



G A O

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**Office of the Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

March 18, 2010

The Honorable Dianne Feinstein
Chairman
The Honorable Christopher S. Bond
Vice Chairman
Select Committee on Intelligence
United States Senate

The Honorable Silvestre Reyes
Chairman
The Honorable Peter Hoekstra
Ranking Republican
Permanent Select Committee on Intelligence
House of Representatives

In recent months, both the Senate and the House of Representatives have passed versions of the Intelligence Authorization Act for Fiscal Year 2010, S. 1494 and H.R. 2701, which include provisions (section 335) reaffirming the authority of the U.S. Government Accountability Office (GAO) to conduct audits and investigations involving the Intelligence Community (IC). GAO welcomes these provisions as an endorsement of its longstanding efforts to support Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people.

On March 15, 2010, Peter R. Orszag, the Director of the Office of Management and Budget (OMB), sent a letter to you presenting the Administration's views on the Senate and House bills. In that letter, OMB warned that the President's senior advisors would recommend that the President veto the bill if it included any of several provisions, including the sections concerning GAO. I write to clarify what I view as several misstatements of law and fact within OMB's letter as it relates to GAO.

OMB's letter posits that the passage of the GAO provisions would result in sweeping changes to the current statutory framework and provide GAO with authority it currently lacks to conduct reviews of intelligence activities. GAO strongly disagrees. GAO has well-established statutory authority to evaluate agency programs and investigate matters related to the receipt, disbursement, and use of public money under 31 U.S.C. §§ 712 and 717 and to access agency records under 31 U.S.C. § 716. These statutes and others provide GAO with the required authority to perform audits

and evaluations of IC activities. Within GAO's authority, specific safeguards exist to reflect the particularly sensitive nature of certain intelligence activities and programs.¹ The proposed legislative provisions in essence reaffirm GAO's existing authority in order to address the lack of cooperation GAO has received from certain elements of the IC in carrying out work at the specific request of the intelligence committees, and other committees of jurisdiction as defined by the rules of the Senate and House.

GAO acknowledges and does not seek to displace the special relationship between the congressional intelligence committees and the IC. However, GAO does not agree with the Administration's view, originating in a 1988 opinion of the Department of Justice's Office of Legal Counsel, that the creation of the congressional intelligence oversight structure (codified at 50 U.S.C. § 413) implicitly exempted reviews of intelligence activities from the scope of GAO's existing audit authority.² Neither the language of section 413 nor its legislative history provides support for this position. Moreover, the executive branch has expansively applied the 1988 opinion as precluding GAO reviews of matters that extend well beyond traditional intelligence activities. This has resulted in GAO frequently being unable to obtain the access or cooperation necessary to provide useful information to the Congress on matters involving the IC.

In the post-9/11 context, and in light of the Intelligence Reform and Terrorism Prevention Act of 2004, oversight of an increasingly unified and active IC has taken on new prominence. GAO has received intelligence committee requests to examine issues primarily involving the management and administration of the IC in recent years, but has faced resistance from the IC that has prevented some of that work from being completed. In addition, GAO has continued to undertake work involving elements of the IC when requested by other committees with jurisdiction over those elements, or for cross-jurisdictional matters.³ Even where the matters under evaluation are well outside the scope of traditional intelligence activities—such as programs involving information sharing and human capital management—GAO has encountered resistance. This situation has greatly impeded GAO's work for the intelligence committees and also jeopardizes some of GAO's work for other committees of jurisdiction, including Armed Services, Appropriations, Judiciary, and Foreign Relations, among others.

In closing, I would like to reiterate that while intelligence oversight poses unique challenges, GAO can play an important role in such oversight, and that role is well

¹ These include narrow statutory limitations on our financial audits of certain "unvouchered" accounts, 31 U.S.C. § 3524, and on our authority to file a civil action to compel access to certain foreign intelligence and counterintelligence information, 31 U.S.C. § 716(d)(1)(A).

² 12 Op. Off. Legal Counsel 171 (1988).

³ While OMB claims in its letter that the Senate and House bills would undermine the oversight relationship between the IC and the intelligence committees by allowing other committees with "arguable" jurisdiction to request GAO reviews of intelligence programs or activities, the proposed provisions are actually consistent with current law. Under 31 U.S.C. § 717(b)(3), GAO is required to undertake reviews for committees with jurisdiction over a program or activity, as determined based on well-established Senate and House rules.

within our authority and capability. Should either the Senate or House version of the GAO provision at issue become law, I believe that the reaffirmation of GAO's authorities would help better position GAO to do the type of work that has been requested of us in the past and to respond to the interests of Congress in this realm in the future. I would not expect our involvement to create any significant change to the special relationship between the intelligence committees and the IC. Rather, I believe that GAO's work, through an enhanced cooperative relationship with the IC, would prove beneficial both to the conduct of oversight by the intelligence committees and to the efficiency and effectiveness of IC operations.

Thank you for your continued support of GAO and for your interest in these important matters.

A handwritten signature in black ink, appearing to read "Gene L. Dodaro". The signature is fluid and cursive, with a large initial "G" and "D".

Gene L. Dodaro
Acting Comptroller General
of the United States