

GOVERNMENT ACCOUNTABILITY OFFICE ACT OF 2008

MAY 22, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5683]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5683) to make certain reforms with respect to the Government Accountability Office, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Government Accountability Office Act of 2008”.

(b) **REFERENCES.**—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 31, United States Code.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; references; table of contents.
Sec. 2. Provisions relating to future annual pay adjustments.
Sec. 3. Pay adjustment relating to certain previous years.
Sec. 4. Lump-sum payment for certain performance-based compensation.
Sec. 5. Inspector General.
Sec. 6. Administering oaths.
Sec. 7. Comptroller General reports.
Sec. 8. Reimbursement of audit costs.
Sec. 9. Financial disclosure requirements.
Sec. 10. Highest basic pay rate.
Sec. 11. Additional authorities.
Sec. 12. Basic pay for retirement.

**SEC. 2. PROVISIONS RELATING TO FUTURE ANNUAL PAY ADJUSTMENTS.**

(a) **IN GENERAL.**—Section 732 is amended by adding at the end the following:

“(j)(1) For purposes of this subsection—

“(A) the term ‘pay increase’, as used with respect to an officer or employee in connection with a year, means the total increase in the rate of basic pay (expressed as a percentage) of such officer or employee, taking effect under section 731(b) and subsection (c)(3) in such year;

“(B) the term ‘required minimum percentage’, as used with respect to an officer or employee in connection with a year, means the percentage equal to the total increase in rates of basic pay (expressed as a percentage) taking effect under sections 5303 and 5304–5304a of title 5 in such year with respect to General Schedule positions within the pay locality (as defined by section 5302(5) of title 5) in which the position of such officer or employee is located;

“(C) the term ‘covered officer or employee’, as used with respect to a pay increase, means any individual—

“(i) who is an officer or employee of the Government Accountability Office, other than an officer or employee described in subparagraph (A), (B), or (C) of section 4(c)(1) of the Government Accountability Office Act of 2008, determined as of the effective date of such pay increase; and

“(ii) whose performance is at least at a satisfactory level, as determined by the Comptroller General under the provisions of subsection (c)(3) for purposes of the adjustment taking effect under such provisions in such year; and

“(D) the term ‘nonpermanent merit pay’ means any amount payable under section 731(b) which does not constitute basic pay.

“(2)(A) Notwithstanding any other provision of this chapter, if (disregarding this subsection) the pay increase that would otherwise take effect with respect to a covered officer or employee in a year would be less than the required minimum percentage for such officer or employee in such year, the Comptroller General shall provide for a further increase in the rate of basic pay of such officer or employee.

“(B) The further increase under this subsection—

“(i) shall be equal to the amount necessary to make up for the shortfall described in subparagraph (A); and

“(ii) shall take effect as of the same date as the pay increase otherwise taking effect in such year.

“(C) Nothing in this paragraph shall be considered to permit or require that a rate of basic pay be increased to an amount inconsistent with the limitation set forth in subsection (c)(2).

“(D) If (disregarding this subsection) the covered officer or employee would also have received any nonpermanent merit pay in such year, such nonpermanent merit pay shall be decreased by an amount equal to the portion of such officer’s or employee’s basic pay for such year which is attributable to the further increase described in subparagraph (A) (as determined by the Comptroller General), but to not less than zero.

“(3) Notwithstanding any other provision of this chapter, the effective date of any pay increase (within the meaning of paragraph (1)(A)) taking effect with respect to a covered officer or employee in any year shall be the same as the effective date of any adjustment taking effect under section 5303 of title 5 with respect to statutory pay systems (as defined by section 5302(1) of title 5) in such year.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any pay increase (as defined by such amendment) taking effect on or after the date of the enactment of this Act.

### SEC. 3. PAY ADJUSTMENT RELATING TO CERTAIN PREVIOUS YEARS.

(a) APPLICABILITY.—This section applies in the case of any individual who, as of the date of the enactment of this Act, is an officer or employee of the Government Accountability Office, excluding—

(1) an officer or employee described in subparagraph (A), (B), or (C) of section 4(c)(1); and

(2) an officer or employee who received both a 2.6 percent pay increase in January 2006 and a 2.4 percent pay increase in February 2007.

(b) PAY INCREASE DEFINED.—For purposes of this section, the term “pay increase”, as used with respect to an officer or employee in connection with a year, means the total increase in the rate of basic pay (expressed as a percentage) of such officer or employee, taking effect under sections 731(b) and 732(c)(3) of title 31, United States Code, in such year.

(c) PROSPECTIVE EFFECT.—Effective with respect to pay for service performed in any pay period beginning after the end of the 3-month period beginning on the date of the enactment of this Act (or such earlier date as the Comptroller General may specify), the rate of basic pay for each individual to whom this section applies shall be determined as if such individual had received both a 2.6 percent pay increase for 2006 and a 2.4 percent pay increase for 2007, subject to subsection (e).

(d) LUMP-SUM PAYMENT.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General shall, subject to the availability of appropriations, pay to each individual to whom this section applies a lump-sum payment. Subject to subsection (e), such lump-sum payment shall be equal to—

(1) the total amount of basic pay that would have been paid to the individual, for service performed during the period beginning on the effective date of the pay increase for 2006 and ending on the day before the effective date of the pay adjustment under subsection (c) (or, if earlier, the date on which the individual retires or otherwise ceases to be employed by the Government Accountability Office), if such individual had received both a 2.6 percent pay increase for 2006 and a 2.4 percent pay increase for 2007, minus

(2) the total amount of basic pay that was in fact paid to the individual for service performed during the period described in paragraph (1).

Eligibility for a lump-sum payment under this subsection shall be determined solely on the basis of whether an individual satisfies the requirements of subsection (a) (to be considered an individual to whom this section applies), and without regard to such individual’s employment status as of any date following the date of the enactment of this Act or any other factor.

(e) CONDITIONS.—Nothing in subsection (c) or (d) shall be considered to permit or require—

(1) the payment of any rate (or lump-sum amount based on a rate) for any pay period, to the extent that such rate would be (or would have been) inconsistent with the limitation that applies (or that applied) with respect to such pay period under section 732(c)(2) of title 31, United States Code; or

(2) the payment of any rate or amount based on the pay increase for 2006 or 2007 (as the case may be), if—

(A) the performance of the officer or employee involved was not at a satisfactory level, as determined by the Comptroller General under paragraph

(3) of section 732(c) of such title 31 for purposes of the adjustment under such paragraph for that year; or

(B) the individual involved was not an officer or employee of the Government Accountability Office on the date as of which that increase took effect.

As used in paragraph (2)(A), the term “satisfactory” includes a rating of “meets expectations” (within the meaning of the performance appraisal system used for purposes of the adjustment under section 732(c)(3) of such title 31 for the year involved).

(f) RETIREMENT.—

(1) IN GENERAL.—The lump-sum payment paid under subsection (d) to an officer or employee shall, for purposes of any determination of the average pay (as defined by section 8331 or 8401 of title 5, United States Code) which is used

to compute an annuity under subchapter III of chapter 83 or chapter 84 of such title—

(A) be treated as basic pay (as defined by section 8331 or 8401 of such title); and

(B) be allocated to the biweekly pay periods covered by subsection (d).

(2) CONTRIBUTIONS.—Notwithstanding section 8334, 8422, 8423, or any other provision of title 5, United States Code, no employee or agency contribution shall be required for purposes of this subsection.

(g) EXCLUSIVE REMEDY.—This section constitutes the exclusive remedy that any individuals to whom this section applies (as described in subsection (a)) have for any claim that they are owed any monies denied to them in the form of a pay increase for 2006 or 2007 under section 732(c)(3) of title 31, United States Code, or any other law. Notwithstanding any other provision of law, no court or administrative body, including the Government Accountability Office Personnel Appeals Board, shall have jurisdiction to entertain any civil action or other civil proceeding based on the claim of such individuals that they were due money in the form of a pay increase for 2006 or 2007 pursuant to such section 732(c)(3) or any other law.

#### SEC. 4. LUMP-SUM PAYMENT FOR CERTAIN PERFORMANCE-BASED COMPENSATION.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General shall, subject to the availability of appropriations, pay to each qualified individual a lump-sum payment equal to the amount of performance-based compensation such individual was denied for 2006, as determined under subsection (b).

