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The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This is in response to your request for our views on H.R. 1180 and four related bills, H.R. 557, H.R. 766, H.R. 1035, and H.R. 2301. All of the bills deal with the public disclosure of lobbying and related activities.

H.R. 1180 and H.R. 2301, the most comprehensive of the lobbying disclosure proposals, are similar bills entitled the "Public Disclosure of Lobbying Act of 1977." A measure comparable to H.R. 1180 and H.R. 2301 was passed by the House during the 94th Congress but was not passed by the Senate. See H.R. 15, 94th Cong., 1st Sess. (1975); 122 Cong. Rec. H 11416 (daily ed. September 28, 1976). Unless otherwise indicated, comments addressed to H.R. 1180 are equally applicable to H.R. 2301.

H.R. 557 and H.R. 1035 are also similar bills but differ materially from H.R. 1180 and H.R. 2301. Unless we indicate differently, comments addressed to H.R. 557 also apply to H.R. 1035. H.R. 766 has no companion bill. Comments on H.R. 557 and H.R. 766 are integrated with our comments on relevant provisions of H.R. 1180.

H.R. 1180 would replace the present lobbying disclosure law, the Federal Regulation of Lobbying Act (2 U.S.C. §261 et seq.), with a comprehensive new statute defining the organizations that must register and report as lobbyists and specifically describing the information that those organizations must disclose. H.R. 557 and H.R. 766 have a similar objective.

We believe H.R. 1180 would constitute a significant improvement over the existing lobbying disclosure law, previously cited. In addition to broadening and clarifying the definition of those organizations subject to lobbying

disclosure requirements, H.R. 1180 would provide additional investigative and enforcement powers needed to make the proposed law effective. Despite these improvements, however, there appear to be certain ambiguities and omissions in H.R. 1180 that should be corrected.

I. H.R. 1180--Scope of Coverage (Section 3)

Section 3 would define who must comply with the bill's registration, recordkeeping, and reporting requirements.

A. Coverage of Organizations that Retain Lobbyists

Under subsection 3(a)(1), the bill would apply to any "organization" (§2(8)) that spends in excess of $1,250 in any "quarterly filing period" (§2(9)) to retain another person to engage in certain lobbying activities on its behalf. The quarterly expenditure threshold in this provision differs from the $250 per calendar quarter threshold prescribed in the comparable provision of H.R. 557. H.R. 766, unlike both H.R. 557 and H.R. 1180, generally requires a filing before lobbying and without regard to the dollar amount expended in a lobbying effort.

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 lobbying organizations to determine and for the administering agency to verify. A quarterly expenditure threshold, in our view, is also preferable to an annual expenditure requirement; with only an annual expenditure requirement, a lobbyist 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 provisions in H.R. 557 and H.R. 1180 could accomplish this objective.

B. Coverage of Organizations that Employ Lobbyists

Unlike H.R. 557 and H.R. 766, subsection 3(a)(2) of H.R. 1180 requires registration if an organization employs "at

least one individual who spends 20 percent of his time or more in any quarterly filing period * * *" engaged in certain lobbying activities. As we indicated previously, subsection 3(a)(1) would establish a quarterly expenditure threshold for retained lobbyists who are not otherwise employees of the registrant.

In many instances, we believe it would be difficult for a lobbying organization to determine and for the administering agency to verify when an organizational employee had spent 20 percent or more of his time engaged in lobbying. Further, a lobbying 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.

We believe consideration should be given to alternate or supplementary means by which the degree of an organization's lobbying efforts could more effectively be measured. One method, of which an example is contained in H.R. 557, might be to apply a quarterly expenditure threshold to organizations that employ individuals to engage in lobbying activities.

