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U.S. General Accounting Office (GAO)

TO:

Chairman Meserve

FOR SIGNATURE OF : ** PRI ** CRC NO: 01-0674

Chairman

DESC: ROUTING:

Comments on Exposure Draft, GAO's Agency
Protocols"

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SPECIAL INSTRUCTIONS OR REMARKS:

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AUTHOR: David Walker
AFFILIATION: GAO
ADDRESSEE: Richard Meserve
SUBJECT: Concerns an exposure draft entitled "GAO's Agency Protocols"

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G A O

Accountability • Integrity • Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

December 19, 2001

The Honorable Richard A. Meserve
Nuclear Regulatory Commission

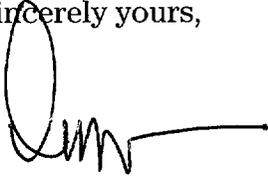
Dear Dr. Meserve:

The enclosed exposure draft, *GAO's Agency Protocols*, is intended to govern the U.S. General Accounting Office's work with executive branch agencies and to provide clearly defined and transparent policies and practices on how we will interact with agencies in the performance of our work. As you know, GAO supports the Congress in meeting its constitutional responsibilities and strives to help improve the performance and accountability of the federal government for the benefit of the American people. While GAO's primary client is the Congress, we seek to maintain constructive relationships with the executive branch, conduct our work in a professional, objective and efficient manner, and help improve government. In fact, the vast majority of GAO's recommendations are addressed to executive branch officials for action.

Agency protocols will provide an institutional framework for GAO's interaction with the federal departments and agencies (referred to collectively in this document as agencies) where we perform financial audits, program reviews, evaluations, analyses, and investigations. The protocols identify what the agencies can expect from GAO and what GAO expects of the agencies. They are intended to cover most situations that arise during the course of GAO's work and, to the extent applicable, are consistent with the protocols that govern GAO's work for the Congress. I firmly believe these protocols will help to ensure the consistency, fairness, and effectiveness of GAO's interactions with the agencies and thereby enable GAO to better serve the Congress and the American people.

Your agency's views would be helpful in finalizing these protocols, which we plan to pilot test this spring. We would appreciate receiving your comments on this exposure draft before February 1, 2002. Also, we invite you to meet with us to discuss any observations you may have. If you or staff have any questions on this matter or would like to arrange a meeting, please call Keith O. Fultz, Managing Director, Product and Process Improvement, at (202) 512-3200.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'DM Walker', with a long horizontal line extending to the right.

David M. Walker
Comptroller General
of the United States

Enclosure

Exposure Draft Agency Protocols – December 2001

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Preface

This document contains the protocols governing the U.S. General Accounting Office's (GAO) work at federal departments and agencies (subsequently referred to in this document as agencies). These protocols are intended to provide clearly defined and transparent policies and practices on how GAO carries out its work at these agencies. The protocols identify what the agencies can expect from GAO and what GAO expects of the agencies. They are intended to cover most situations that arise during the course of GAO's work (e.g., financial audits, program reviews, evaluations, analyses, and investigations). I firmly believe the protocols will help to ensure the consistency, fairness, and effectiveness of GAO's interactions with the agencies and thereby enable GAO to better serve the Congress and the American people.

To ensure the broadest practical exposure of these protocols throughout the federal government, GAO will pilot test the protocols for a period of time next calendar year. After completing the pilot, GAO will make any needed refinements based on feedback received from the Congress and agency officials. Along with all members of the GAO team, I look forward to using these protocols to help GAO better meet the needs of the Congress and to help improve the performance and improve the accountability of the federal government for the benefit of the American people.

This exposure draft was prepared under the direction of Keith O. Fultz, Managing Director, Product and Process Improvement. Questions or comments can be directed to Mr. Fultz before February 1, 2002, at (202) 512-3200, or via electronic mail at AgencyProtocols@gao.gov.

David M. Walker
Comptroller General
of the United States

The following protocols are general principles governing GAO's relationships with federal agencies when GAO conducts its work (e.g., financial audits, program reviews, evaluations, analyses, and investigations) at these agencies. They are intended to enhance GAO's working relationship with agencies by establishing a framework that will supersede prior arrangements with them while building on practices that have proved successful in the past. If there are sensitive areas requiring special handling that are not covered by the protocols, these areas will be discussed with the affected agencies to determine whether a protocol modification or a supplemental procedure is needed.