(b) AMOUNT.—The amount payable to a qualified individual under this section shall be equal to—

(1) the total amount of performance-based compensation such individual would have earned for 2006 (determined by applying the Government Accountability Office's performance-based compensation system under GAO Orders 2540.3 and 2540.4, as in effect in 2006) if such individual had not had a salary equal to or greater than the maximum for such individual's band (as further described in subsection (c)(2)), less

(2) the total amount of performance-based compensation such individual was in fact granted, in January 2006, for that year.

(c) QUALIFIED INDIVIDUAL.—For purposes of this section, the term “qualified individual” means an individual who—

(1) as of the date of the enactment of this Act, is an officer or employee of the Government Accountability Office, excluding—

(A) an individual holding a position subject to section 732a or 733 of title 31, United States Code (disregarding section 732a(b) and 733(c) of such title);

(B) a Federal Wage System employee; and

(C) an individual participating in a development program under which such individual receives performance appraisals, and is eligible to receive permanent merit pay increases, more than once a year; and

(2) as of January 22, 2006, was a Band I staff member with a salary above the Band I cap, a Band IIA staff member with a salary above the Band IIA cap, or an administrative professional or support staff member with a salary above the cap for that individual's pay band (determined in accordance with the orders cited in subsection (b)(1)).

(d) EXCLUSIVE REMEDY.—This section constitutes the exclusive remedy that any officers and employees (as described in subsection (c)) have for any claim that they are owed any monies denied to them in the form of merit pay for 2006 under section 731(b) of title 31, United States Code, or any other law. Notwithstanding any other provision of law, no court or administrative body in the United States, including the Government Accountability Office Personnel Appeals Board, shall have jurisdiction to entertain any civil action or other civil proceeding based on the claim of such officers or employees that they were due money in the form of merit pay for 2006 pursuant to such section 731(b) or any other law.

(e) DEFINITIONS.—For purposes of this section—

(1) the term “performance-based compensation” has the meaning given such term under the Government Accountability Office's performance-based compensation system under GAO Orders 2540.3 and 2540.4, as in effect in 2006; and

(2) the term “permanent merit pay increase” means an increase under section 731(b) of title 31, United States Code, in a rate of basic pay.

#### SEC. 5. INSPECTOR GENERAL.

(a) IN GENERAL.—Subchapter I of chapter 7 is amended by adding at the end the following:

**“§ 705. Inspector General for the Government Accountability Office**

“(a) ESTABLISHMENT OF OFFICE.—There is established an Office of the Inspector General in the Government Accountability Office, to—

“(1) conduct and supervise audits consistent with generally accepted government auditing standards and investigations relating to the Government Accountability Office;

“(2) provide leadership and coordination and recommend policies, to promote economy, efficiency, and effectiveness in the Government Accountability Office; and

“(3) keep the Comptroller General and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations of the Government Accountability Office.

“(b) APPOINTMENT, SUPERVISION, AND REMOVAL.—

“(1) The Office of the Inspector General shall be headed by an Inspector General, who shall be appointed by the Comptroller General without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General shall report to, and be under the general supervision of, the Comptroller General.

“(2) The Inspector General may be removed from office by the Comptroller General. The Comptroller General shall, promptly upon such removal, communicate in writing the reasons for any such removal to each House of Congress.

“(c) AUTHORITY OF INSPECTOR GENERAL.—In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, may—

“(1) have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that relate to programs and operations of the Government Accountability Office;

“(2) make such investigations and reports relating to the administration of the programs and operations of the Government Accountability Office as are, in the judgment of the Inspector General, necessary or desirable;

“(3) request such documents and information as may be necessary for carrying out the duties and responsibilities provided by this section from any Federal agency;

“(4) in the performance of the functions assigned by this section, obtain all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence from a person not in the United States Government or from a Federal agency, to the same extent and in the same manner as the Comptroller General under the authority and procedures available to the Comptroller General in section 716 of this title;

“(5) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this section, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

“(6) have direct and prompt access to the Comptroller General when necessary for any purpose pertaining to the performance of functions and responsibilities under this section;

“(7) report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law; and

“(8) provide copies of all reports to the Audit Advisory Committee of the Government Accountability Office and provide such additional information in connection with such reports as is requested by the Committee.

“(d) COMPLAINTS BY EMPLOYEES.—

“(1) The Inspector General—

“(A) subject to subparagraph (B), may receive, review, and investigate, as the Inspector General considers appropriate, complaints or information from an employee of the Government Accountability Office concerning the possible existence of an activity constituting a violation of any law, rule, or regulation, mismanagement, or a gross waste of funds; and

“(B) shall refer complaints or information concerning violations of personnel law, rules, or regulations to established investigative and adjudicative entities of the Government Accountability Office.

“(2) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent

of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

“(3) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

“(e) SEMIANNUAL REPORTS.—(1) The Inspector General shall submit semiannual reports summarizing the activities of the Office of the Inspector General to the Comptroller General. Such reports shall include, but need not be limited to—

“(A) a summary of each significant report made during the reporting period, including a description of significant problems, abuses, and deficiencies disclosed by such report;

“(B) a description of the recommendations for corrective action made with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

“(C) a summary of the progress made in implementing such corrective action described pursuant to subparagraph (B); and

“(D) information concerning any disagreement the Comptroller General has with a recommendation of the Inspector General.

“(2) The Comptroller General shall transmit the semiannual reports of the Inspector General, together with any comments the Comptroller General considers appropriate, to Congress within 30 days after receipt of such reports.

“(f) INDEPENDENCE IN CARRYING OUT DUTIES AND RESPONSIBILITIES.—The Comptroller General may not prevent or prohibit the Inspector General from carrying out any of the duties or responsibilities of the Inspector General under this section.

“(g) AUTHORITY FOR STAFF.—

“(1) IN GENERAL.—The Inspector General shall select, appoint, and employ such personnel as may be necessary to carry out this section consistent with the provisions of this title governing selections, appointments, and employment in the Government Accountability Office. Such personnel shall be appointed, promoted, and assigned only on the basis of merit and fitness, but without regard to those provisions of title 5 governing appointments and other personnel actions in the competitive service, except that no personnel of the Office may be paid at an annual rate greater than \$1,000 less than the annual rate of pay of the Inspector General.

“(2) EXPERTS AND CONSULTANTS.—The Inspector General may procure temporary and intermittent services under section 3109 of title 5 at rates not to exceed the daily equivalent of the annual rate of basic pay for level V of the Executive Schedule under section 5315 of such title.

“(3) INDEPENDENCE IN APPOINTING STAFF.—No individual may carry out any of the duties or responsibilities of the Office of the Inspector General unless the individual is appointed by the Inspector General, or provides services obtained by the Inspector General, pursuant to this paragraph.

“(4) LIMITATION ON PROGRAM RESPONSIBILITIES.—The Inspector General and any individual carrying out any of the duties or responsibilities of the Office of the Inspector General are prohibited from performing any program responsibilities.

“(h) OFFICE SPACE.—The Comptroller General shall provide the Office of the Inspector General—

“(1) appropriate and adequate office space;

“(2) such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Office of the Inspector General; and

“(3) necessary maintenance services for such office space, equipment, office supplies, and communications facilities; and

“(4) equipment and facilities located in such office space.

“(i) DEFINITION.—As used in this section, the term ‘Federal agency’ means a department, agency, instrumentality, or unit thereof, of the Federal Government.”.

(b) INCUMBENT.—The individual who serves in the position of Inspector General of the Government Accountability Office on the date of the enactment of this Act shall continue to serve in such position subject to removal in accordance with the amendments made by this section.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 7 is amended by inserting after the item relating to section 704 the following:

“705. Inspector General for the Government Accountability Office.”.

**SEC. 6. ADMINISTERING OATHS.**

Section 711 is amended by striking paragraph (4) and inserting the following:

“(4) administer oaths to witnesses, except that, in matters other than auditing and settling accounts, the authority of an officer or employee to administer oaths to witnesses pursuant to a delegation under paragraph (2) shall not be available without the prior express approval of the Comptroller General (or a designee).”.