C. Coverage of Lobbying Communications

Subsections 3(a)(1) and (2) of H.R. 1180 would also require lobbying organizations subject to the bill to register and report as lobbyists when they attempt to influence certain executive branch officials off-the-record with respect to any report, investigation (excluding civil or criminal investigations or prosecutions by the Attorney General), or rule, as well as when they attempt to influence the content or outcome of legislation. Executive branch activities of the type covered by H.R. 1180 would also be covered by H.R. 557; they would not be covered by H.R. 766. We think it especially wise that the disclosure provisions of H.R. 1180 currently cover lobbying directed at the described activities of the executive branch which, like legislation, may directly affect the public. As we testified before your Subcommittee on Administrative Law and Governmental Relations 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.

We note, however, that H.R. 1180, unlike H.R. 557, limits its coverage of lobbying communications directed to the executive branch to communications made to the executive branch officials listed in sections 5312 through 5316 of title 5, United States Code. These officials are paid at levels I through V of the Executive Schedule. With certain exceptions, H.R. 1180 would cover lobbying communications directed to any Congressman or any congressional employee. Many officers and employees in the executive branch who are not paid at levels I through V of the Executive Schedule may, like congressional employees who are covered by the bill, perform duties that significantly impact on public and private interests. Thus, we question whether it is necessary or desirable to exclude from the coverage of H.R. 1180 organizations that lobby executive branch officials who are not listed in 5 U.S.C. §§5312-5316.

Subsection 3(a)(1) of H.R. 1180 extends the bill's coverage to communications made to influence the award of Government contracts. In our opinion, this provision needs clarification. As presently drafted, subsection 3(a)(1) could be construed to require that an organization otherwise subject to the bill keep track of and report routine sales contacts where the communication involved merely relates to a company's performance capabilities.

We note too that subsections 3(a)(1) and (2) of H.R. 1180 could be interpreted to apply only to lobbying efforts undertaken in connection with matters actually pending in the Congress. Whether H.R. 1180 would also apply when an organization attempts to prevent the introduction of legislation is not clear. H.R. 766 specifically covers this type of lobbying effort. To avoid unnecessary interpretive disputes in the application of H.R. 1180, we believe this ambiguity should be clarified.

D. Coverage of Lobbying Communications Directed to Legislative Branch Agencies

H.R. 1180 does not cover lobbying of the officers and employees of legislative branch agencies such as the General Accounting Office, Cost Accounting Standards Board, Office of Technology Assessment, the Congressional Budget Office, and others.

The bill applies to organizations that seek to influence a "Federal officer or employee," a key term defined by subsections

2(6)(A)-(C). Essentially, this subsection defines a "Federal officer or employee" as any Member of Congress, any congressional employee, and any officer of the executive branch listed in sections 5312 through 5316 of title 5, United States Code. Officers and employees of legislative agencies are not within the scope of this definition. Although subsection 3(a)(1) specifically exempts from the bill's coverage organizations attempting to influence a lobbying-related investigation by the Comptroller General, this exemption seems somewhat anomalous because the Comptroller General is not, in our view, a "Federal officer or employee" as that term is presently defined.

We 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. We have no objection, however, to the retention of the subsection 3(a)(1) exempting provision.

Enactment of this recommendation would, of course, necessitate a change in the definition of a "Federal officer or employee" (§2(6)). We noted earlier that all congressional employees are currently covered by this definition. In contrast, the coverage of executive branch officials is limited to only those officials in levels I through V of the Executive Schedule who are listed in 5 U.S.C. §§5312-5316. We questioned whether it was necessary or desirable to exclude from H.R. 1180's coverage organizations that lobby executive branch officials not listed in the cited sections of title 5. Similarly, we recommend that lobbying communications directed to an officer or employee of the General Accounting Office or the Cost Accounting Standards Board, like communications directed to congressional employees, be subject to the bill's registration, recordkeeping, and reporting requirements. Were this done, lobbying activities unrelated to the subsection 3(a)(1) exemption would be subject to the bill's registration, reporting, and recordkeeping requirements.

E. Coverage of Indirect or Grassroots Lobbying Communications

The registration, recordkeeping, and reporting requirements of H.R. 1180 apply to organizations whose lobbying activities include the retention of another (§3(a)(1)) or the use of an organization's employee (§3(a)(2)) to make a

communication "directed to" a Federal officer. An organization whose sole lobbying activity is to encourage the general public to communicate a particular viewpoint to a Federal officer would not be subject to the provisions of H.R. 1180 because no communications of that organization would be "directed to" Federal officers.