The protocols cover communication between GAO and the agencies, interactions during the course of GAO's work, and follow-up on GAO's recommendations. Furthermore, the protocols will help to ensure the consistency, fairness, and effectiveness of interactions between GAO and the agencies with which it works. GAO follows modified protocols, which are discussed in separate sections of this document, in work leading up to congressional testimony and during investigations of fraud, abuse, or misconduct conducted by its Office of Special Investigations.

These protocols are not applicable to the work GAO conducts in support of its legal opinions and decisions. GAO's General Counsel issues legal opinions in response to requests from the Congress and its committees. GAO also has statutory authority to render decisions on matters such as bid protests and the availability and use of appropriated funds. Further information about this work can be found in *Bid Protests at GAO: A Descriptive Guide* and *Principles of Federal Appropriations Law, Volumes I, II, III, IV*, which are available on GAO's Web site (www.gao.gov).

GAO's Mission

GAO examines the use of public funds; evaluates federal programs and activities; and provides analyses, options, recommendations, and other assistance to help the Congress make effective oversight, policy, and funding decisions. In this context, GAO works to continuously improve the economy, efficiency, and effectiveness of the federal government through the conduct of financial audits, program reviews, evaluations, analyses, investigations, legal opinions, and other services. GAO's activities are designed to ensure the executive branch's accountability to the Congress under the Constitution and to ensure the government's accountability to the American people.

GAO supports congressional oversight in several ways. For example it

- oversees government operations through financial and other management audits to determine whether public funds are being spent efficiently, effectively, and in accordance with applicable laws;
- evaluates federal policies and the performance of agencies and programs to determine how well they are working;
- analyzes financing for government activities;
- conducts analyses to assess needed actions and the implications of proposed actions;

- conducts investigations to assess whether illegal or improper activities are occurring; and
- provides legal opinions to determine whether agencies are in compliance with laws and regulations.

Further information about the general principles governing GAO's work for the Congress and GAO's operating plan can be found in *GAO's Congressional Protocols* and *GAO's Strategic Plan*, both of which are posted on GAO's Web site (www.gao.gov).

Sources of GAO's Work

GAO undertakes work through three primary means: (1) congressional mandates, (2) congressional requests, and (3) legal authority allowing GAO to undertake work on its own initiative that is intended to support the Congress (research and development work).

GAO's Approach

To effectively support the Congress, GAO must be professional, objective, fact-based, nonpartisan, nonideological, fair, and balanced in all its work. GAO is committed to meeting the highest levels of professional standards while conducting audits, evaluations, and investigations reflective of its core values of accountability, integrity, and reliability. GAO performs its audit and analytical work in accordance with generally accepted government auditing standards (GAGAS or the "Yellow Book" standards). GAO conducts its investigations—which involve allegations of serious wrongdoing that often involve potential violations of criminal law—or its testing of the security of agencies' systems, controls, and property in accordance with standards established by the President's Council on Integrity and Efficiency as adapted for GAO's work.

Statutory Responsibilities

Through the Budget and Accounting Act of 1921, the Congress established GAO in the legislative branch with the broad role of investigating "all matters relating to the receipt, disbursement, and application of public funds" and to "make recommendations looking to greater economy or efficiency in public expenditures." Since World War II, the Congress has clarified and expanded that original charter:

- The Government Corporation Control Act of 1945 provides GAO with the authority to audit the financial transactions of government corporations.
- The Budget and Accounting Procedures Act of 1950 assigns GAO the responsibility for establishing accounting standards for the federal government and for carrying out audits of internal controls and financial management.
- The Legislative Reorganization Act of 1970 and the Congressional Budget and Impoundment Control Act of 1974 authorize GAO to conduct program evaluations and analyses of federal activities.

- The Chief Financial Officers (CFO) Act of 1990 and the Government Management Reform Act of 1994 authorize GAO to audit agencies' financial statements and annually audit the consolidated financial statements of the United States.
- Numerous other laws complement GAO's basic audit and evaluation authorities, including the Inspector General Act of 1978, providing for GAO-established standards for the audit of federal programs and activities, and the Competition in Contracting Act of 1984, providing for GAO's review of protested federal contracting actions.

