



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives

Dear Mr. Speaker:

We understand that a Rule will soon be requested for H.R. 8494, entitled the "Public Disclosure of Lobbying Act of 1978." The bill was approved on February 22, 1978, with amendments, by the House Committee on the Judiciary. H.R. 8494 designates the Comptroller General as the official with primary responsibility for administering the proposed law.

The present lobbying law, the Federal Regulation of Lobbying Act (2 U.S.C. §261 et seq.), is universally considered ineffective--from the standpoint of the law itself, its administration, and its enforcement. The Attorney General is responsible for enforcing the current lobbying law. Although the Clerk of the House and the Secretary of the Senate administer the law, these officials have no right of access to records required to be maintained, and no investigative or compliance authority. They are self-acknowledged repositories of information they cannot verify. Unlike other laws requiring the reporting of information, the present lobbying law provides no administrative means to assist either the Attorney General or the administering officials in the verification and enforcement process. In short, the Government's ability to monitor and ensure compliance with the present law depends almost exclusively on the compliance efforts of the Attorney General and his willingness to engage in time-consuming litigation. This enforcement scheme has proved itself unworkable and ineffective.

The General Accounting Office completed a review of the administration and enforcement of the present lobbying law in 1975, when we issued a report entitled, "The Federal Regulation of Lobbying Act--Difficulties in Enforcement and Administration." This report confirmed the near total ineffectiveness of the enforcement scheme described above, and the crippling and debilitating effects of that scheme on the lobbying law's administration.

The report shows, for example, that of the 1,920 lobbyists who filed in one 3-month period in 1974, over 60 percent filed late and nearly 50 percent of the filings were defective on their face. The administering officials--the Clerk of the House and the Secretary of the Senate--had no meaningful authority to require correction of these inadequacies. And the Justice Department--the agency responsible for enforcing the law--investigated only five matters over a 4-year period, 1972-1975. Enforcement was almost nonexistent.

In commenting on this situation, the Justice Department said the administering officials--not the Justice Department--were in the best position to monitor compliance. From a managerial standpoint, this view is persuasive. But from the standpoint of the present law, the administering officials have no authority to obtain access to records, to give definitive guidance on the law's requirements, to investigate potential infractions, or to require completion of the reports lobbyists filed. It is also well recognized that the Attorney General cannot litigate and resolve all of the sundry compliance problems that arise under statutes that require the accurate reporting of information.

If there is to be any meaningful enforcement, the administering officials must have some basic compliance tools, such as the authority to compel access to the records required to be maintained. Litigation by the Attorney General simply cannot be relied upon as the exclusive means of monitoring and fostering optimum compliance in the day to day administration of a disclosure statute. We believe the Attorney General's role in lobbying disclosure should be devoted primarily to those aggravated cases where the administrative and civil processes fail to work and the lobbyist apparently proceeds in deliberate violation of the law. The more routine aspects of compliance could more effectively be handled by the administering agency, as they are in the case of most disclosure statutes.

H.R. 8494 would replace the present lobbying disclosure law 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. The Comptroller General would be the official with primary responsibility for administering the

new law, and for ensuring that all lobbying information is available to and accurately summarized for the Congress and the public.

H.R. 8494, as reported from subcommittee, comprehensively addressed the enforcement weaknesses of the present law and proposed an enforcement program comparable to that of other disclosure statutes. This seemed particularly appropriate in light of the proven ineffectiveness of the present law's enforcement scheme and the likelihood that the new law will require more lobbyists to register and report more detailed information about their lobbying activities.

As reported from subcommittee, the bill authorized the Comptroller General to obtain access to lobbying records required to be maintained, to monitor compliance, to obtain answers to questions about the way lobbyists completed their reports, to do basic noncriminal investigative work, to seek judicial enforcement of the bill's access to records provisions, and to render advisory opinions. Through the use of these tools, the Comptroller General could resolve most noncriminal compliance problems without asking the Attorney General to litigate them. These authorizations would have given GAO the tools necessary to administer the new lobbying law in an effective and efficient manner. Other provisions of the bill gave the Attorney General the enforcement powers necessary to handle aggravated violations of the law.

However, the full House Committee on the Judiciary made very substantial changes in H.R. 8494. First, the Committee deleted the bill's advisory opinion section. We believe the advisory opinion mechanism useful because: (1) it would make GAO's views on the lobbying law public, and if we were thought to be wrong, lobbyists could challenge our views in court; and (2) lobbyists could challenge the administering agency's views on the lobbying law in a forum other than a Government-initiated civil or criminal prosecution. Without the advisory opinion mechanism, lobbyists could find out what the law required them to do only if the Attorney General decided to prosecute them in court.

The second and more significant of the Committee's actions on enforcement came in the form of an amendment

characterized as a "transfer" of the Comptroller General's enforcement powers to the Department of Justice. The characterization "transfer" is inaccurate. The amendment deleted from the bill all of the Comptroller General's basic compliance tools, including a provision requiring GAO to refer apparent criminal violations to the Attorney General. These compliance tools were not transferred to the Attorney General. Under the amendment, exclusive civil and criminal litigative responsibilities would be those of the Attorney General, as they were before this amendment. The amendment gave the Attorney General no additional substantive enforcement powers. In short, the enforcement scheme now provided by H.R. 8494 represents a return to that of the present lobbying law.

Prior to the House Judiciary Committee's final consideration of H.R. 8494, we advised Chairman Rodino that we were willing, able, and ready to perform the administrative and compliance functions then contemplated by the bill. We expressed our belief that the General Accounting Office, as an agency in the legislative branch of Government, was the most appropriate agency to administer and enforce a disclosure measure covering lobbying on legislative matters. We added that we considered the Comptroller General's compliance duties under H.R. 8494, as reported from the subcommittee, necessary to the effective administration of any new lobbying law. We have not changed this position.

Merely transferring to the Comptroller General the recordkeeping functions of the Secretary of the Senate and the Clerk of the House, without any compliance tools--and essentially that is all H.R. 8494 now would do--would not, in our opinion, guarantee the Congress and the public any better information about lobbying than they have now. If the Comptroller General is to be responsible for administering the new lobbying law, he should be given the tools to do an effective job. On the other hand, if the Congress favors a lobbying bill without any real enforcement authority in the administering agency, we strongly recommend that the responsibility for the recordkeeping functions remain with the Secretary of the Senate and the Clerk of the House rather than being placed with the Comptroller General.

We are sending a similar letter to the Chairman of the Rules Committee, the Chairman, House Committee on the Judiciary, and the Chairman of the Subcommittee on Administrative Law and Governmental Relations.

Sincerely yours,

(Signed) Elmer B. Staats

Comptroller General
of the United States