Under subsection 6(b)(6) of H.R. 1180, an organization that had either (1) spent $1,250 in a quarterly filing period for the retention of another to make communications directed to Federal officers; or (2) employed at least one individual who had spent 20 percent of his time or more in a quarterly filing period in making communications directed to a Federal officer, would be required to report lobbying solicitations to the public it had either paid for or initiated. When the organization's lobbying activities satisfy neither of these criteria, however, the organization is not subject to the bill and solicitations may go unreported. Thus, indirect or grassroots lobbying--that is, encouraging the general public, through a solicitation, to communicate a position of the organization to Congress--would not always be subject to full disclosure.

H.R. 557 and H.R. 766 both apply when an organization, through its own paid employees or through the retention of others, encourages the general public to communicate a specific position of the organization directly to Federal officers.

It has been widely reported that certain lobbying organizations are extremely adept at generating mass-letter-writing campaigns through solicitations to the general public. As a result, much criticism has focused on the exclusion of grassroots lobbying from the disclosure provisions of the current lobbying law. We recommend, therefore, that subsections 3(a)(1) and (2) of H.R. 1180 be amended to extend the bill's application to indirect or grassroots lobbying when the total direct expenses of such lobbying exceed a specified dollar amount.

F. Exempt Communications

Subsection 3(b) of H.R. 1180 would qualify subsections 3(a)(1) and (2) by specifically exempting certain types of communications from the bill's coverage. This provision contains several important exemptions that are not included in

H.R. 557 or H.R. 766. Subsection 3(b)(3), for example, carefully excludes from the bill's coverage communications by an individual citizen, acting solely on his own behalf, for redress of a personal grievance or to express his personal opinion.

Another subsection 3(b) exemption provides that the bill shall not apply to:

> "a communication (A) made at the request of a Federal officer or employee, (B) submitted for inclusion in a report or in response to a published notice of opportunity to comment on a proposed agency action, or (C) submitted for inclusion in the record, public docket, or public file of a hearing or agency proceeding."

A literal construction of the exemption for communications "made at the request of a Federal officer or employee" would exempt from disclosure all communications made by a lobbying organization if the communications were made at the request of a Congressman. Under this exemption, any Congressman could ask an organization to lobby other Congressmen. Since the resultant communication would be made "at the request" of a Congressman, the lobbying organization could escape the bill's disclosure requirements.

The definition of "lobbying" in H.R. 557 only exempts a communication made to the requesting Congressman or to an entity, such as a congressional committee, that the requesting Congressman officially represents. H.R. 766 contains an exemption comparable to that of H.R. 557. Although the subsection 3(b) exemption for communications made "at the request of a Federal officer or employee" may have been intended to be limited to communications made to the requesting Federal officer or employee, we recommend the provision be amended to exempt those communications made to the requesting official.

Subsection 3(b)(5) of H.R. 1180, unlike the other lobbying disclosure proposals, would also exempt from the bill's coverage a communication by an organization on any subject if the communication is directed to the two Senators and the Representative that represent the State and the congressional district, respectively, where the organization maintains its

principal place of business. This exemption is commonly referred to as the "home-State" exemption. This particular version of the exemption, by not extending its applicability to all Representatives of a State, avoids the disparate treatment and inequities that could result where one organization's principal place of business is in a State having a large congressional delegation and where another organization's principal place of business is in a State having a smaller congressional delegation.

All States have two Senators and an organization otherwise satisfying the subsection 3(b)(5) criteria can, without triggering the bill's disclosure requirements, communicate with either or both of the Senators who represent the State where the organization has its principal place of business. In the case of communications to Representatives, the exemption applies only to communications directed to the Representative who represents the congressional district where the organization has its principal place of business.