Communication Between GAO and Agencies

GAO is committed to maintaining constructive and continuing communications with agencies and major components within agencies. These communications take several forms, including periodic meetings with an agency's leadership and executives, specific communications with an agency pertaining to planned and ongoing work, and periodic meetings with the agency's Inspector General. Specifically:

- At least annually, at agencies where GAO has a significant ongoing audit presence, GAO senior executives and leaders who are responsible for managing and coordinating GAO's work will meet with agency-designated senior executives. GAO senior executives will also meet with executive-level counterparts of other agencies at an agency's request. These executive-level meetings will help build an understanding of key and emerging issues; provide an opportunity to discuss GAO's short- and long-term work plans, as well as the general working relationship between GAO and the agency, including the agency's use of GAO's work; and facilitate the discussion of issues associated with particular work.
- When initiating work at an agency, GAO will designate a primary point of contact who will respond to the agency's requests for information on the status of work and to any concerns about the work's scope or approach. In turn, GAO expects the agency to designate a point of contact who is knowledgeable about the agency's programs and organization and is able to facilitate GAO's ability to complete its work in a timely manner. Furthermore, the agency's point of contact or a designee should be able to, among other things, set up necessary meetings, identify and ensure that GAO can talk to the appropriate agency representatives, help resolve problems, coordinate agency comments on any draft product that may result from the work, and serve as the focal point for follow-up on GAO's recommendations.

In response to inquiries from agencies not involved in a particular ongoing review, GAO will provide information only about the objectives, scope, and methodology of the review, the source of the work (legislation, name of the congressional requester(s), or research and development), and the expected completion date. For congressionally requested work, further information may be shared after consultation with the congressional requester.

- At least annually, at agencies where GAO has a significant ongoing audit presence, GAO will also meet with representatives of the agency's Office of Inspector General to coordinate work between GAO and the Office of Inspector General, achieve efficiencies and minimize duplication, and identify specific issues that might benefit from a collaborative effort between GAO and the Office of Inspector General.

Notification of GAO Work

Before beginning any new engagement that requires GAO to seek information from the agency, GAO generally notifies an agency of the work to be undertaken. However, when GAO conducts investigations it does not notify agencies that it is conducting work because to do so might jeopardize the investigations. GAO's modified protocols for investigations are discussed in detail in a separate section of this document. To the extent practical, the notice to an agency

- identifies the source of the work (legislation, name of the congressional requester(s), or research and development);
- identifies the GAO point of contact (name, telephone number, and electronic mail address), the team performing the work, and a unique identification number (i.e., engagement code);
- describes the objectives or key questions of the work;
- indicates where the work will be performed, when possible;
- indicates when the work is expected to start; and
- identifies a time frame for holding the initial meeting between GAO and the agency (i.e., entrance conference).

If the objectives of the work to be performed change significantly or if the location of the work needs to be modified, GAO will notify agency officials of the change.

GAO will generally provide written notification to the agencies involved in the work. In some instances, GAO may ask agency liaisons to distribute the written notification to their major components. In time-sensitive situations, GAO may notify an agency of work by telephone or electronic mail and then follow up with a written notification letter, if requested by the agency.

For certain types of work to be performed at an agency, GAO may provide only oral notification. Such work includes (1) congressional requests for testimony based on new work, (2) work that is to be completed within a short time frame, and (3) requests for information on the implementation status of recommendations made in issued reports.

Entrance Conference

An entrance conference is a meeting that GAO holds with agency officials at the start of an engagement. GAO anticipates that an agency will arrange for its personnel to be available for an entrance conference no later than 14 calendar days after receiving a request for a meeting. At the entrance conference, GAO will discuss the (1) source of the work; (2) roles and responsibilities of the GAO staff; (3) need for data and access to agency officials; (4) key objectives (research questions); (5) sites where GAO expects to conduct its work, when possible; and (6) need for any precautions, such as special clearances. During the entrance conference, GAO will also ask agency officials to designate a key contact to assist, as applicable, in obtaining temporary office space, fax and telephone service, and telecommunications lines needed for GAO to complete its work at the agency. In addition, GAO staff will request that agency officials identify knowledgeable agency personnel and provide GAO with potential sources of information related to the work's objectives, such as available studies or electronic files.