**SEC. 7. COMPTROLLER GENERAL REPORTS.**

Section 719 is amended—

- (1) in subsection (b)(1)(B), by striking “and” at the end;
- (2) in subsection (b)(1)(C), by striking the period at the end and inserting “; and”;
- (3) by adding at the end of subsection (b)(1) the following:  
“(D) for agencies subject to sections 901–903 and other agencies designated by the Comptroller General, an assessment of their overall degree of cooperation in making personnel available for interview, providing written answers to questions, submitting to an oath authorized by the Comptroller General under section 711, granting access to records, providing timely comments to draft reports, adopting recommendations in reports and responding to such other matters as the Comptroller General deems appropriate in carrying out his duties under authority of sections 711–720 or any other provisions of law.”;
- (4) in subsection (c)(2)(B), by striking “and” at the end;
- (5) in subsection (c)(3), by striking the period at the end and inserting “; and”, and
- (6) by adding at the end of subsection (c) the following:  
“(4) as soon as practicable when an agency does not, within a reasonable time of a request by the Comptroller General, make personnel available for interview, provide written answers to questions, grant access to records, or submit to an oath authorized by the Comptroller General under sections 711–720 or any other provisions of law.”.

**SEC. 8. REIMBURSEMENT OF AUDIT COSTS.**

(a) IN GENERAL.—Section 3521 is amended by adding at the end the following:

“(1) Any executive agency or component thereof that prepares an audited financial statement under section 3515 shall reimburse the Government Accountability Office the cost of any audit of the financial statements (or any part thereof) and related schedules of such agency or component performed by the Comptroller General.

“(2) Reimbursements required by paragraph (1) shall be credited to the appropriation account ‘Salaries and Expenses, Government Accountability Office’ current when the reimbursement is received and shall remain available until expended.”.

(b) CONFORMING AMENDMENT.—Section 1401 of title I of Public Law 108–83 (31 U.S.C. 3523 note) is repealed.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 2009.

**SEC. 9. FINANCIAL DISCLOSURE REQUIREMENTS.**

Section 109(13)(B) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

- (1) in clause (i), by inserting “(except any officer or employee of the Government Accountability Office)” after “legislative branch”, and by striking “and” at the end;
- (2) by redesignating clause (ii) as clause (iii); and
- (3) by inserting after clause (i) the following:  
“(ii) each officer or employee of the Government Accountability Office who, for at least 60 consecutive days, occupies a position for which the rate of basic pay, minus the amount of locality pay that would have been authorized under section 5304 of title 5, United States Code (had the officer or employee been paid under the General Schedule) for the locality within which the position of such officer or employee is located (as determined by the Comptroller General), is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and”.

**SEC. 10. HIGHEST BASIC PAY RATE.**

Section 732(c)(2) is amended by striking “highest basic rate for GS–15;” and inserting “rate for level III of the Executive Level, except that the total amount of cash compensation in any year shall be subject to the limitations provided under section 5307(a)(1) of title 5;”.

**SEC. 11. ADDITIONAL AUTHORITIES.**

- (a) IN GENERAL.—(1) Section 731 is amended—
  - (A) by repealing subsection (d);
  - (B) in subsection (e)—
    - (i) in the matter before paragraph (1), by striking “maximum daily rate for GS–18 under section 5332 of such title” and inserting “daily rate for level IV of the Executive Schedule”; and
    - (ii) by striking “more than—” and all that follows and inserting the following: “more than 20 experts and consultants may be procured for terms of not more than 3 years, but which shall be renewable.”; and
  - (C) by adding at the end the following:
    - “(j) Funds appropriated to the Government Accountability Office for salaries and expenses are available for meals and other related reasonable expenses incurred in connection with recruitment.”.
- (2) CONFORMING AMENDMENTS.—(A) Section 732a(b) is amended by striking “section 731(d), (e)(1), or (e)(2)” and inserting “paragraph (1) or (2) of section 731(e)”. (B) Section 733(c) is amended by striking “(d)”. (C) Section 735(a) is amended by striking “731(c)–(e),” and inserting “731(c) and (e)”.
  - (b) ACCESS TO CERTAIN INFORMATION.—
    - (1) IN GENERAL.—Subchapter II of chapter 7 is amended by adding at the end the following:

**“§ 721. Access to certain information**

“(a) No provision of the Social Security Act shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information, to inspect any record, or to interview any officer, employee, or contractor under section 716 of this title, including with respect to any information disclosed to or obtained by the Secretary of Health and Human Services under part C or D of title XVIII of the Social Security Act.

“(b) No provision of the Federal Food, Drug, and Cosmetic Act shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information, to inspect any record, or to interview any officer, employee, or contractor under section 716 of this title, including with respect to any information concerning any method or process which as a trade secret is entitled to protection.”.

(2) INTERVIEWS.—Section 716(a) is amended in the second sentence by inserting “and interview agency officers and employees” after “agency record”.

(3) CLERICAL AMENDMENT.—The analysis for chapter 7 is amended by inserting after the item relating to section 720 the following:

“721. Access to certain information.”.

**SEC. 12. BASIC PAY FOR RETIREMENT.**

Section 8331(3) of title 5, United States Code, is amended—

- (1) in subparagraph (G), by striking “and” at the end;
- (2) in subparagraph (H), by inserting “and” at the end;
- (3) by inserting after subparagraph (H) the following:
  - “(I) the nonpermanent amount of a performance-based pay increase received by an employee of the Government Accountability Office, to the extent that such increase does not cause the basic pay of such employee to exceed the limitation specified in section 732(c)(2) of title 31;”;
- (4) in the matter following subparagraph (I) (as added by this section), by striking “(B) through (H)” and inserting “(B) through (I)”.

**PURPOSE AND SUMMARY**

H.R. 5683, the Government Accountability Office Act of 2008 (the Act), was introduced by Subcommittee Chairman Danny K. Davis on April 2, 2008. H.R. 5683 addresses a number of issues related to pay and personnel matters, access to information, and internal operations at the Government Accountability Office (GAO).

**BACKGROUND AND NEED FOR LEGISLATION**

Over a two-year period, the House Committee on Oversight and Government Reform’s Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, held several hearings and staff meetings regarding GAO’s implementation of the Government

Accounting Office Human Capital Reform Act of 2004 (P.L. 108–271) (hereafter “GAO Reform Act of 2004”) and was disturbed by its findings.

At the time the GAO Reform Act of 2004 was being considered by Congress, members expressed concern about whether employees who “met or exceeded expectations” would get the annual across-the-board cost of living adjustment. An agreement was reached that instead of codifying such a provision in the Act, the Comptroller General would commit to doing so on the record. At a July 16, 2003, hearing on GAO’s human capital proposal before the House Subcommittee on Civil Service and Agency Organization, the CG, David Walker, committed to guarantee annual across-the-board purchase power protection and to address locality pay consideration to all employees rated as performing at a satisfactory level or above (i.e., meeting expectations or above) absent extraordinary economic circumstances or severe budgetary constraints.<sup>1</sup>

Under the auspices of the GAO Reform Act of 2004, and contrary to congressional intent, the CG, in 2006 and 2007, denied certain employees whose job performance at least “met expectations” the annual GAO across-the-board increase. In addition, certain GAO employees did not receive all of the merit pay that they earned in 2006.

In testimony before the House and Senate Subcommittees on the Federal Workforce, the CG stated that the new pay rates for 2006 were based on a 2004 market-based compensation study conducted by Watson Wyatt Worldwide (WWW).<sup>2</sup> Based on the study, the CG determined that certain employees were paid above market rate and should be denied their annual across-the-board pay increase.

However, at the joint hearing, Chairman Davis revealed findings from a Subcommittee investigation that the outcome of the study was predetermined by the contract between GAO and WWW.<sup>3</sup> GAO stated in its contract with WWW that the contractor was to provide an analysis of compensation ranges based on an assumption that GAO had four pay bands of analysts, when GAO in fact had three bands (Band I, Band II, and Band III). Subsequent to the WWW analysis, GAO restructured Band II to form Band IIA (engagement staffers) and Band IIB (engagement leaders). Tenured employees who were not placed in Band IIB were deemed “overpaid” and denied the GAO across the board increase. Upon reviewing the job surveys that were used for the WWW compensation study, independent expert witnesses testified that the study was flawed and should not have been used to make pay decisions.<sup>4</sup>

<sup>1</sup>House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization, GAO Human Capital Reform: Leading the Way, 108th Cong. (July 16, 2003).

<sup>2</sup>House Committee Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Joint with Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Hearing on the Government Accountability Office’s Personnel Reform Efforts, 110th Cong. (May 22, 2007).

<sup>3</sup>Developing Market-Based Compensation Ranges for GAO Analysts, Attorneys, and Selected Specialists, Contract No. 2004335 between the Government Accountability Office and Watson Wyatt Worldwide (awarded July 15, 2004).

