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
HOUSE COMMITTEE ON THE JUDICIARY
ON
FINANCIAL DISCLOSURE LEGISLATION

Mr. Chairman and Members of the Committee:

We appreciate your invitation to present our views on several proposed bills to establish a new financial disclosure system for top-level officers and employees of the three branches of the Federal Government.

During the past three years, we have issued 23 reports concerning the financial disclosure systems and standard of conduct regulations of executive branch departments and agencies. These reviews have revealed serious weaknesses in agency systems, due, in part, to the lack of enforcement authority, and effective monitoring by the Civil Service Commission.

On February 28, 1977, we recommended that the President issue a statement to the heads of all executive departments and agencies setting forth a firm commitment to the highest standards of ethical conduct. We also recommended that he establish an executive branch Office of Ethics with adequate powers to address the problems of enforcement and compli

Among its responsibilities, we believe the Office of Ethics should

--Issue uniform and clearly stated ethical standards of conduct and financial disclosure regulations as discussed in GAO reports.

--Develop financial disclosure forms so that all relevant information is obtained concerning employee interests needed to enforce conflict-of-interest matters.

--Make periodic audits of the effectiveness of agency financial disclosure systems on a sample basis to see that they include appropriate procedures for collecting and reviewing statements, and followup procedures to preclude conflicts of interest.

--Establish a formal advisory service to render opinions on matters of ethical conduct so that all agencies are advised of such opinions.

--Provide criteria for positions requiring disclosure statements.

--Administer the financial disclosure system for Presidential appointees under section 401 of Executive Order 11222.

--Report annually to the President and the Congress on the effectiveness of the ethics program and recommend changes or additions to applicable laws as appropriate.

--Investigate and resolve ethical conduct matters unresolved at the agency level, including allegations against a Federal employee or officer.

--Provide a continuing program of information and education for Federal officers and employees.

The President submitted to the Congress on May 3, 1977, a legislative proposal which would establish an Office of Government Ethics for the executive branch with strong oversight and enforcement powers. The President's proposal was embodied

in H.R. 6954--the Ethics in Government Act of 1977--which would apply only to the executive branch. We believe the provisions of H.R. 6954 are needed to remedy the deficiencies that exist in the executive branch disclosure systems. We note that the provisions of Title I of H.R. 9 as amended, are similar to H.R. 6954.

On August 1, 1977, we reported to the Congress that the Civil Service Commission's financial disclosure system for top-level executive branch officials has not been effective because:

--the Commission did not design and operate the system effectively,

--the system lacked enforcement authority from the President,

--the Commission was not involved in the review and investigation process of appointees by the White House and Senate confirmation committees,

--the system was managed with limited support and insufficient resources,

--additional financial information was needed from appointees because of their particular duties and responsibilities, and

--policies and criteria for blind trusts had not been formalized and enforced.

Most of the proposed legislation currently before the Congress also would address these deficiencies.

I would now like to briefly summarize some observations regarding certain segments of the bills.

FINANCIAL DISCLOSURE LEGISLATION

Several bills, such as H.R. 1, would establish a financial disclosure system for all three branches of the Federal Government. These bills would give responsibility to the Comptroller General for administering a Government-wide financial disclosure system. We do not agree that this responsibility should be given to the Comptroller General.

On July 29, 1976, the Comptroller General appeared before this Subcommittee to present our views on H.R. 3249, a bill similar to H.R. 1. At that time he strongly emphasized that giving GAO the responsibility for administering a financial disclosure system, particularly for Members of Congress and congressional employees, could potentially do great damage to the overall effectiveness of our Office and endanger the close relationship which this Office must have with Members and committees of the Congress. We do not believe that oversight and investigation of the personal financial transactions of individual Members of Congress is consistent with our role as a non-partisan arm of the Congress.

We believe that responsibility for administering a financial disclosure system should rest with each branch of Government.

H.R. 9--the Ethics in Government Act of 1977--as amended by the Subcommittee on July 21, 1977, would establish a financial disclosure system for all three branches of the Federal Government.

Title I of H.R. 9 would establish an Office of Government Ethics in the executive branch with strong administrative and enforcement powers over the financial disclosure system. This Title reflects GAO's recommendations on actions needed to improve the executive branch financial disclosure system, and is similar to the President's proposals introduced as H.R. 6954 on May 3 to reform the financial disclosure system. In our opinion, Title I, with its strong enforcement provisions would create an effective financial disclosure system.