The attendance of key agency officials—those responsible for work related to GAO's key objectives—at the entrance conference enhances the opportunity for a substantive exchange of information. If the review includes work at separate agency field locations, or if requested by the agency, GAO will consider holding additional entrance conferences when work is begun at field locations.

In certain cases, GAO conducts work involving reviews at more than one agency. If all of the agencies under review and GAO agree, one entrance conference may be held for all of the parties involved at a mutually agreed-upon location. For a governmentwide review, an entrance conference is generally held with the executive branch agency designated by the agencies involved in the review to speak for them. Such a designation will be made before the entrance conference is scheduled but may change during the course of GAO's work. If the designation changes, GAO will notify the agencies under review.

Closeout Meeting at Field Locations

After conducting work at a field location, GAO staff may hold a closeout meeting with agency officials who are responsible for the operations of the field location and have oversight for issues related to the work's objectives. The purpose of the closeout meeting is to ensure that GAO staff have been provided with a full understanding of the information they have gathered and its relevance to the engagement's objectives. GAO staff may discuss the implications of the information gathered. Such discussions may identify additional relevant information and thus lead to further data gathering at the location. In addition, as appropriate, the closeout meeting may cover the extent to which documents were made available and access to relevant field officials was provided. GAO's conclusions or recommendations are not discussed at the closeout meeting.

Exit Conference With Agency

GAO holds an exit conference with an agency after completing its data collection and analysis. The purpose of the exit conference is to consider the completeness and accuracy of the information that has been gathered and to discuss the implications of that information. GAO officials responsible for the completion of the engagement will participate in the meeting. Agency officials who have oversight of the issues related to the engagement's objectives are also expected to attend the meeting. Written material, if provided, is generally limited to a compilation of key information collected (a statement of facts). Preliminary conclusions and potential recommendations that flow from the factual information collected may be discussed but are not provided in writing.

Agency Comments

As required by generally accepted government auditing standards, GAO provides responsible agency officials and other directly affected parties with an opportunity to review and provide comments on a draft report before it is published. However, GAO will not seek comments from an agency or affected party when (1) disclosure of an investigation's results could pose risks to individuals and their confidentiality or (2) premature disclosure of information could compromise the results of the work. GAO's modified investigation protocols are discussed in a separate section of this document.

The amount of time available for the agency to comment is determined on a facts and circumstances basis. Although GAO may give an agency up to 30 calendar days to comment, it may decide to obtain comments in less time, depending on the timing needs of the requester and the complexity of the issues involved. GAO reserves the right to release the report without considering agency comments if the comments are not received within the time allotted or if the contents of the draft report are prematurely released. GAO will not usually solicit agency comments if a report summarizes information from a prior GAO report. Generally, testimony statements are not provided for comment. As previously noted, GAO follows modified protocols for testimonies, which are discussed separately later in this document.

GAO prefers that agencies submit written comments but will accept comments provided orally or in an electronic mail message. GAO expects an agency to provide (1) a single position on GAO's findings, conclusions, and recommendations—including the consolidation of disparate agency views if necessary—and (2) the rationale for any disagreement. When an agency's designated senior official provides oral comments, GAO will summarize these comments and give the designated official an opportunity to respond to GAO's characterization of the agency's position. The GAO senior executive official responsible for the completion of the engagement, along with the staff that performed the work, will participate in this meeting. In addition, for governmentwide work, GAO will generally request that comments be provided by the executive branch agency designated—at the notification phase—to speak for the agencies involved. Consistent with GAO's Congressional Protocols, the congressional requester will be notified before a draft report is provided to the agency for comment and will be offered a

copy of the draft for informational purposes. Furthermore, under 31 U.S.C. §718(b)(2), the Senate Governmental Affairs and House Government Reform committees may request copies of any draft report generated under GAO's legislative authority (research and development work) when the draft report is sent to the agency for comment. GAO will advise these committees when such a draft is sent to the agency for comment.

Procedures for Soliciting Agency Comments

GAO does not have classification authority for its products. Therefore, before soliciting agency comments on those products that contain national security, proprietary, or sensitive information, GAO will request that the agency perform a classification review and that the review's results be communicated in writing to GAO within 30 calendar days of the request. After receiving the written notification of the classification, GAO will provide the draft product to the agency for comments.