<sup>4</sup>House Committee Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Joint with Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Testimony of Dr. Charles Fay, Chair, Human Resources Management, Rutgers University, Hearing on the Government Accountability Office’s Personnel Reform Efforts, 110th Cong. (May 22, 2007).

Hearings, interviews, and a GAO employee survey requested by Subcommittee Chairman Davis also found that, historically, African-Americans employed by GAO had long received lower performance ratings than their white counterparts. Because the Band II restructuring was in part based on questionable distinctions in Band II, it had a more negative impact on African-American employees. At a Subcommittee hearing on November 13, 2007, on diversity in legislative branch agencies, the managing director of GAO's Office of Opportunity and Inclusiveness testified that the CG was aware of the rating disparities between African Americans and their non-minority counterparts, but nevertheless executed the restructuring.<sup>5</sup>

In addition to the lack of across-the-board increases, certain GAO employees did not receive all of the merit pay that they earned in 2006. The retroactive 2006 and 2007 cost of living salary increase and the lump sum payment provisions in the bill address those situations.

In reviewing the implementation of the GAO Reform Act of 2004, the Subcommittee also was concerned that the flexibilities provided in that legislation meant that GAO employees were receiving an across-the-board annual adjustment that was lower than the cost-of-living adjustment paid to employees covered by the federal GS system.

To address these issues, the legislation supplements GAO's pay-for-performance pay system with a "floor guarantee" for employees, ensuring that, as long as they perform satisfactorily, they will receive an annual pay increase at least as great as that paid under the General Schedule (GS) system. In addition, the bill provides for salary increases and lump sum payments to GAO employees who were denied cost of living increases in 2006 and 2007.

The "floor guarantee" provision will ensure that in the future GAO employees who are performing at a satisfactory level will receive at least as much as the annual adjustment under the GS system. However, the bill maintains some of GAO's flexibility to set an annual across-the-board increase.

Moreover, the legislation raises the statutory pay cap for GAO employees from GS-15 to Executive Level III for certain employees and counts performance-based bonuses for purposes of calculating employees' high three years of salary for retirement purposes. These provisions will help GAO with recruitment and retention.

In addition, the bill establishes a statutory inspector general at GAO, which is consistent with the practices of other legislative and executive branch agencies and ensures oversight that is independent and autonomous from the CG.

The bill also includes important provisions that will enhance the ability of GAO to perform its oversight functions.

#### LEGISLATIVE HISTORY

On April 2, 2008, Subcommittee Chairman Danny K. Davis introduced H.R. 5683 and referred the bill to the Committee on Oversight and Government Reform.

<sup>5</sup> House Federal Workforce, Postal Service, and District of Columbia Subcommittee Hearing, Testimony of Ron Stroman, Managing Director, Office of Opportunity and Inclusiveness, Government Accountability Office, Hearing Legislative Branch Diversity at the Highest Levels, 110th Cong. (Nov. 13, 2007).

The Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia held a hearing on March 13, 2008, on legislation to improve the oversight, administration, and pay adjustment functions of GAO. The witnesses were the Honorable Gene Dodaro, Acting Comptroller General, GAO; Paul Coran, Chairman, Personnel Appeals Board, GAO; Anne Wagner, General Counsel, Personnel Appeals Board, GAO; Curtis Copeland, Specialist in American National Government, Congressional Research Service; Shirley Jones, Representative, GAO's Employee Advisory Committee; Janet C. Smith, President, Ivy Planning Group, LLC; and Jacqueline Harpp, International Federation of Professional & Technical Engineers, AFL-CIO.

The Subcommittee held a business meeting to consider H.R. 5683 on April 3, 2008, and ordered the bill to be reported by voice vote. The full committee held a business meeting to consider H.R. 5683 on May 1, 2008, and ordered the bill to be reported, as amended, by voice vote.

#### SECTION-BY-SECTION

##### *Section 1: Short title*

The short title of the bill is the "Government Accountability Office Act of 2008."

##### *Section 2: Provisions relating to future annual pay adjustments*

Under this section, all GAO employees will be subject to a "floor guarantee" that will preserve GAO's pay flexibility and ensure that GAO's employees receive an annual increase in their permanent pay that is at least equal to the GS across-the-board increase for each locality. GAO is to make the annual adjustment, including the floor guarantee, effective as of the effective date of the GS adjustment.

Under the floor guarantee, all GAO employees (except for the three groups identified below) whose pay is adjusted under 31 U.S.C. § 732(c)(3) and who are performing at a "meets expectations" level or better will be guaranteed a permanent pay adjustment that will be at least equal to the annual adjustment for GS employees for the locality pay area for the GAO employees' duty station. The three groups of employees not covered by the floor guarantee are members of the Senior Executive Service, Federal Wage System employees, and employees who are in GAO's entry-level developmental programs. Under these entry-level developmental programs, participants receive performance reviews and associated permanent pay raises more than once a year and the pay increases are generally substantially greater than what the floor guarantee would provide.

##### *Section 3: Pay Adjustment relating to certain previous years*

Section 3 requires GAO to pay those employees who did not receive a permanent base pay increase in 2006 or 2007 an amount equal to the full annual adjustment for those years. This pay increase would also be applied prospectively, so that the affected employee's permanent pay is adjusted for future years.

To calculate the increase for each year, the amount of a permanent increase in base pay that the employee actually received in

2006 (including permanent merit pay as well as any annual adjustment) will be compared to the permanent increase in base pay that the employee would have received if he or she had received a 2.6% base pay adjustment in 2006. The employee will be paid the difference between these two figures for the 2006 cycle. The same calculation will be made for 2007, using 2.4% instead of 2.6% with both calculations subject to the statutory maximum rate. The employee's pay will be increased prospectively to reflect these increases.

In addition, those GAO employees who will receive an increase in their base pay under this section will also receive a lump sum payment. For each employee, the lump sum payment will compensate for the additional pay that the employee would have earned had the differences calculated above (and compounded for 2007 and 2008) been paid to the employee from the effective dates of the 2006 and 2007 adjustments through the effective date of the permanent pay increase addressed above. Thus, the lump sum payment for an employee who did not receive the full 2006 annual adjustment will be the additional amount that the employee would have received, had the difference for that year been paid for the period beginning January 22, 2006, until the effective date of the permanent pay increase under this section, or such earlier date if the employee has retired or otherwise left GAO before the payment but after the enactment of this section. Similar calculations will be made for employees who did not receive the full 2007 annual adjustment for the period beginning February 18, 2007. Employees who received less than the full annual adjustment in both years will receive a lump sum payment that includes both the 2006 and the 2007 adjustments.

Under subsection (f), the lump sum payments are deemed to be basic pay for 2006 and 2007, as appropriate, and hence are to be taken into account when calculating employees' high three years of salary for retirement purposes. The subsection makes clear that this consideration of the lump sum in the "high three" calculation shall not require any deduction from the amount due to employees for deposit into the retirement fund, nor shall GAO be required to make any additional contribution to the retirement fund.

Subsection (g) of section 3 provides that the provisions constitute the sole and exclusive remedy for any covered officers and employees who claim that they were denied the full annual adjustment for 2006 and 2007. Claims unrelated to payment of the annual adjustment for 2006 and 2007 are not affected by subsection (g). This subsection also withdraws jurisdiction from the GAO Personnel Appeals Board, U.S. district courts, and other courts or administrative bodies from hearing past, pending, or future claims related to these payments. Congress intends that the amounts provided for payment pursuant to section three constitute full and complete satisfaction of any claim which an employee may assert for the 2006 and 2007 annual adjustment.

#### *Section 4: Lump-sum payment for certain performance-based compensation*

Section 4 addresses certain pay concerns that arose from GAO's implementation of the annual pay adjustment provision of the GAO Reform Act of 2004. For 2006, employees who were performing at

a “meets expectations” level but did not receive the annual adjustment also were limited in the amount of performance based compensation (PBC) they could receive. This section seeks to provide a lump sum payment to those who were denied the annual adjustment and whose PBC in 2006 was limited for that reason.

This provision applies to three groups of employees as follows:

Band I staff with base pay that was at or over the 2006 Band I pay cap. In 2006, those employees who were in the bottom 80% of this group did not receive any PBC, either as permanent merit pay or nonpermanent merit pay, while those in the top 20% of performers received \$1,000 in nonpermanent merit pay.