The "home-State" exemption is qualified in two other ways that should limit the ability of parent organizations to utilize their State "affiliates," a term defined in subsection 2(1) of the bill, to evade the bill's disclosure requirements. To be exempt, an "affiliate" must lobby on its own initiative and not at the "suggestion, request, or direction," of any other person and the costs of the lobbying must be borne by the local organization.

Finally, H.R. 1180 does not include several exemptions contained in the other lobbying disclosure bills. For example, H.R. 557 excludes communications by a Federal officer or employee from its definition of "lobbying." H.R. 766 contains an analogous exemption. It may be that communications between officers and employees of the executive and legislative branches are exempt under other provisions of H.R. 1180, such as the definition of "organization" in subsection 2(8). We believe, however, that clarification of the bill's application to this special category of communication would be desirable. Since subsection 2(8) defines the term "organization" as including "any corporation," we also recommend clarification of the bill's applicability to communications by Government corporations.

II. H.R. 1180--Registration (Section 4)

Section 4 of H.R. 1180 would require each organization subject to the bill's disclosure requirements to register with the Comptroller General within 15 days after becoming a lobbyist. A registration in any calendar year would be effective until January 15 of the succeeding calendar year.

H.R. 1180 would place the primary onus of registration on the organization on whose behalf lobbying services are performed. H.R. 557 and H.R. 766, on the other hand, place the responsibility to register directly on the person who will perform lobbying services, not necessarily on the person or organization on whose behalf the services will be performed. Further, H.R. 766, unlike both H.R. 557 and H.R. 1180, requires registration, except in unspecified "extenuating circumstances," before any lobbying activity may properly be engaged in. This requirement could prove unduly burdensome to the registrant and monitoring compliance with a pre-lobbying registration provision would, in our view, be administratively impracticable.

The amount and types of information that an organization must disclose when registering under H.R. 1180 would be limited when compared to the registration information required under the other lobbying disclosure proposals. Subsection 4(b) of H.R. 1180 would require that an organization's registration statement contain (1) an identification of the organization and a general description of the methods used to arrive at a position on an issue before the legislative or executive branch, except that the registration need not disclose the identity of the organization's members; and (2) an identification of the person retained by the organization (§3(a)(1)) or the persons employed by the organization (§3(a)(2)) to engage in certain lobbying activities. Subsection 4(b)(1) provides that the registration need not identify an organization's members and subsection 4(b)(2) would require disclosure of persons retained or employed to engage in lobbying activities. We recommend clarification of H.R. 1180's registration disclosure requirements when a member of an organization is also an employee who lobbies on behalf of the registrant.

Under H.R. 557 and H.R. 766, the registrant would be required to disclose substantially all of the information required under H.R. 1180. In addition, the registrant would be

required to identify the issues or measures to be lobbied and describe the financial terms or conditions under which an employed or retained lobbyist performed services. Under H.R. 557, the Comptroller General could direct the registrant to furnish additional information not specifically required by the bill.

III. H.R. 1180--Recordkeeping (Section 5)

Section 5 of H.R. 1180 would require lobbying organizations and persons retained by such organizations to maintain records relating to their lobbying activities in accordance with regulations prescribed by the Comptroller General. Under subsection 5(b), records would be preserved by the lobbying organization for a period of not less than 5 years after the close of the quarterly filing period to which the records relate. 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.

H.R. 557 and H.R. 766 specifically describe the information that must be contained in a registrant's records but, unlike H.R. 1180, do not authorize the issuance of regulations governing the maintenance of records. While we think it desirable that lobbyists be sufficiently apprised of the records they must maintain and of the information those records must contain, we consider the authority to issue regulations governing the maintenance of records essential to establish fair, realistic and necessary recordkeeping requirements as experience is acquired in administering a new lobbying disclosure law.

The final major difference between the recordkeeping requirements of H.R. 1180 and those of the other lobbying disclosure bills is the time period prescribed for the preservation of lobbying records by lobbyists. H.R. 1180 would establish a 5-year record retention period; H.R. 557 and H.R. 766 prescribe a 2-year retention period. Requiring a lobbyist to retain his records for a period of 5 years strikes us as fair and not overly burdensome. Such a retention period should allow sufficient time to thoroughly verify and investigate an organization's reported lobbying activities and, where necessary, to seek civil or criminal sanctions. A substantially

shorter retention period, such as that adopted by H.R. 557 and H.R. 766, could result in the destruction of records essential to the enforcement of any new lobbying disclosure law.