GAO transmits most draft reports for comment to agencies electronically in an agreed-upon format that protects the files from alteration. Classified, proprietary, or otherwise sensitive draft reports are transmitted through other means. A transmittal letter accompanies each draft report to inform recipients of GAO's request for written or oral comments and of the date when the comments are due. The transmittal letter also states that the draft report is not final, is therefore subject to change, and must be safeguarded to prevent transmittal to unauthorized personnel, alteration, or premature release.

GAO will take extra precautions in obtaining agency comments when it believes the premature disclosure of a draft report's findings and recommendations would affect a complete understanding of its work. For example, GAO may decide not to transmit a draft report electronically and instead provide limited printed copies of the draft. GAO may request that agency officials review the draft report in the presence of GAO staff and that they provide the agency's consolidated comments at that time. In such cases, the draft report will be available for review only at a meeting with GAO staff. Although agency officials may take notes as they review the draft, at the conclusion of the meeting, all copies of the draft will be returned to GAO. In addition, there may be other instances when GAO determines that based on the particular sensitivity of a draft report's information or recommendations, more restrictive comment procedures are required.

Disposition of Agency Comments

After receiving agency comments, GAO considers their substance, revises the draft report as appropriate, and indicates in the issued report whether the agency agreed or disagreed with GAO's findings, conclusions, and recommendations. If the agency disagrees with GAO's findings, conclusions, and recommendations, GAO will accept further explanations from agency officials in support of the agency's position. However, the documented evidence supporting this explanation must be provided simultaneously and will be verified if it materially affects the content of the report. When the agency disagrees with a finding, conclusion, or recommendation, GAO identifies the disagreement and states its own position in the issued report. An agency's written

comments are typically printed as an appendix to the issued report. Electronic messages describing an agency's comments will not be printed in the issued report.

On occasion, the congressional client who requested the work may ask to see the agency's comments before GAO's final report is issued. Copies of written comments on a draft GAO report may be shared with the congressional client if (1) the client specifically asks GAO for the comments, (2) the comments are official, and (3) GAO has evaluated the comments and developed its position on them. Comments will not be shared with anyone else, including congressional staff not associated with the request, the media, or other external parties, until the report is issued.

Follow-up on GAO Recommendations

GAO's recommendations are intended to improve the economy, efficiency, and effectiveness of an agency's operations. GAO is responsible for monitoring the agency's progress in implementing these recommendations. In addition, GAO updates the status of recommendations periodically and maintains a database of open recommendations that is available to the public on its Web site (www.gao.gov). The database describes agencies' actions and plans for implementing any open recommendations.

Agency personnel serve as the primary source of information on the status of recommendations. When GAO issues a report containing recommendations to the head of an agency, 31 U.S.C. §720 requires that the agency head submit a written statement of the actions taken by the agency on GAO's recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Reform not later than 60 days after the date of the report. The agency's statement of action shall also be submitted to the House and Senate Committees on Appropriations with the first request for appropriations that is submitted more than 60 days after the date of the report.

GAO requests that the agency also provide it with a copy of the agency's statement to serve as preliminary information on the status of open recommendations. GAO will follow up by discussing the status of recommendations with cognizant agency officials; obtaining copies of agency documents supporting the recommendations' implementation; and performing sufficient work to verify that the recommended actions are being taken and, to the extent possible, that the desired results are being achieved. In addition, GAO provides an annual report on the status of open recommendations to the House and Senate Committees on Appropriations as well as to the Chairs and Ranking Members of all Senate and House committees and to the Director of the Office of Management and Budget (OMB). GAO further provides applicable federal departments and agencies with copies so that they can respond to inquiries about GAO's open recommendations during their appropriations and oversight hearings.

GAO closes its recommendations after determining that (1) they have been implemented, (2) actions have been taken that in substance meet their intent, or (3) circumstances have changed and the recommendations are no longer relevant.

Testimony

Congressional committee or subcommittee Chairs frequently request that GAO prepare testimony statements and that GAO witnesses appear at hearings. GAO is required to follow the rules of the Senate and the House and relevant committees or subcommittees in connection with any such testimonies. Accordingly, GAO's agency protocols are modified for these requirements. For example, because most hearing appearances are requested and statements are delivered within short time frames or they are based on ongoing or already completed work, GAO generally does not hold an entrance conference with agency officials. When agency officials need to be contacted for information that was not previously obtained or was not part of a previous review, GAO will notify the agency's point of contact of the need for access to the information.