Band IIA employees whose base pay was over the 2006 Band IIA pay cap fell into 2 categories. In 2006, those employees whose pay was less than the transition rate received 50% of their PBC as permanent merit pay, not to exceed the Band IIA transition cap (\$118,700); the remainder of the PBC was lost. Employees whose pay was at the transition pay cap received \$1,000 in nonpermanent merit pay if they were in the top 20% of performers with any remaining PBC lost; those employees who were in the bottom 80% did not receive any PBC, either as permanent or nonpermanent merit pay.

Administrative Professional Support staff with base pay that was over their 2006 pay caps. In 2006, those employees in the bottom 80% did not receive any PBC, either as permanent or nonpermanent merit pay. Those in the top 20% of performers received \$1,000 in nonpermanent merit pay.

As with section 3, this section would apply only to those employees are employed on the effective date of the legislation (and who were employed in 2006 and 2007) and does not apply to Senior Executive Service or Senior Level employees, Federal Wage System employees, or employees in GAO’s entry level development programs.

Subsection 4(a) would require the GAO to provide the affected employees with a lump sum payment equal to the amount of nonpermanent merit pay that they were denied in 2006. Subsection 4(b) indicates that the payment shall be derived by calculating the amount of nonpermanent merit pay the employee would have earned under the PBC system in existence in 2006 if the employee had not had a salary equal to or in excess of the maximum for his or her band less any amounts the employee received either as permanent merit pay or nonpermanent merit pay.

Under subsection (d), the employee’s entitlement to the lump sum payment under section (4) represents the sole and exclusive remedy for individuals covered by the provision who claim they are owed PBC for 2006. As with section 3, no court or administrative body shall have jurisdiction relating to these claims. It is the intent of Congress that the amounts provided for payment pursuant to section four constitutes full and complete satisfaction of any claim which the employees may assert concerning the payment of these 2006 PBC amounts. Claims unrelated to payments of the 2006 PBC amounts are not affected by subsection (d).

### *Section 5: Inspector General*

This section establishes a statutory Inspector General (IG) for GAO, to be appointed by the CG and who, like other IGs, will operate under the general supervision of the agency head.

This is consistent with practices at legislative branch agencies pursuant to various statutes and executive branch agencies pursuant to the Inspector General Act of 1978 (5 U.S.C. App.).

The roles and responsibilities of GAO's statutory IG are designed to promote economy and efficiency in programs and operations administered by GAO. The IG will have the authority, and is expected, to investigate and report on GAO's administration of its programs and operations. Like other IGs, the GAO IG is not expected to perform program responsibilities.

The GAO IG is required to submit semiannual reports to the CG summarizing the activities of its office. The CG must transmit the IGs semiannual report to Congress within 30 days of receiving it.

### *Section 6: Administering oaths*

This section amends 31 U.S.C. § 711 to allow the CG greater authority, subject to appropriate safeguards, to administer oaths to witnesses. Presently, section 711 authorizes the CG to administer oaths when auditing and settling accounts. When GAO was established in 1921, auditing and settling accounts were its principal focus, but that is no longer the case. The CG has been called upon to perform many other audit, investigative, and adjudicative roles for the Congress. These roles periodically raise situations involving potential criminal or ethical violations or conflicting testimony or assertions concerning material and sensitive subjects. In such situations, the ability to administer oaths can be an important tool for the CG to accomplish his work for the Congress.

### *Section 7: Comptroller General reports*

This section amends 31 U.S.C. § 719 by adding two new reporting requirements. The first is designed to provide critical information to the Congress regarding the overall cooperation of federal agencies in all aspects of the work of GAO. It does so by requiring that for all agencies subject to the Chief Financial Officers Act of 1990 (31 U.S.C. §§ 901–903), and other agencies designated by the CG, the CG will report to Congress annually regarding the overall degree of cooperation exhibited by the agencies or their staff in making personnel available for interviews, in providing written answers to questions, in submitting to an oath authorized by the CG, in granting access to records, in providing timely comments to draft reports, in adopting report recommendations, and in responding to such matters as the CG deems appropriate. Section 7 also requires that the CG report to Congress, as soon as practicable, when an agency or other entity does not make personnel available for interview, provide written answers to questions, or submit to an oath.

These reporting requirements will enable the CG to keep Congress apprised of the general state of cooperation between GAO and other agencies and entities concerning the work of the office. While the CG will advise Congress as soon as practicable when GAO reasonably concludes that an agency or entity is not cooperating in an audit or investigation, it is anticipated that the annual report will provide greater insight into the ongoing relationships

between GAO and the agencies it audits and investigates in a balanced and fair manner.

*Section 8: Reimbursement of audit costs*

This section amends section 3521 of title 31, U.S.C., under which each covered executive branch agency is responsible for obtaining an audit of the financial statements it prepares under section 3515 of that title. Section 3521(e) assigns the responsibility for the performance of an agency's financial statement audit to each agency's inspector general, or, if there is no inspector general, to the head of the agency, who must engage an independent external auditor. The agency IG may conduct the audit or engage an independent external auditor to perform the audit. However, the CG may choose to audit an agency's financial statements in lieu of the agency IG or an agency-engaged independent external auditor. Since 1997, the CG has exercised his statutory discretion to audit the financial statements of the Internal Revenue Service and the Schedule of Federal Debt at the Department of the Treasury. The Department of the Treasury has received these audit services without reimbursing GAO.

Section 8 requires the Department of Treasury, the Internal Revenue Service, or any other executive branch agency covered by the CFO Act for which GAO elects to audit financial statements or related schedules to reimburse GAO for the cost of performing such audits. Such payment will be consistent with the principle that agencies should pay for financial statement audit services. This principle has already been applied to financial statement audits conducted by GAO (under separate legal authority) of the Securities and Exchange Commission and the Federal Deposit Insurance Corporation, as well as other government corporations.

The Securities and Exchange Commission shall reimburse GAO for financial statements under Public Law 108-83 for work performed up to October 1, 2009, and under this Act for audit work performed on or after October 1, 2009.

*Section 9: Financial disclosure requirements*

This section amends section 109 of the Ethics in Government Act (5 U.S.C. App.) to remedy an anomaly created by GAO's new pay system, which has resulted in a large increase in the number of GAO employees who must file a public financial disclosure statement. Prior to implementation of the new pay system, any GAO employee whose basic pay minus the amount of locality pay was more than 120% of the basic rate for GS-15, step 1, had to file a statement. Under the new pay system, compensation differences in local markets are taken into account in setting the pay ranges for GAO's various locations but are not broken out separately. Therefore, many employees, without the deduction for locality pay, have a basic rate of pay that requires filing a financial disclosure statement. This section remedies this unexpected consequence by deducting the amount of the General Schedule locality pay from the basic pay that a GAO employee would have received had the new pay system not been implemented.

*Section 10: Highest basic pay rate*

This section allows the CG to pay employees above the GS-15 pay cap, up to the rate for Executive Level III. This provision is designed to allow GAO to more appropriately compensate skilled professionals and managers, thus aiding GAO in recruitment and retention. While the provision sets the highest rate at Executive Level III, this maximum will be used only for hard to fill positions.

*Section 11: Additional authorities*

Section 11 amends section 731 of title 31, U.S.C. to make changes in GAO's authority to appoint certain experts and consultants or fix the basic rate of certain officials, deleting two provisions that have never been used, and slightly increasing (from 15 to 20) the number of senior-level experts and consultants that can be appointed for 3-year renewable terms.

This section also authorizes the CG to make expenditures for meals and other expenses in connection with recruitment. The nature of GAO's work requires skilled professionals for whom GAO must compete with top private sector firms. Permitting the CG to make expenditures for meals and other related meal expenses while recruiting officers and employees will help GAO attract top talent.

Section 11(b) adds a new section 721 to title 31 to ensure that provisions contained in the Social Security Act and the Federal Food, Drug, and Cosmetic Act are not construed to limit GAO's rights of access to agency information. The new section 721(a) is intended in part to correct an erroneous interpretation by the Department of Health and Human Services of provisions of the Social Security Act pertaining to the Medicare prescription drug benefit (Part D). Under its interpretation, the Department has refused to disclose certain information related to Medicare Part D to GAO. The new section 721(a) provision confirms GAO's right to obtain information from the Department and ensures that GAO is able to conduct congressionally requested and statutorily required audits, including audits of Parts C and D of the Medicare program. The Committee is aware that there are efforts by the Ways and Means Committee to pass similar corrective legislation to clarify the rights that other congressional support agencies, like the Congressional Research Service, have to this information. The Committee fully supports these efforts, but could not include those provisions in this bill because it does not have jurisdiction over legislative branch agencies other than GAO.