IV. H.R. 1180--Reports (Section 6)

Section 6 of the bill would require lobbying organizations to file quarterly reports with the Comptroller General. The information required in these reports would be considerably more detailed than the information required for registration under subsection 4(b). Once again, however, the reporting requirements of H.R. 1180 are different from the reporting provisions of the other lobbying disclosure proposals, including H.R. 2301.

H.R. 1180 and H.R. 2301 are similar in that they would require lobbyists' reports to include, among other information, the "total expenditures" that an organization made for subsection 3(a) lobbying activities and an identification of persons retained or employed to lobby and expenditures made in connection with such retention or employment. Both bills would require an itemized disclosure of each expenditure in excess of $25 made to or for the benefit of identified Federal officials. With regard to this latter category of expenditures, H.R. 1180, but not H.R. 2301, would require a lobbying organization's expenditures to individual Congressmen to be referred by the Comptroller General to Congress' Committee on Standards of Official Conduct if the aggregate expenditure exceeded $100.

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 efforts. An H.R. 2301 report, on the other hand, would contain (1) a description of the 25 issues on which the organization spent the greatest portion of its lobbying efforts and (2) a general description of all other lobbied issues.

Reports filed under H.R. 557 would disclose each issue that an individual lobbyist sought to influence and would identify each lobbyist as well as the person or organization on whose behalf the specific lobbying services were performed. And reports filed under H.R. 766 would contain substantially all of the information required to be reported under the other lobbying disclosure proposals as well as any other information required by the Comptroller General.

take testimony by deposition, issue subpoenas, and initiate civil actions for the sole purpose of compelling compliance with a subpoena.

The administrative powers and procedures prescribed in H.R. 1180 should significantly improve the effectiveness of lobbying disclosure. We do have reservations, however, about an apparent condition attached to one of the powers prescribed by subsection 8(a)(7) of H.R. 1180.

A. Authority to Issue Rules and Regulations

Subsection 8(a)(7) authorizes the Comptroller General to prescribe only "procedural rules and regulations" considered necessary to carry out the provisions of the bill in an effective and efficient manner. (Emphasis added.) We believe the characterization "procedural" may be misleading. If the only effect of the "procedural" provision is to prohibit the Comptroller General from requiring more information or greater specificity than would be allowed under the registration and reporting sections of the bill, we certainly have no objection to the purpose of the condition. We cannot be certain, however, that the courts will adopt such a narrow interpretation of the provision.

Subsection 8(a)(7) contains the general rule-making authority for implementing the bill and the "procedural" provision could affect rule-making under other sections of the bill. If, for example, a general principle concerning the bill's applicability evolved in a series of advisory opinions (§9) and the Comptroller General sought to promulgate a regulation embodying this principle, would a court consider the regulation "procedural" and enforce the regulation, or would the court hold that the rule was substantive and that the Comptroller General exceeded his authority under subsection 8(a)(7)? If such a principle were not formally embodied in a regulation, but was nevertheless generally applied as precedent in subsequent advisory opinion determinations, would a court conclude that the principle as applied was really a de facto regulation having substantive characteristics?

In short, due to the lack of specificity in subsection 8(a)(7), we do not know what effect the "procedural" condition may have on the Comptroller General's ability to implement H.R.

1180 in an effective and efficient manner. We must recommend, therefore, that the "procedural" provision be deleted.

B. Congressional Veto

We believe section 12 of H.R. 1180 creates an unnecessary obstacle to the effective discharge of the Comptroller General's responsibilities under other provisions of H.R. 1180. Under section 12, all proposed regulations must be transmitted to the Congress before they may take effect. Either House of the Congress may veto a regulation within 90 calendar days of continuous session following transmittal of a proposed regulation.