For testimony based on new work, regardless of whether it is a preliminary or final product, GAO will obtain the views of agency officials on the information collected from the agency to (1) validate the accuracy of the data gathered and (2) discuss the implications that flow from the data gathered. The agency's views are generally obtained through a meeting with the official designated to speak for the agency or through other means, such as a telephone conference call. The views of the agency official will be considered in the development of the testimony statement. If the agency is unable to schedule a meeting to provide its views within the time frame specified by GAO, the testimony will reflect that GAO was unable to obtain the agency's views. Generally, when the testimony statement is based on previously reported work, GAO will not seek agency views. Additionally, in instances in which GAO conducts investigations, it does not obtain testimony comments because that could jeopardize future proceedings. GAO's modified investigations protocols are discussed in greater detail in a separate section of this document. GAO will distribute its written testimony in accordance with the rules of the Senate or House, including the applicable committees' rules.

Disposition of Work

GAO prefers using published products to communicate the final results of its work because they (1) communicate the results consistently to all interested parties, (2) make the results available to the public, and (3) facilitate follow-up to determine whether appropriate corrective measures have been taken when needed. However, an oral briefing may be used when the work does not result in recommendations or when information is needed urgently. GAO will notify an agency when its work is terminated without a written product.

GAO's goal is to post written products on GAO's Web site (www.gao.gov) within 24 hours of issuance or release. All congressionally requested products will have a targeted issue date that is determined by the Members in consultation with GAO. However, congressional requesters may ask GAO to restrict the release of a product for up to 30 calendar days after the issuance date. GAO reserves the right to release any product that has been issued but is under restriction if the product's contents are made public prior to the expiration of the restriction date. GAO products that contain classified or restricted

data are not posted on the Web site. Classified products are distributed only to those with the appropriate security clearances and a need to know. Restricted versions of products that contain information such as proprietary data are distributed only to recipients who are authorized by statute or regulation and have a need to know.

Office of Special Investigations

The Office of Special Investigations (OSI) is a specialized unit within GAO that is staffed by criminal investigators. OSI's mission is to improve the performance and ensure the accountability of government by investigating allegations of serious wrongdoing that often involve potential violations of criminal law. OSI investigations typically focus on allegations of corruption, fraud, misconduct, contract and procurement improprieties, conflicts of interest, and ethics violations in federal programs or activities. OSI also engages in proactive operations that test the security of agencies' systems, controls, and property. These operations are coordinated with appropriate authorities, such as the Department of Justice. In addition, OSI's work involves law-enforcement-related issues or programs. OSI also utilizes GAO's FraudNET, an automated system that affords the public an opportunity to report allegations of fraud, waste, abuse, and mismanagement of federal funds. Typically, OSI refers this information to the appropriate agency's Office of Inspector General or another law enforcement agency for action. GAO expects to receive a report from the agency on the results of the action.

OSI conducts its investigations and other work in accordance with the standards established by the President's Council on Integrity and Efficiency as adapted for GAO's work. In accordance with these standards, all OSI work is conducted by personnel who collectively possess the required knowledge, skills, and abilities to perform it and who exercise due professional care (e.g., thoroughness, appropriate use of investigative techniques, impartiality, objectivity, protection of individual rights, and timeliness) in the performance of their work. OSI seeks evidence of wrongdoing either in conjunction with or independently of audits and evaluations. It focuses on physical, testimonial, documentary, and analytical evidence that is relevant, material, and admissible in criminal and civil proceedings. To ensure that its work will be admissible in subsequent judicial proceedings, OSI performs it in accordance with the requirements of the U.S. Constitution, statutes, and court decisions applicable to obtaining evidence in criminal and civil cases.

Like GAO's other units, OSI expects that an agency will promptly comply with requests for access to its records and to agency personnel directly involved with the matter under investigation. Furthermore, there should be no interference with an investigator's ability to obtain relevant information concerning an investigative matter.