In addition, the Food and Drug Administration, citing a provision of the Federal Food, Drug, and Cosmetic Act, has taken the position that it will only disclose trade secrets information to GAO for studies conducted at the request of a chair of a committee or subcommittee of jurisdiction, and only when the requests for the studies specifically refer to GAO's need for such information. The new section 721(b) is designed to remove any doubt as to GAO's authority to obtain trade secrets information from the Food and Drug Administration.

While GAO has had a longstanding right of access to agency records, its audit, evaluation, and investigation efforts have occasionally been frustrated by a lack of willingness on the part of agency officials and employees to discuss the information contained

in those records, as well as background information relevant to programs under review. In addition, many agency activities are not documented for subsequent audit, and cooperation from these individuals provides the only viable means for GAO to obtain critical information about these activities. Accordingly, this section also clarifies GAO's existing access authority by providing an express right to interview agency officers and employees under section 716(a) of Title 31.

*Section 12: Basic pay for retirement*

This section provides that in determining the basic pay of a GAO employee for purposes of retirement, the calculation shall include any nonpermanent merit increases awarded under GAO's pay for performance system up to the statutory maximum.

#### EXPLANATION OF AMENDMENTS

During the business meeting, Rep. Waxman offered an amendment in the nature of a substitute which passed by voice vote. The amendment made technical changes to the bill and added provisions which guaranteed GAO access to certain information. The section-by-section analysis reflects the provisions of this amendment.

#### COMMITTEE CONSIDERATION

On Thursday, May 1, 2008, the Committee met in open session and favorably ordered H.R. 5683 to be reported to the House by a voice vote.

#### ROLL CALL VOTES

No roll call votes were held.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 5683 contains provisions which relate to the terms and conditions of employment at the legislative branch agency GAO, specifically with regard to salary and bonuses. The details of these provisions are described in the section-by-section analysis of this report.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need to address pay matters and the operation and management of GAO.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and

objectives are reflected in the descriptive portions of this report, including increasing the efficiency and effectiveness of GAO.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 5683. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

#### FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

#### UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

#### EARMARK IDENTIFICATION

H.R. 5683 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

#### COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 5683. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5683 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, May 15, 2008.

Hon. HENRY A. WAXMAN,  
*Chairman, Committee on Oversight and Government Reform,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5683, the Government Accountability Office Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Barry Blom.

Sincerely,

PETER R. ORSZAG.

Enclosure.

*H.R. 5683—Government Accountability Office Act of 2008*

Summary: H.R. 5683 would require the Government Accountability Office (GAO) to change certain pay practices and, subject to the availability of appropriations, compensate employees for certain past practices. It also would increase the cap on employees' pay. Assuming appropriation of the necessary amounts, CBO estimates that implementing those provisions would cost about \$11 million over the 2009–2013 period.

The bill also would expand the types of pay that are included in retirement benefit calculations, which would increase direct spending by less than \$500,000 over the 2009–2018 period. The bill would have an insignificant effect on revenues. Implementing other provisions of H.R. 5683 would have no significant effect on the agency's budget.

H.R. 5683 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of H.R. 5683 is shown in the following table. The costs of this legislation fall within budget functions 600 (income security) and 800 (general government).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	3	2	2	2	2
Estimated Outlays	3	2	2	2	2

Note.—Enacting the bill also would increase direct spending by less than \$500,000 over the 2009–2018 period.

Basis of estimate: For this estimate, CBO assumes that H.R. 5683 will be enacted at the beginning of fiscal year 2009 and that the necessary amounts will be appropriated for each year. CBO estimates that enacting H.R. 5683 would increase salary payments to some GAO employees, assuming availability of appropriated funds. It also would increase retirement costs.

Section 3 would require GAO to pay, subject to the availability of appropriations, a lump-sum reimbursement to about 300 employees who received less than the annual pay increase given to others in 2006 (2.6 percent) and 2007 (2.4 percent). Based on information

provided by GAO and assuming the availability of appropriated funds, CBO estimates that making the lump-sum payments would cost the agency about \$1.7 million in 2009. Because those payments would cause the affected employees' base pay to rise, future salaries would also increase, by an estimated \$3 million over the 2009–2013 period.

Section 4 would provide a lump-sum payment to individuals who did not receive their full performance-based compensation as a result of having a salary equal to or greater than the maximum for their pay band. Based on information from GAO, CBO estimates that this provision would boost discretionary spending in 2009 by about \$200,000.

The bill also would make other changes including: increasing the highest basic rate of pay under the pay schedule, limiting the total amount of cash compensation (salaries, bonuses, and other payments) that an employee can receive in any year, and guaranteeing a minimum rate of increase in the annual pay of most employees. Based on information from GAO, CBO estimates that those provisions would cost about \$6 million over the five-year period, assuming appropriation of the estimated amounts.

Section 12 would direct that the nonpermanent portion of a performance-based pay increase be included in the employee's basic pay for purposes of calculating retirement benefits. CBO estimates that the resulting change in retirement benefits would increase direct spending by less than \$500,000 over the 2009–2018 period.

Other provisions of this bill would have no effect on the federal budget.

Intergovernmental and private-sector impact: H.R. 5683 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Barry Blom, Taylor Tarver, and Deborah Reis, Impact on State, Local, and Tribal Governments: Elizabeth Cove, Impact on Private Sector: Paige Piper/Bach

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

### **TITLE 31, UNITED STATES CODE**

\* \* \* \* \*

### **Subtitle I—GENERAL**

\* \* \* \* \*

## CHAPTER 7—GOVERNMENT ACCOUNTABILITY OFFICE

### SUBCHAPTER I—DEFINITIONS AND GENERAL ORGANIZATION

Sec.

701. Definitions.

\* \* \* \* \*

705. *Inspector General for the Government Accountability Office.*

\* \* \* \* \*

### SUBCHAPTER II—GENERAL DUTIES AND POWERS

711. General authority.

\* \* \* \* \*

721. *Access to certain information.*

### SUBCHAPTER I—DEFINITIONS AND GENERAL ORGANIZATION

\* \* \* \* \*

#### **§ 705. *Inspector General for the Government Accountability Office***

(a) *ESTABLISHMENT OF OFFICE.*—There is established an Office of the Inspector General in the Government Accountability Office, to—

(1) conduct and supervise audits consistent with generally accepted government auditing standards and investigations relating to the Government Accountability Office;

(2) provide leadership and coordination and recommend policies to promote economy, efficiency, and effectiveness in the Government Accountability Office; and

(3) keep the Comptroller General and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations of the Government Accountability Office.

(b) *APPOINTMENT, SUPERVISION, AND REMOVAL.*—

(1) The Office of the Inspector General shall be headed by an Inspector General, who shall be appointed by the Comptroller General without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General shall report to, and be under the general supervision of, the Comptroller General.

(2) The Inspector General may be removed from office by the Comptroller General. The Comptroller General shall, promptly upon such removal, communicate in writing the reasons for any such removal to each House of Congress.

(c) *AUTHORITY OF INSPECTOR GENERAL.*—In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, may—

(1) have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that relate to programs and operations of the Government Accountability Office;

(2) make such investigations and reports relating to the administration of the programs and operations of the Government

*Accountability Office as are, in the judgment of the Inspector General, necessary or desirable;*

*(3) request such documents and information as may be necessary for carrying out the duties and responsibilities provided by this section from any Federal agency;*

*(4) in the performance of the functions assigned by this section, obtain all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence from a person not in the United States Government or from a Federal agency, to the same extent and in the same manner as the Comptroller General under the authority and procedures available to the Comptroller General in section 716 of this title;*

*(5) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this section, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;*

*(6) have direct and prompt access to the Comptroller General when necessary for any purpose pertaining to the performance of functions and responsibilities under this section;*

*(7) report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law; and*

*(8) provide copies of all reports to the Audit Advisory Committee of the Government Accountability Office and provide such additional information in connection with such reports as is requested by the Committee.*

*(d) COMPLAINTS BY EMPLOYEES.—*

*(1) The Inspector General—*

*(A) subject to subparagraph (B), may receive, review, and investigate, as the Inspector General considers appropriate, complaints or information from an employee of the Government Accountability Office concerning the possible existence of an activity constituting a violation of any law, rule, or regulation, mismanagement, or a gross waste of funds; and*

*(B) shall refer complaints or information concerning violations of personnel law, rules, or regulations to established investigative and adjudicative entities of the Government Accountability Office.*

*(2) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.*

*(3) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.*

(e) *SEMIANNUAL REPORTS.*—(1) *The Inspector General shall submit semiannual reports summarizing the activities of the Office of the Inspector General to the Comptroller General. Such reports shall include, but need not be limited to—*

(A) *a summary of each significant report made during the reporting period, including a description of significant problems, abuses, and deficiencies disclosed by such report;*

(B) *a description of the recommendations for corrective action made with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);*

(C) *a summary of the progress made in implementing such corrective action described pursuant to subparagraph (B); and*

(D) *information concerning any disagreement the Comptroller General has with a recommendation of the Inspector General.*

(2) *The Comptroller General shall transmit the semiannual reports of the Inspector General, together with any comments the Comptroller General considers appropriate, to Congress within 30 days after receipt of such reports.*

(f) *INDEPENDENCE IN CARRYING OUT DUTIES AND RESPONSIBILITIES.*—*The Comptroller General may not prevent or prohibit the Inspector General from carrying out any of the duties or responsibilities of the Inspector General under this section.*

(g) *AUTHORITY FOR STAFF.*—

(1) *IN GENERAL.*—*The Inspector General shall select, appoint, and employ such personnel as may be necessary to carry out this section consistent with the provisions of this title governing selections, appointments, and employment in the Government Accountability Office. Such personnel shall be appointed, promoted, and assigned only on the basis of merit and fitness, but without regard to those provisions of title 5 governing appointments and other personnel actions in the competitive service, except that no personnel of the Office may be paid at an annual rate greater than \$1,000 less than the annual rate of pay of the Inspector General.*

(2) *EXPERTS AND CONSULTANTS.*—*The Inspector General may procure temporary and intermittent services under section 3109 of title 5 at rates not to exceed the daily equivalent of the annual rate of basic pay for level V of the Executive Schedule under section 5315 of such title.*

(3) *INDEPENDENCE IN APPOINTING STAFF.*—*No individual may carry out any of the duties or responsibilities of the Office of the Inspector General unless the individual is appointed by the Inspector General, or provides services obtained by the Inspector General, pursuant to this paragraph.*

(4) *LIMITATION ON PROGRAM RESPONSIBILITIES.*—*The Inspector General and any individual carrying out any of the duties or responsibilities of the Office of the Inspector General are prohibited from performing any program responsibilities.*

(h) *OFFICE SPACE.*—*The Comptroller General shall provide the Office of the Inspector General—*

(1) *appropriate and adequate office space;*

(2) *such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Office of the Inspector General; and*

- (3) *necessary maintenance services for such office space, equipment, office supplies, and communications facilities; and*  
 (4) *equipment and facilities located in such office space.*

(i) *DEFINITION.—As used in this section, the term “Federal agency” means a department, agency, instrumentality, or unit thereof, of the Federal Government.*

## SUBCHAPTER II—GENERAL DUTIES AND POWERS

### § 711. General authority

The Comptroller General may—

(1) \* \* \*

\* \* \* \* \*

[(4) administer oaths to witnesses when auditing and settling accounts.]

(4) *administer oaths to witnesses, except that, in matters other than auditing and settling accounts, the authority of an officer or employee to administer oaths to witnesses pursuant to a delegation under paragraph (2) shall not be available without the prior express approval of the Comptroller General (or a designee).*

\* \* \* \* \*

### § 716. Availability of information and inspection of records

(a) Each agency shall give the Comptroller General information the Comptroller General requires about the duties, powers, activities, organization, and financial transactions of the agency. The Comptroller General may inspect an agency record *and interview agency officers and employees* to get the information. This subsection does not apply to expenditures made under section 3524 or 3526(e) of this title.

\* \* \* \* \*

### § 719. Comptroller General reports

(a) \* \* \*

(b)(1) The Comptroller General shall include in the report to Congress under subsection (a) of this section—

(A) \* \* \*

(B) information on carrying out duties and powers of the Comptroller General under clauses (A) and (C) of this paragraph, subsections (g) and (h) of this section, and sections 717, 731(e)(2), 734, 1112, and 1113 of this title; [and]

(C) the name of each officer and employee of the Government Accountability Office assigned or detailed to a committee of Congress, the committee to which the officer or employee is assigned or detailed, the length of the period of assignment or detail, a statement on whether the assignment or detail is finished or continuing, and compensation paid out of appropriations available to the Comptroller General for the period of the assignment or detail that has been completed[.]; and

(D) *for agencies subject to sections 901–903 and other agencies designated by the Comptroller General, an assessment of their overall degree of cooperation in making personnel available for interview, providing written answers to questions, sub-*

*mitting to an oath authorized by the Comptroller General under section 711, granting access to records, providing timely comments to draft reports, adopting recommendations in reports and responding to such other matters as the Comptroller General deems appropriate in carrying out his duties under authority of sections 711–720 or any other provisions of law.*

\* \* \* \* \*

(c) The Comptroller General shall report to Congress—

(1) \* \* \*

(2) on the adequacy and effectiveness of—

(A) \* \* \*

(B) inspections by an agency of offices and accounts of fiscal officials; **[and]**

(3) as frequently as practicable on audits carried out under sections 713 and 714 of this title**[.]**; and

(4) *as soon as practicable when an agency does not, within a reasonable time of a request by the Comptroller General, make personnel available for interview, provide written answers to questions, grant access to records, or submit to an oath authorized by the Comptroller General under sections 711–720 or any other provisions of law.*

\* \* \* \* \*

## **§ 721. Access to certain information**

(a) *No provision of the Social Security Act shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information, to inspect any record, or to interview any officer, employee, or contractor under section 716 of this title, including with respect to any information disclosed to or obtained by the Secretary of Health and Human Services under part C or D of title XVIII of the Social Security Act.*

(b) *No provision of the Federal Food, Drug, and Cosmetic Act shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information, to inspect any record, or to interview any officer, employee, or contractor under section 716 of this title, including with respect to any information concerning any method or process which as a trade secret is entitled to protection.*

## **SUBCHAPTER III—PERSONNEL**

### **§ 731. General**

(a) \* \* \*

\* \* \* \* \*

**[(d) When a change in organization, management responsibility, or workload makes it necessary, the Comptroller General may fix the rate of basic pay of 5 positions at rates not more than the rate for level IV of the Executive Schedule.]**

(e) The Comptroller General may procure the services of experts and consultants under section 3109 of title 5 at rates not in excess of the **[maximum daily rate for GS–18 under section 5332 of such title]** *daily rate for level IV of the Executive Schedule*, except that the services of not **[more than—]** *more than 20 experts and con-*

*sultants may be procured for terms of not more than 3 years, but which shall be renewable.*

(1) \* \* \*

\* \* \* \* \*

*(j) Funds appropriated to the Government Accountability Office for salaries and expenses are available for meals and other related reasonable expenses incurred in connection with recruitment.*

## **§ 732. Personnel management system**

(a) \* \* \*

\* \* \* \* \*

(c) Under the personnel management system—

(1) \* \* \*

(2) except as provided in clause (4) of this subsection and section 733(a)(3)(A) of this title, the highest basic pay rate under the pay schedule may not be more than the [highest basic rate for GS-15;] *rate for level III of the Executive Level, except that the total amount of cash compensation in any year shall be subject to the limitations provided under section 5307(a)(1) of title 5;*

\* \* \* \* \*

*(j)(1) For purposes of this subsection—*

*(A) the term “pay increase”, as used with respect to an officer or employee in connection with a year, means the total increase in the rate of basic pay (expressed as a percentage) of such officer or employee, taking effect under section 731(b) and subsection (c)(3) in such year;*

*(B) the term “required minimum percentage”, as used with respect to an officer or employee in connection with a year, means the percentage equal to the total increase in rates of basic pay (expressed as a percentage) taking effect under sections 5303 and 5304–5304a of title 5 in such year with respect to General Schedule positions within the pay locality (as defined by section 5302(5) of title 5) in which the position of such officer or employee is located;*

*(C) the term “covered officer or employee”, as used with respect to a pay increase, means any individual—*

*(i) who is an officer or employee of the Government Accountability Office, other than an officer or employee described in subparagraph (A), (B), or (C) of section 4(c)(1) of the Government Accountability Office Act of 2008, determined as of the effective date of such pay increase; and*

*(ii) whose performance is at least at a satisfactory level, as determined by the Comptroller General under the provisions of subsection (c)(3) for purposes of the adjustment taking effect under such provisions in such year; and*

*(D) the term “nonpermanent merit pay” means any amount payable under section 731(b) which does not constitute basic pay.*

*(2)(A) Notwithstanding any other provision of this chapter, if (disregarding this subsection) the pay increase that would otherwise take effect with respect to a covered officer or employee in a year would be less than the required minimum percentage for such offi-*

cer or employee in such year, the Comptroller General shall provide for a further increase in the rate of basic pay of such officer or employee.

(B) The further increase under this subsection—

(i) shall be equal to the amount necessary to make up for the shortfall described in subparagraph (A); and

(ii) shall take effect as of the same date as the pay increase otherwise taking effect in such year.

(C) Nothing in this paragraph shall be considered to permit or require that a rate of basic pay be increased to an amount inconsistent with the limitation set forth in subsection (c)(2).

(D) If (disregarding this subsection) the covered officer or employee would also have received any nonpermanent merit pay in such year, such nonpermanent merit pay shall be decreased by an amount equal to the portion of such officer's or employee's basic pay for such year which is attributable to the further increase described in subparagraph (A) (as determined by the Comptroller General), but to not less than zero.

(3) Notwithstanding any other provision of this chapter, the effective date of any pay increase (within the meaning of paragraph (1)(A)) taking effect with respect to a covered officer or employee in any year shall be the same as the effective date of any adjustment taking effect under section 5303 of title 5 with respect to statutory pay systems (as defined by section 5302(1) of title 5) in such year.

#### **§ 732a. Critical positions**

(a) \* \* \*

(b) Senior-level positions under this section may include positions referred to in [section 731(d), (e)(1), or (e)(2)] paragraph (1) or (2) of section 731(e) of this title.

#### **§ 733. Senior Executive Service**

(a) \* \* \*

\* \* \* \* \*

(c) The Office Senior Executive Service may include positions referred to in section 731(c), [(d),] (e)(1), or (e)(2) of this title.

\* \* \* \* \*

#### **§ 735. Relationship to other laws**

(a) Except as provided in section 733(c) of this title, this subchapter and subchapter IV of this chapter do not affect sections 702(b), 703, [731(c)–(e),] 731(c) and (e), 772, 775(a) and (d) of this title.

\* \* \* \* \*

### **Subtitle III—FINANCIAL MANAGEMENT**

\* \* \* \* \*

#### **CHAPTER 35—ACCOUNTING AND COLLECTION**

\* \* \* \* \*

## SUBCHAPTER III—AUDITING AND SETTLING ACCOUNTS

## § 3521. Audits by agencies

(a) \* \* \*

\* \* \* \* \*

(i)(1) *Any executive agency or component thereof that prepares an audited financial statement under section 3515 shall reimburse the Government Accountability Office the cost of any audit of the financial statements (or any part thereof) and related schedules of such agency or component performed by the Comptroller General.*

(2) *Reimbursements required by paragraph (1) shall be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the reimbursement is received and shall remain available until expended.*

\* \* \* \* \*

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**ACT OF SEPTEMBER 30, 2003**

(Public Law 108-83)

AN ACT Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2004, and for other purposes.

\* \* \* \* \*

**TITLE I—LEGISLATIVE BRANCH  
APPROPRIATIONS**

\* \* \* \* \*

**GENERAL ACCOUNTING OFFICE**

\* \* \* \* \*

**ADMINISTRATIVE PROVISION**
**[SEC. 1401. PAYMENT FOR AUDITS.**

**[(a) IN GENERAL.—**At any time during fiscal year 2004 or thereafter, the Comptroller General may accept payment from the Securities and Exchange Commission for the performance of any audit of the financial statements of the Commission which is conducted by the Comptroller General.

**[(b) CREDIT TO ACCOUNT.—**Any payment accepted under the authority of subsection (a) shall be credited to the account established for salaries and expenses of the General Accounting Office, and shall be available for obligation and expenditure upon receipt.]

\* \* \* \* \*

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**ETHICS IN GOVERNMENT ACT OF 1978**

\* \* \* \* \*

# TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

\* \* \* \* \*

## DEFINITIONS

SEC. 109. For the purposes of this title, the term—

(1) \* \* \*

\* \* \* \* \*

(13) “officer or employee of the Congress” means—

(A) \* \* \*

(B)(i) each officer or employee of the legislative branch *(except any officer or employee of the Government Accountability Office)* who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; **[and]**

*(ii) each officer or employee of the Government Accountability Office who, for at least 60 consecutive days, occupies a position for which the rate of basic pay, minus the amount of locality pay that would have been authorized under section 5304 of title 5, United States Code (had the officer or employee been paid under the General Schedule) for the locality within which the position of such officer or employee is located (as determined by the Comptroller General), is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and*

**[(ii)]** *(iii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;*

\* \* \* \* \*

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## TITLE 5, UNITED STATES CODE

\* \* \* \* \*

## PART III—EMPLOYEES

\* \* \* \* \*

### Subpart G—Insurance and Annuities

\* \* \* \* \*

## CHAPTER 83—RETIREMENT

\* \* \* \* \*

## SUBCHAPTER III—CIVIL SERVICE RETIREMENT

## § 8331. Definitions

For the purpose of this subchapter—

(1) \* \* \*

\* \* \* \*

(3) “basic pay” includes—

(A) \* \* \*

\* \* \* \*

(G) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved; **[and]**

(H) any amount received under section 5948 (relating to physicians comparability allowances); *and*

*(I) the nonpermanent amount of a performance-based pay increase received by an employee of the Government Accountability Office, to the extent that such increase does not cause the basic pay of such employee to exceed the limitation specified in section 732(c)(2) of title 31;*

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs **[(B) through (H)]** *(B) through (I)* of this paragraph retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

\* \* \* \*

#### ADDITIONAL VIEWS OF RANKING MEMBER TOM DAVIS

Last July, the Government Accountability Office submitted to Congress a legislative proposal to make a number of changes to GAO's authorizing statutes—changes which were largely uncontroversial. And, I'm pleased to say we were able to come to agreement on some other very important reforms included in this legislation.

For example, I appreciate Chairman Waxman's willingness to include in the legislation an increase in the pay cap for GAO employees from GS-15, step 10 to Executive Schedule III. This change should help to address many the pay compression issues facing the GAO workforce and better enable GAO to recruit and retain top talent.

Also, I appreciate the Chairman's willingness to accommodate my request to include language allowing GAO employees under GAO's performance-based compensation system to include bonuses in their base pay for purposes of calculating their "high-three" salary. As the federal government continues to reform its outdated personnel system—relying more heavily on annual performance bonuses—it is important these performance bonuses are taken into consideration for purposes of calculating annuities.

This legislation also attempts to resolve a longstanding pay dispute between GAO and some of its employees. Hopefully, this bill will allow stakeholders to put the dispute to rest and move forward.

However, I am disappointed the bill includes a number of additional proposals which, to me, are controversial and potentially call into question my support for the bill.

Fortunately, the Chairman agreed to remove one of the more problematic provisions from the bill. The new provision—which was not discussed or debated at all by this Committee—would have given GAO new authority to interview "contractors." The term "contractors" is ambiguous at best and could be interpreted in any number of troubling ways. What's more—current law already gives GAO access to contractor records. To my knowledge, no case has been made for the need to enhance GAO's ability to force private citizens to be "interviewed" by government investigators. I appreciate the Chairman's willingness to remove this provision from the legislation.

But other troubling new provisions remain in the legislation.

For example, the legislation includes language giving GAO specific access to Medicare Part D data held by the Department of Health and Human Services as well as trade secrets data held by the Food and Drug Administration: GAO requested neither of these authorities in its proposal last summer, both of which are aimed at issues of particular interest to the current majority. Congress

has access to that information now and we are free to share it with GAO.

Further, this bill includes language to expand GAO's authority to interview agency employees and administer oaths to witnesses in conjunction with investigations. By increasing GAO's investigative powers, I am concerned we will trigger a chilling effect on GAO's relationship with federal agencies—resulting in agencies being less forthcoming in providing information and diminishing GAO's role in improving government operations and promoting best practices in the federal government.

I hope we can work together on these issues as we have on others as the bill moves forward.

TOM DAVIS.