This provision has several drawbacks. It would add another administrative step prior to implementation of the bill and prevent the expeditious modification of existing regulations. It would prevent the timely implementation of H.R. 1180 and the issuance of urgently needed regulations. The delay that would be caused by this provision, in our opinion, is unnecessary since the Comptroller General, under section 8(b) of the bill, would typically obtain and consider comments from the public and, of course the Congress, before the regulations could become effective.

Moreover, if the Comptroller General incorporated a judicial interpretation of H.R. 1180 in a proposed regulation or proposed a regulation implementing, for example, H.R. 1180's definitional section, either House of the Congress could veto the rule within the prescribed time period. This latter situation could result in the anomalous situation where H.R. 1180 had become law in the usual manner by passing the Senate and the House and receiving the President's approval, but either House could effectively frustrate the law's implementation by a single-house veto.

H.R. 766, like H.R. 1180, would designate the Comptroller General as the official responsible for administering the new lobbying disclosure law. Although H.R. 766 imposes administrative duties on the Comptroller General much in the same manner as H.R. 1180, the authority to promulgate rules and regulations under H.R. 766 is not encumbered by the "procedural limitation" found in subsection 8(a)(7) of H.R. 1180.

H.R. 557 places responsibility for administration in the Federal Election Commission and H.R. 1035 would place the responsibility in a new Federal Lobbying Disclosure Commission, an independent agency 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 whether the task warrants the establishment of a new agency for the sole purpose of disclosing lobbying activities.

VI. H.R. 1180--Enforcement (Sections 9 and 10)

Finally, we would like to discuss the enforcement provisions of H.R. 1180. The enforcement scheme envisioned by H.R. 1180 would impose primary enforcement responsibility on the Attorney General, with the Comptroller General playing a limited role.

Under section 9 of the bill, the Comptroller General, at the request of any individual or organization, must render written advisory opinions respecting the applicability of the bill's recordkeeping, registration, or reporting requirements to any specific set of facts involving the requesting individual or organization, "or other individual or organizations similarly situated." Section 9 goes on to provide, however, that an individual or organization "with respect to whom an advisory opinion is rendered" is presumptively in compliance with the law if the advisory opinion is adhered to in good faith. (Emphasis added.) And subsection 9(3) provides that any individual or organization "who has received and is aggrieved" by an advisory opinion may file a civil declaratory action against the Comptroller General in Federal court. (Emphasis added.)

We recommend that section 9 be clarified to specifically indicate whether "individuals or organizations similarly situated" who have not specifically requested an advisory opinion may (1) claim the compliance with the law presumption (§9) or (2) file a declaratory action as a party aggrieved by the advisory opinion (§9(e)).

Under section 10, the Comptroller General would be responsible for conducting investigations when he has reason

to believe that an individual or an organization violated any provision of the bill.

Based exclusively on the language of this provision, it could be argued that before the Comptroller General may order an investigation, there must be some basis--such as a complaint or apparent inconsistency in a registration statement or report--for forming a belief that the law may have been violated. In short, the Comptroller General may be prohibited from conducting investigations on his own initiative, without some evidence that a violation has occurred or is about to occur. In our opinion, such a restriction on the Comptroller General's investigative authority could prove troublesome because it could conceivably bar general compliance audits or investigations, thereby handicapping our ability to ensure that organizations are complying with the law's requirements.

Subsection 10(b) provides that if the Comptroller General determines, after any investigation, that there is reason to believe that a lobbyist has engaged in acts that constitute an apparent civil violation of the law, he shall attempt to correct the apparent civil violation through informal methods of conference and conciliation.

If these informal methods fail, or if the apparent violation seems criminal in nature, the Comptroller General would be required to refer the matter to the Attorney General. H.R. 1180 would require the Attorney General to report back periodically to the Comptroller General on the status of all matters that have been referred. 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 declaratory actions that challenged advisory opinions rendered by the Comptroller General on the registration, recordkeeping, and reporting requirements. Although H.R. 1180 would authorize the Comptroller General to seek court enforcement of subpoenas (§7(a)(6)), a matter we alluded to earlier, the bill does not authorize the Comptroller General to bring a civil enforcement action under any circumstances.