Investigations by their very nature do not support the use of entrance or exit conferences. Nor do the standards of the President's Council on Integrity and Efficiency require these conferences. Revealing information at the start of an investigation may lead to the destruction or concealment of evidence, thus jeopardizing the investigation. Likewise, revealing the results of an investigation at an exit conference could jeopardize future

administrative or judicial proceedings. Moreover, obtaining comments after an investigation has been completed could jeopardize future proceedings. However, on occasion, OSI works jointly with other GAO units or independently on compliance or evaluation issues. In those cases, the provisions of GAO's standard agency protocols are applicable.

Access to Agency Information

The Congress relies on GAO to examine virtually every federal program, activity, and policy as well as institutions that rely on federal funds. Generally accepted government auditing standards make GAO analysts and financial auditors responsible for planning, conducting, and reporting their work in a timely manner without internal or external impairments to the work. These standards require that analysts and financial auditors promptly obtain sufficient, competent, and relevant evidence to afford a reasonable basis for any related findings and conclusions. Therefore, prompt access to all records and other information associated with these activities is needed for the effective and efficient performance of GAO's work. For the most part, agencies have provided GAO with requested information within agreed-upon time frames. The following sections describe the steps GAO is authorized to follow if it believes it is experiencing unreasonable delays in obtaining the requested access.

The Congress has given GAO broad statutory rights of access to a wide range of federal agency documents. The basic access authority is established in 31 U.S.C. §716(a), which requires each agency to give GAO "information the Comptroller General requires about the duties, powers, activities, organization, and financial transactions of the agency." GAO is also authorized to inspect an agency's records to secure the required information. This authority includes access to inter- and intra-agency memorandums and electronic files as well as sensitive information, including business-confidential or proprietary data. While the Freedom of Information Act, the Trade Secrets Act, and other statutes may generally protect certain categories of information from disclosure by an agency to the public, this protection does not justify withholding the information from GAO. GAO has a statutory right to access predecisional and deliberative documents unless the President or the Director of OMB certifies that certain standards are met under 31 U.S.C. §716(d)(1)(C), as added by the General Accounting Office Act of 1980. Aside from the general access statute, various forms of special legislation govern GAO's access to certain types of agency records and information, such as tax, social security, financial institution, and employee benefit plan records and information. In addition, under certain circumstances, GAO has the authority to access information from other entities receiving federal funds, such as the District of Columbia, state and local governments, and private sector contractors.

Handling and Disclosing Information

GAO secures all information obtained during the course of its work. When GAO needs access to classified, proprietary, or otherwise sensitive information, it will comply with all applicable statutory requirements, including obtaining the necessary security and other clearances for assigned GAO staff. Under 31 U.S.C. §716(e), GAO is obligated to give the information the same level of confidentiality and protection required of the agency. Because of its statutory access authority, GAO generally does not sign a nondisclosure or other agreement as a condition of gaining access to sensitive or proprietary data to which it is entitled.

While GAO is not subject to the Freedom of Information Act, its disclosure policy follows the spirit of the act consistent with GAO's duties and responsibilities to the Congress. It is GAO's policy not to provide records to the public that originated in another agency or a nonfederal organization. Instead, GAO refers those who request such records to the originating organization. Further information on the public availability of the documents and data that form GAO's workpapers can be found in 4 C.F.R. part 81.

GAO will grant congressional Members, upon their written request, access to its workpapers at the GAO site or will provide copies of selected workpapers only after a product has been made publicly available. This access is subject to legal and privacy considerations, such as those concerning taxpayer return information, protected banking information, grand jury information, and credit card account information listed in travel vouchers.

Obtaining Access to Information

GAO's work involves different collection approaches to meet the evidence requirements of the generally accepted government auditing standards. Such evidence falls into four categories:

- physical evidence (e.g., the results of direct inspection or observation);
- documentary evidence (e.g., information created by and for an agency, such as letters, memorandums, contracts, management and accounting records, and other documents in various formats, including electronic databases);
- testimonial evidence (e.g., the results of face-to-face or written inquiries, interviews, and questionnaires); and
- analytical evidence (developed by or for GAO through computations, data comparisons, and other analyses).

GAO expects that an agency will promptly comply with its requests for access to the agency's records so that it can obtain all categories of needed evidence. Such access generally includes the ability to make and retain copies of the evidence. GAO also expects that it will receive full and timely access to agency officials who have stewardship over the requested records; to agency employees who are responsible for the

programs, issues, events, operations, and other factors covered by such records; and contractor personnel supporting such programs, issues, events, and operations. In addition, GAO expects that it will have access to the agency's facilities and other relevant locations. GAO will endeavor to conduct work related to requests for information with minimal interruption to the agency's operations.

Resolving Disputes Over Access

Timely access to information is in the best interests of both GAO and the agencies. GAO needs to efficiently use the time available to complete its work to minimize the impact on the agency being reviewed and to meet the congressional requesters' time frames. Therefore, GAO expects that an agency's leadership and internal procedures will recognize the importance of and support prompt responses to GAO's requests for information. For the most part, agencies have provided GAO with requested information within agreed-upon time frames. However, if GAO believes it is experiencing unreasonable delays in obtaining requested access, GAO officials will contact the agency's leadership for resolution and notify the congressional requester of the work affected, as appropriate. Consistent with GAO's reporting standards, when there is difficulty in obtaining timely access to information, GAO will identify these limitations in its product. In addition, unreasonable delays in gaining access to an agency's information can reduce the time available for the agency to provide its views or comments on GAO's work.

To ensure GAO's access to information maintained by federal agencies, the Congress provided in 31 U.S.C. §716(b) for enforcement actions to compel the production of a record. First, the Comptroller General sends a written request to the agency head for the record that has not been made available to GAO within a reasonable time after an initial request. The agency head then has 20 calendar days to respond, either by providing the record for inspection or by explaining why it is being withheld. If the agency head does not provide the record, the Comptroller General may file a report describing the access issues with the President, the Director of OMB, the Attorney General, the agency head, and the Congress. If the agency head does not provide the record within 20 calendar days of the report's filing, the statute authorizes the Comptroller General to bring a civil action in District Court to enforce GAO's access rights. If the Comptroller General is successful in this action, the court will issue an order directing the agency head to produce the record.

Extremely limited exceptions to the authority are established in 31 U.S.C. §716(b) for a civil enforcement action to compel access to a record. The most notable exception is if the President or the Director of OMB certifies that (1) the record could be withheld under either of two Freedom of Information Act exemptions in 5 U.S.C. §552(b)(5) (deliberative process) and (b)(7) (law enforcement records) and (2) disclosure could reasonably be expected to impair substantially the operations of the government—a requirement that, as the legislative history of section 716 makes clear, presents a very high standard for an agency to meet. As previously noted, the fact that materials may be exempt from public disclosure does not justify withholding them from GAO. Moreover,

GAO's statutory right of access to an agency's records is not diminished by the certification provisions of the legislation. Rather, the certification simply allows the President or the Director of OMB to preclude the Comptroller General from seeking a judicial remedy in certain limited situations. In the event there is a certification, generally accepted government auditing standards require that the limitations to GAO's access to records be identified in the product and the audit findings be adjusted accordingly.

Press Policy

GAO does not initiate press conferences, but senior GAO officials may participate in press conferences held by Members of Congress, if requested. Although GAO does not issue press releases about products, it does advise the media, agency personnel, and the public of the release of GAO products via the World Wide Web and other venues. In response to inquiries from the media about ongoing work, GAO will provide information only about the objectives, scope, and methodology of a review; the source of the work (legislation, name of congressional requester(s), or research and development); and the expected completion date. GAO will refer inquiries for any additional information to the congressional requesters. As a professional courtesy, GAO will inform the requesters of substantive media inquiries during an ongoing review. As appropriate, such courtesy will be extended by GAO staff conducting the work to the agency-designated point of contact for the work. Once a product is publicly released, GAO staff with expertise in the subject matter will answer questions from the media when asked. *A Reporter's Guide to GAO* is available on GAO's Web site (www.gao.gov).

On-camera interviews for television news programs are done only on request and only when GAO deems them appropriate for public understanding of the facts, findings, conclusions, and recommendations of GAO's products. GAO's policy is that senior executives with the broadest knowledge of a completed engagement do such interviews. Before GAO agrees to do an on-camera interview, GAO will advise requesters of the media source and the expected date and time. If asked to participate in press briefings sponsored by requesters, GAO will provide support if the press briefing is held in Washington, D.C. In such instances, GAO will provide knowledgeable staff with the understanding that they are present only to answer questions about the specifics of released GAO products.

United States General Accounting Office

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