Title II of H.R. 9 concerning the establishment of a financial disclosure system for the legislative branch , we assume, will be based on the recommendations of the House Select Committee on Ethics. The Select Committee on Ethics reported H.R. 7401--the Legislative Branch Disclosure Act--on August 5, 1977. H.R. 7401 as reported by the Committee deals with the responsibilities of the Comptroller General in a manner that is satisfactory to us.

In testimony before the House Select Committee on Ethics in June of this year on H.R. 7401, the Comptroller General opposed giving GAO audit responsibility for the financial statements of Members of Congress and congressional employees. In addition there

was testimony of the Chairman of the Federal Elections Commission, the Executive Director of the Alabama Ethics Commission, and a senior partner of Price Waterhouse and Company who agreed that a random audit system of financial disclosure statements would be unworkable, meaningless, and basically unnecessary.

H.R. 7401, as reported, places the responsibility for seeing that there is compliance with the Act with the Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House. The Comptroller General is required to conduct a study before November 30, 1979, and regularly thereafter, to determine whether the Act is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to the Act.

Specifically, the GAO study is expected to provide an analysis and recommendations concerning such items as:

--adequacy of coverage, including an evaluation of the manner in which Members designate persons to file;

--compliance with filing requirements by all covered individuals, including candidates;

--compliance with filing deadlines and the reasons for late filing;

--the procedures and activity of the designated House and Senate Committees in fulfilling their compliance review role;

--the discharge of administrative duties imposed on the Clerk and the Secretary, including their implementation of the requirement for public availability of the reports.

--any unnecessary burden or apparent omissions with regard to the contents of disclosure statements;

--the discharge of duties imposed on designated State officials; and

--the extent of Justice Department activity in enforcing compliance.

The bill specifically directs the GAO, in its first study under this provision, to analyze the feasibility and potential need for systematic random audits of the financial disclosure reports. Within 30 days after completion of the investigation and study, the Comptroller General must transmit a report to the Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative changes deemed appropriate.

We believe this type of GAO oversight if incorporated in H.R. 9, together with the enforcement authority of the supervising ethics offices and the Attorney General, and the public and media review of the financial disclosure statements, would be sufficient to insure the integrity of a Government-wide financial disclosure system.

We also note that section 101(f)(3) would require officers and employees of the General Accounting Office to file statements as an executive agency, as it is defined in section 105 of Title 5, United States Code. We believe this section should be amended to state "with the exception of the officers and employees of the General Accounting Office," and that Title II, when incorporated, should contain provisions requiring officers and employees of legislative branch agencies to file with the appropriate committee of the Congress.

BALANCING PRIVACY CONSIDERATIONS WITH PUBLIC DISCLOSURE

While both the Senate and House have decided to have public disclosure of financial interests of its Members, we believe that as legislation is considered for the three branches of Government, the Congress should continue to balance conflict-of-interest and public disclosure concerns with the rights of individuals to privacy.

Obviously, the Congress faces a difficult dilemma in seeking to accommodate 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.

Here the primary concern is promoting confidence in public officials through a code of ethics and 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 our mind, are avoidable without undermining the overall objective being pursued.

We suggest that if public availability is to be required disclosure of individual reports not be automatic but on a request basis and that there be notice to the individual that disclosure of his financial report has been made and to whom. Prior to inspecting or receiving a copy of any financial report, we believe the requester should be required to present a written request giving his name; address, names and addresses of persons or organization, if any, or on whose behalf he is making the request, and the intented use of the report.

We also believe that if the financial disclosure statements of top-level officials are made public, many more questions will be raised than are answered because of the absence of Government-wide standards of conduct. Questions will likely be raised as to whether certain interests could be potential conflicts of interests or whether certain actions are unethical. Such actions or interests, if held up against absolute but impractical ethical standards, could tarnish the careers of many honest individuals without their even being given a hearing.

We believe that the supervising ethics office in each branch has a duty, to the public, and to the individual against which a complaint is made, to insure that each complaint is fully considered, that a thorough investigation is conducted if warranted, and that an unbiased opinion is rendered on each complaint.

This concludes my statement and I will be glad to respond to any questions.