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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUN 23 1978

Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for our views on H.R. 12171, the "Federal Accounting and Auditing Act of 1978."

Section 2 would give the Comptroller General authority to audit unvouchered expenditures (sometimes known as "confidential funds"), which are, by law, accounted for solely on the approval of the President or designated agency head. The purpose of this certification authority is to preserve the essential confidentiality of certain expenditures made in the conduct of national security and foreign affairs, intelligence gathering, and law enforcement activities.

In conjunction with section 2, section 3 would (1) repeal the provision in the Budget and Accounting Act of 1921 that limits the Comptroller General's access to records of expenditures of transactions with foreign governments that are solely accounted for by the President or Secretary of State, (2) give the Comptroller General authority to subpoena the records and documents of Federal agencies and contractors, and (3) authorize the Comptroller General to bring suit in Federal court to enforce requests and subpoenas for such information.

The apparent intent of these sections is to provide a means of assuring that such confidential funds are not mismanaged. However, in our view, sections 2 and 3 would render meaningless the existing authority of the President and certain agency heads to account for funds solely on their respective certifications. In particular, we strongly oppose any

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provision that would require disclosure by the President of information that he is constitutionally obligated to protect.

Secondly, since Congress has seen fit to permit certain expenditures to be accounted for solely on the approval, authorization, or certification of the particular department or agency, we do not believe that such expenditures should be subject to general legislation giving the Comptroller General authority to audit such expenditures and unlimited subpoena power to require disclosure of such records. The question of whether unvouchered expenditures should be subject to GAO audit and no longer solely accountable by the agency head must be examined in the context of the enabling legislation for, and mission of, each such agency and, in particular, the deliberations and policy conclusions that were arrived at in the development of such authorities.

In this connection, we point out that the Department of Justice has reservations about the constitutionality of certain aspects of both sections 2 and 3. We also urge that the views of the Central Intelligence Agency and the Department of Defense on the impact of these provisions be seriously considered.

Section 4 would mandate a process for selection of candidates for appointment by the President to the Comptroller General position--that is, that the President appoint the Comptroller General from a list of candidates recommended by a special congressional commission composed of the Speaker of the House, the President pro tempore of the Senate, the majority and minority leaders of both Houses, the chairperson and ranking minority members of this committee and its Senate counterpart. This section would also authorize the Comptroller General to appoint the Deputy Comptroller General, who is currently appointed by the President. We agree with the Department of Justice on the constitutional objections raised by the proposed restriction on the President's appointment power. With regard to authorizing the Comptroller General to appoint the Deputy, we are aware of no compelling reason or justification to alter the current manner of appointment to this position.

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For the reasons set forth above, we are unable to recommend favorable consideration of H.R. 12171.

Sincerely,

James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

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OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO
Mr. Harris
~~Mr. Lordan~~
~~Mr. Barie~~
~~Mr. Stubbing~~
~~Mr. Donahue~~
Mr. Mullinix
Ms. Bradshaw
Mr. Dolan, Justice
[redacted] CIA

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM ~~Robert Carlstrom~~ DATE ~~6/23/78~~

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REMARKS

For your information.

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