We believe the administering agency should be vested with civil enforcement authority generally, and the authority to conduct civil litigation in particular. We have serious

reservations whether the bill'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 over questions of statutory interpretation, the disposition of particular cases, and other legal and policy matters. The bill would establish no procedure for resolving these 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.

Granting the Attorney General exclusive authority to initiate civil enforcement actions also would tend to undercut several important functions specifically given to the Comptroller General in the bill. For example, enforcement through informal methods of conference and conciliation could be rendered ineffective if the Attorney General refused to file a civil enforcement action after the Comptroller General had sought and failed to enforce the law through the informal methods. 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 pursuant to subsection 9(e) of the bill. In short, the bill would place the Comptroller General in the awkward position of having his actions effectively overruled by the Attorney General.

Finally, several provisions of the bill underscore the importance of timely disclosure of lobbyists' activities. The enforcement scheme of the bill, however, may encourage dilatory tactics by lobbyists, and would create unnecessary delay and duplication of effort. The Attorney General, in all likelihood, would want to repeat many of the investigative steps already taken by the Comptroller General.

It is for these reasons that we have consistently stated that the agency responsible for administering a new lobbying disclosure law should be given all civil enforcement authority, including the authority to litigate, and that the Attorney General should retain all criminal enforcement powers. This authority 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.

Clearly, 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, section 504(a) of the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871, 959, 42 U.S.C. §6384, directs the Comptroller General to collect energy information for the Congress and empowers him, through atttorneys of his own selection, to institute a civil action to collect civil penalties or enforce subpoenas he issues under the Act. Similarly, section 12 of the Federal Energy Administration Act of 1974, Pub. L. No. 93-275, 88 Stat. 96, 106-107, 15 U.S.C. §§761, 771, authorizes the Comptroller General to institute a civil action in Federal Court to compel compliance with subpoenas issued under that Act. See also, United States v. Rumely, 345 U.S. 41, 43 (1953); McGrain v. Daugherty, 273 U.S. 135, 175 (1927); Associated Industries v. Ickes, 134 F.2d 694, 704 (2d Cir. 1943); Reade v. Ewing, 205 F.2d 630, 631 (2d Cir. 1953).

We note too that section 1016 of the Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 336-337, 31 U.S.C. §1406, authorizes the Comptroller General to bring a civil action in Federal court, again through attorneys of his own selection, to compel the release of impounded budget authority.

We believe that vesting civil enforcement powers in the Comptroller General not only will place the enforcement of the legislative branch's information-gathering power within the legislative branch where it should be, but will, in our view, eliminate potential conflict between the Comptroller General and the Attorney General. See, United States v. Harriss, 347 U.S. 612, 625-626 (1954).

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 could conceivably strengthen the civil 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 H.R. 1180, 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.

We also have serious reservations about the enforcement schemes adopted by the other lobbying disclosure proposals.

H.R. 766 suffers from substantially the same enforcement deficiencies that are present in H.R. 1180--the Comptroller General, the Federal official responsible for administering the bill, would have no meaningful civil enforcement powers. H.R. 766, like H.R. 1180, vests virtually all civil enforcement power in the Attorney General. Although H.R. 766 is silent on the point, criminal enforcement would presumably be the Attorney General's responsibility.

The responsibility for administering the disclosure provisions of H.R. 557 would be the responsibility of the Federal Election Commission. H.R. 1035 would place the same responsibility in a new Federal agency, a fact we commmented on earlier in this letter. Both bills vest all civil and criminal enforcement powers in the administering agency. As we indicated in our comments on H.R. 1180, we believe the administering agency should be given civil enforcement authority but do not believe that the agency responsible for administering a new lobbying law should be given criminal enforcement powers.

We hope this information will prove useful to you, and we are ready to provide whatever additional assistance you

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might require. At your request, we have enclosed four copies of our April 1975 report, entitled "The Federal Regulation Of Lobbying Act--Difficulties In Enforcement And Administration."

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosures