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GAO: Government Accountability Office and General Accounting Office

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Summary

On July 7, 2004, an old congressional support agency was given a new name, while keeping the same initials (GAO): at that time, the General Accounting Office, established in 1921, was re-designated the Government Accountability Office (P.L. 108-271). The renaming, which came at the request of its head, the Comptroller General (CG) of the United States, was designed to reflect the agency's evolution and additional duties since its creation more than eight decades before. The act also expanded the CG's authority over pay and personnel matters.

The Government Accountability Office is the largest of three agencies that provide staff support, research, review, and analysis for Congress. GAO operates under the control and direction of the Comptroller General, who is appointed by the President, with the advice and consent of the Senate, for a 15-year nonrenewable term. A unique arrangement begins the process with a special bicameral commission of legislators from both parties making recommendations to the President.

GAO was established in 1921 as an independent auditor of government agencies and activities by the Budget and Accounting Act. The office was intended to be "independent of the executive departments," the entities it would audit and review. Sometimes called "Congress's watchdog" and its "investigative arm," GAO now provides a variety of services to Congress that extend beyond its original functions and duties, including oversight, investigation, review, and evaluation of executive programs, operations, and activities. Several proposals in the 110th Congress, including increased funding for FY2008, are seen as augmenting GAO's capabilities. One would clarify its audit authority over the Intelligence Community (H.R. 978 and S. 82). GAO has also proposed legislation that would, among other things, amend its basic authority over personnel and pay matters for employees, set a new annuity level for the CG, and establish an office of inspector general (H.R. 3268, introduced by request, and S. 2564). In another matter, personnel flexibilities powers granted to the Comptroller General in 2004 have generated some controversy in Congress and among GAO employees. As an outgrowth of this and other considerations, GAO staff have set up a new bargaining unit.

Throughout much of its history, the office has experienced growth in its powers, duties, and resources. In the mid-1990s, however, it was the subject of congressional hearings, studies, and proposals for change, connected with its mission, roles, and capabilities; these reviews were generated in part by criticisms of its perceived orientation. As a result, GAO's budget and authorities were reduced. Certain of the "executive powers" of the Comptroller General were abolished or transferred (to executive branch agencies) in 1996. In addition, GAO's budget was cut by 25% over a two-year period (FY1996 and FY1997), resulting in a 39% reduction in its staff over a seven-year period.

In comparison to these earlier budget reductions, however, the office's funding has since risen, from $358 million in FY1998 to $507.2 million in FY2008. Nonetheless, GAO's staff size has remained lower than in earlier periods.

Contents

List of Tables

GAO: Government Accountability Office and General Accounting Office

Introduction

The Government Accountability Office (GAO) — with more than 3,100 staff positions and an annual budget exceeding $507 million in FY2008 — is the largest of several support agencies that provide research, review, and analysis for Congress; and it is the only one with a nationwide field structure.[1] GAO, which had been titled the General Accounting Office until 2004, operates under the control and direction of the Comptroller General of the United States (CG). The head is appointed by the President — after receiving recommendations from a special bicameral congressional commission — by and with the advice and consent of the Senate, for a 15-year nonrenewable term. The position, which had been vacant for two years, was filled in late 1998, when David M. Walker was sworn in and became only the seventh Comptroller General in GAO's history, which began more than eight decades ago. The post is now vacant with Mr. Walker's resignation on March 12, 2008.[2]

GAO was established as an independent auditor of government agencies and activities by the Budget and Accounting Act of 1921 (42 Stat. 23). That enactment also created the Bureau of the Budget, the forerunner to the Office of Management and Budget, and established presidential authority over the budget formulation process. The basic authority for the office and its head is codified at 31 U.S.C. 701 et seq. and 3511 et seq. Numerous other statutory provisions affect the powers and duties of both GAO and the CG.

The office was designed to be "independent of the executive departments," which were placed under its audit and review powers (31 U.S.C. 702(a)). Sometimes characterized as "Congress's watchdog" and the "investigative arm of Congress," the

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[1] The others are the Congressional Budget Office and the Congressional Research Service, along with other entities in the Library of Congress. A former support agency, the Office of Technology Assessment, was abolished in 1995, and the Government Printing Office serves different types of functions.

[2] U.S. Government Accountability Office, "David M. Walker, U.S. Comptroller General, Announces His Early Departure To Head New Public Interest Foundation," press release, February 15, 2008; Elizabeth Newell, "GAO chief announces resignation," *Government Executive*, available at [http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0208/021508ts1.htm]; Elizabeth Williamson, "Government Accountability Chief Resigns," *Washington Post*, February 16, 2008, p. A7; Stephen Barr, "Comptroller General Leaving for Love of Country," *Washington Post*, March 10, 2008, pp. D1 and D4; and Jordy Yager, "Comptroller General vacancy intensifies Bush-Hill battle," *The Hill*, available at [http://www.thehill.com], March 12, 2008.

GAO provides a variety of services to Congress, largely connected to the oversight, investigation, and evaluation of executive operations, activities, and programs.

The evolution of the office's authority, functions, and mandates over time, along with new pay and personnel powers for the Comptroller General, prompted him to request a change in its name: from the General Accounting Office to the Government Accountability Office (P.L. 108-271). GAO's current activities and services include:[3]

- auditing and evaluating federal programs and operations;
- conducting special investigations (through a small office) of alleged violations of federal criminal law, particularly conflict of interest or procurement and contract fraud;
- providing various legal services to Congress, including advice on legal issues involving government programs and activities;
- resolving bid protests that challenge government contract awards;
- prescribing accounting principles and standards for the executive branch, advising federal agencies on fiscal and other policies and procedures, and setting standards for auditing government programs;
- assisting the professional audit/evaluation community in improving and keeping abreast of ongoing developments in such matters as audit methodology and approaches; and

[3] Illustrations of products and services extend from identifying "high risk" areas in the executive, to conducting specialized investigations of criminal matters, to auditing a narrow project, to reviewing a broad program, to the Comptroller General making suggestions for congressional oversight topics. A summary of GAO's activities and services appears in CRS Report RL30240, *Congressional Oversight Manual*. For elaboration, see U.S. Senate Committee on Governmental Affairs, *Oversight of GAO: What Lies Ahead for Congress' Watchdog?* hearing, 108th Cong., 1st sess. (Washington: GPO, 2003); in addition to GAO publications, all of which are available from the Government Accountability Office: *Fiscal Stewardship: A Critical Challenge Facing Our Nation*, GAO-07-362SP (2007); *Fiscal Year 2008 Budget Request: U.S. Government Accountability Office*, GAO-07-547T (2007); *GAO: Transformation, Challenges, and Opportunities*, GAO-03-116T (2003); *GAO's Strategic Plan, 2007-2012*, GAO-07-1SP (2007); *Suggested Areas for Oversight for the 110th Congress*, letter to the Congressional Leadership, from Comptroller General David M. Walker, GAO-07-235R (2006); *U.S. General Accounting Office: The Role of GAO in Assisting Congressional Oversight*, statement by J. Christopher Mihm, GAO-02-816T (2002); and *United States Government Accountability Office: Supporting the Congress through Oversight, Insight, and Foresight*, statement of David M. Walker, Comptroller General, GAO-07-644T (2007).

- detailing GAO staff to work directly for congressional committees (in these temporary transfers, the assigned staffs represent the committees and not GAO itself).[4]

Since 1994, GAO has been the subject of congressional hearings, studies, and proposals for change connected with its mission, roles, capabilities, and personnel system. After a lengthy period of growth — in its powers, duties, and resources — the office experienced reductions in these areas in the mid-1990s. In 1996, for instance, certain of the "executive powers" of the Comptroller General were abolished or transferred to executive branch agencies. In addition, GAO's budget was cut by 25% over a two-year period (FY1996 and FY1997), representing the largest reduction in a seven-year downsizing (1992-1999). Since then, however, its budget authority has increased, from a low of $358 million in FY1998 to a high of $488.6 million for FY2007. Since 1995, however, full-time-equivalent employees are fewer than in previous years, with 3,159 currently compared to 4,324 in FY1995. In fact, in the midst of the cutbacks during the 1990s, GAO experienced an overall staff reduction of 39% from FY1992 to FY1998.

Establishment and Evolution of GAO

1921 Establishment

The Budget and Accounting Act of 1921, which created the General Accounting Office, built upon efforts over a considerable period of time to develop a new budget process and involved trade-offs between the legislature and executive.[5] The

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[4] The office's criteria, standards, and procedures for responding to congressional requests are contained in U.S. General Accounting Office, *GAO's Congressional Protocols*, GAO-04-310G (Washington: GAO, 2004). Its work with federal agencies is governed by *GAO's Agency Protocols*, GAO-03-232SP (Washington: GAO, 2002).

[5] For background on the establishment and evolution of GAO and the Comptroller General, see, among others: Darrell Hevenor Smith, *The General Accounting Office: Its History, Activities, and Organization* (Baltimore: Johns Hopkins University Press, 1927); Harvey C. Mansfield, *The Comptroller General* (New Haven, CT: Yale University Press, 1939); Thomas D. Morgan, "The General Accounting Office: One Hope for Congress to Regain Parity of Power with the President," *North Carolina Law Review*, vol. 51, October 1973, pp. 1279-1368; Frederick C. Mosher, *The GAO: The Quest for Accountability in American Government* (Boulder, CO: Westview Press, 1979); *A Tale of Two Agencies: A Comparative Analysis of the General Accounting Office and the Office of Management and Budget* (Baton Rouge, LA: Louisiana State University Press, 1984); Joseph Pois, *Watchdog on the Potomac: A Study of the Comptroller General of the United States* (Washington: University Press of America, 1979); Roger R. Trask, *GAO History, 1921-1991*, GAO Report OP-3-HP (Washington: GAO, 1991), along with a series of historical studies produced by GAO; U.S. Joint Committee on the Organization of Congress, *Support Agencies*, hearing, 103rd Cong., 1st sess. (Washington: GPO, 1993), pp. 5-27, 287-375; Frederick M. Kaiser, "The Comptroller General: History and Independence," in U.S. Senate Committee on Government Operations, Subcommittee on Reports, Accounting, and Management, *GAO Legislation*, hearing, 94th Cong., 1st sess. (Washington: GPO, 1975); U.S. Senate Committee on (continued...)

legislation gave the President substantial responsibilities and authority over the federal budget formulation process. To assist in this endeavor, the statute also created the Bureau of the Budget in the Treasury Department. (The bureau was later moved to the Executive Office of the President and is now known as the Office of Management and Budget.) As a counterweight to these enhancements of executive power in the budget process, Congress established the General Accounting Office in the legislative branch, in large part through the transfer of comptroller and auditor duties from the Treasury Department.

Congressional work on what was to become the 1921 act began two years earlier with legislative proposals to transfer the duties and responsibilities of the comptrollers and auditors from the Treasury Department to an entity independent of the executive departments and, indeed, located in the legislative branch. This initial legislation was vetoed by President Woodrow Wilson, who objected to a section allowing for the removal of the new Comptroller General by Congress alone, through a concurrent resolution.[6] This provision was later changed to allow for the removal of the Comptroller General by adoption of a joint resolution. The joint resolution, which must be signed by the President, is subject to presidential veto and the possibility of a veto override.

The 1921 act abolished the post of Comptroller and Assistant Comptroller of the Treasury, along with the six auditors in the department. Their personnel, records, and resources were transferred to the new General Accounting Office. The establishing authority also vested GAO with the powers and responsibilities of the auditors and Comptroller of the Treasury, some of which dated to the Treasury Act of 1789.

Along with this, the originating legislation gave the Comptroller General broad authority to "investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds" (42 Stat. 25). To augment this, the Comptroller General was given extensive access to information in "all departments and establishments ... regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective office as he may from time to time require" (42 Stat. 26).

Adding to the new position, the law authorized the Comptroller General to recommend legislation "to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement,

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[5] (...continued)
Governmental Affairs, *The Roles, Mission and Operation of the U.S. General Accounting Office: A Report by the National Academy of Public Administration*, Senate Print 103-87, 103rd Cong., 2nd sess. (Washington: GPO, 1994); Wallace E. Walker, *Changing Organizational Culture: Strategy, Structure, and Professionalism in the U.S. General Accounting Office* (Knoxville: University of Tennessee Press, 1986); and Jonathan Walters and Charles Thompson, *The Transformation of the Government Accountability Office: Using Human Capital to Drive Change* (Washington: IBM Center for The Business of Government, 2006).

[6] President Wilson's veto message and the House action, which sustained the veto by a vote of 178 to 103, are recorded in *Congressional Record*, vol. 59, June 4, 1920, pp. 8609-8613.

and application of public funds as he may think advisable" (42 Stat. 25-26). The initial authority, moreover, established new requirements for reporting to Congress and directed the Comptroller General to make special investigations and reports when ordered by either House of Congress or by any committee with jurisdiction over revenue, appropriations, and expenditures.

Expansion and Extension of Authority and Jurisdiction

Since 1921, the scope of GAO's powers, mandates, and jurisdiction has been expanded by public laws. Its current functions, duties, and extensive jurisdiction (with a few notable exceptions[7]) have grown out of its powers over finances and expenditures of the federal government, the two major legislative branch reorganizations (in 1946 and 1970), and specific additions to the Comptroller General's responsibilities and authority.

Additional Responsibilities. Additional responsibilities and authority have accrued over time. The Government Corporation Control Act of 1945, for instance, granted GAO audit authority over mixed-ownership government corporations (59 Stat. 600-601). And the Budget and Accounting Procedures Act of 1950 directed the Comptroller General to prescribe principles and standards for accounting in executive agencies (64 Stat. 835). Building on this, the Federal Manager's Financial Integrity Act of 1982 required each agency to establish internal accounting and administrative controls in accordance with standards prescribed by the Comptroller General (96 Stat. 814). In addition, the Chief Financial Officers Act of 1990 gave the Comptroller General enhanced audit authority and the power to review financial audits conducted by an inspector general or an external auditor (104 Stat. 2852-2854).

Along these same lines, GAO has a prominent role in monitoring and reviewing the development and implementation of the Government Performance and Results Act of 1993 (GPRA) (107 Stat. 285).[8] GAO has been involved not only in the training of executive personnel and congressional staff who are to implement and oversee GPRA, but also in the evaluation of pilot programs, strategic plans, annual performance plans and goals, and followup reports from the agencies.

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[7] Exceptions to GAO's jurisdiction over executive branch and independent agencies are (1) the Central Intelligence Agency, which views its own statutory authority as exempting it from GAO audits and reviews (e.g., the Central Intelligence Agency Act of 1949, 63 Stat. 213, and the General Accounting Office Act of 1980, 94 Stat. 311); and (2) foreign operations and money market policies of the Federal Reserve (31 U.S.C 714(b)). In addition, the President may proscribe GAO access to certain foreign intelligence and counterintelligence information and prevent its auditing of unvouchered funds involved in such areas (31 U.S.C. 716(b) and 3524(c)). This matter is discussed further below.

[8] For an overview of and further citations to GPRA and GAO's involvement, see U.S. General Accounting Office, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO Report GGD-96-118 (Washington: GAO, 1996); *Managing for Results: Using GPRA to Assist Congressional and Executive Branch Decisionmaking*, T-GGD-97-43 (Washington: GAO, 1997); and Mihm, *The Role of GAO in Assisting Congressional Oversight*.

In the 106th Congress, GAO was authorized to review federal agency rules and regulations, under the Truth in Regulating Act of 2000. But the program was not implemented because of a lack of funding.[9]

In order to fulfill its mission, the office has been given broad powers to gain access to information and materials of government entities, based on its original authority as well as later supplements (31 U.S.C. 712 and 716), with several exceptions. These powers are designed to provide access — fully and directly in most cases — or, barring that, provide an auxiliary means to compel recalcitrant offices to release information. To enforce this, the Comptroller General has power, rarely used, to sue a noncomplying agency for the production of requested records (31 U.S.C. 716).[10] Under this authority, the CG makes a written request to the agency head, who has 20 days to explain why the records are not being made available. At that time, the Comptroller General may file a report with the President, the Director of the Office of Management and Budget, the head of the relevant agency, and Congress. Twenty days after this action, the CG may file suit in the district court for the District of Columbia to require the agency head to produce the requested records.

Legislative Reorganization Act Changes. Major legislative reorganization efforts have also augmented GAO's powers and independence. The Legislative Reorganization Act (LRA) of 1946 specifically directed the Comptroller

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[9] P.L. 106-312 established a three-year pilot program, whereby the Comptroller General would review any "economically significant rule" (e.g., a rule having an annual impact of $100 million on the economy or other specified economic effects), at the request of a chairman or ranking member of any committee of jurisdiction, and report his findings to Congress. Background information and debate on these proposals are included in: U.S. Congress, Senate Committee on Governmental Affairs, *Congressional Accountability for Regulatory Information Act of 1999; Report to Accompany S. 1198*, S.Rept. 106-225 (Washington: GPO, 1999); and *Congressional Record*, vol. 146, pp. S3782-S3785 and H6851-H6855.

[10] An attempt to use this authority in 2001 resulted in a conflict with the executive. In this case, the Comptroller General was denied access to records of an executive commission — the National Energy Policy Development Group (NEPDG), established by a presidential memorandum and headed by the Vice President. Still denied access after issuing a demand letter, the Comptroller General sued. In 2002, however, the District Court for the District of Columbia held that GAO lacked standing to sue the Vice President to compel the release of information pertaining to NEPDG. The decision has not been appealed. *Walker v. Cheney*, 230 F.Supp.2nd 51 (D.D.C., 2002). For further coverage, see Louis Fisher, "Congressional Access to Information: Using Legislative Will and Leverage," *Duke Law Journal*, vol. 52, 2002; CRS Report RL31397, *Walker v. Cheney: Statutory and Constitutional Issues Arising from the General Accounting Office's Suit Against the Vice President*, by T. J. Halstead; and T. J. Halstead, "*Walker v. Cheney*: Legal Insulation of the Vice President from GAO Investigations," *Presidential Studies Quarterly*, vol. 33, September 2003. The principals' statements are available at [http://oversight.house.gov/investigations.asp?ID=110]; Richard Cheney, U.S. Vice President, "Letter to the House of Representatives," August. 2, 2001; and U.S. General Accounting Office, "Statement on the NEPDG," 2001, "Letter to Vice President Cheney," July 18, 2001, "Report to the House of Representatives," August 17, 2001, and "Decision of the Comptroller General Concerning NEPDG Litigation," January 30, 2002, available at [http://www.gao.gov/cgdecnepdg.pdf].

General "to make an expenditure analysis of each agency in the executive branch of Government (including Government corporations), which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended" (60 Stat. 837). In the 1970 LRA, Congress significantly expanded GAO's assistance to congressional committees and strengthened its program evaluation responsibilities (84 Stat. 1167-1171).

Other Duties Assigned to the Comptroller General. In addition to the office's assignments and powers, the Comptroller General himself has been given a variety of specific responsibilities in public law, some of which are temporary while others are permanent. Over the years, these have included the power to bring suit to require the release of impounded funds (2 U.S.C. 687); a duty to impose civil penalties under the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6385(a)); the assignments to serve as a member of the Chrysler Corporation Loan Guarantee Board (15 U.S.C. 1862) and of the Board of Directors of the United States Railway Association (45 U.S.C. 711(d)); and the authority to consider bid protests under the Competition in Contracting Act of 1984 (31 U.S.C. 3551-3556).

The Comptroller General, along with the Secretary of the Treasury and Director of OMB, serves as a principal on the Federal Accounting Standards Advisory Board. It considers and recommends issuance of accounting standards and principles and provides interpretations of existing ones. Previously, the CG had co-chaired the Cost Accounting Standards Review Panel, consisting of public officials and defense industry representatives. It had examined operations and activities of the Cost Accounting Standards Board (CASB), an executive agency in OMB (41 U.S.C. 422).

In the aftermath of the devastating Gulf Coast hurricanes of 2005, the Comptroller General joined inspectors general from appropriate agencies in a new Hurricane Katrina Contract Audit Task Force. It serves as a means of coordinating the efforts of federal organizations auditing the Gulf Coast Recovery Program. Besides GAO, these include offices of inspector general in the Departments of Defense, Homeland Security, Housing and Urban Development, Health and Human Services, and Transportation, as well as the Environmental Protection Agency and General Services Administration.

The Comptroller General also chaired the Commercial Activities Panel (CAP), a now-defunct interagency group consisting of representatives from executive departments (i.e., the Office of Personnel Management and Department of Defense), as well as from private organizations and public sector unions. The congressionally mandated panel, which completed its mission in 2002, studied and made recommendations for improving the policies and procedures governing the transfer of commercial activities from the government to contractor personnel.[11]

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[11] David M. Walker, *Commercial Activities Panel: Improving Sourcing Decisions of the Federal Government*, GAO-02-866T, June 26, 2002; and U.S. Commercial Activities Panel, *Improving Sourcing Decisions of the Government: Final Report* (Washington: CAP, 2002).

Changes in Authority

Several different types of changes in the authority of GAO and the CG have occurred since the mid-1980s.

In 1985, a constitutional conflict arose over powers delegated to the Comptroller General, when Congress gave him specific budget-reduction authority under the Balanced Budget and Deficit Control Act.[12] The CG was to review recommendations about such reductions and report his findings to the President, who, in turn, was to issue a sequestration order mandating spending reductions specified by the CG. Additional legislative mechanisms (or "fallback" provisions) to cut spending were also included in the statute. The Supreme Court held, however, that the delegation of authority to the CG was unconstitutional, concluding that "the powers vested in the Comptroller General under section 251 violate the command of the Constitution that the Congress play no direct role in the execution of the laws."[13]

In contrast to GAO's long-term expansion over decades, the mid-1990s witnessed a cutback in its authority and, perhaps more importantly, its resources (discussed below). The 1996 General Accounting Office Act abolished or transferred — to the Director of the Office of Management and Budget or the head of an executive department or agency — certain specific "executive" powers of the Comptroller General (110 Stat. 3826 and 3838-3840). These related to his authority to make certain determinations about executive assistance and services, resolve disputes over certain purchases made by executive agencies, conduct identified audits of executive accounts, or prescribe regulations for specified executive operations.

Proposed Changes for GAO in the 110th Congress

Several proposals in the 110th Congress would affect GAO's structure and authority.

Changes Affecting GAO's Internal Structure and Organization

In July 2007, the Comptroller General proposed various changes in a number of areas. These include GAO's pay and personnel system, retirement pay, voluntary separation incentive payments, the CG's annuity level, reimbursement of audit costs, administering oaths, appointment of the deputy, and the office of inspector general. Legislation has been introduced by request — the Government Accountability Office Act of 2007 (H.R. 3268) in the 110th Congress — along these lines; and hearings

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[12] Sec. 251, P.L. 99-177, 99 Stat. 1038 (1985).

[13] *Bowsher v. Synar*, 478 U.S. 714, at 734 (1986).

have been held on it in 2008.[14] The Senate version (S. 2564), introduced on January 29, 2008, is substantially the same.

Pay and Benefits. If enacted, the new legislation would modify the CG's authority over pay rates for GAO officers and employees, allowing them to rise to level III of the Executive Schedule (EX), instead of the current GS-15 ceiling. The proposal would also grant more discretion to the comptroller general in determining pay for several high-ranking positions now paid by reference to the EX Schedule; these posts are the comptroller general, deputy, general counsel, and up to 20 experts and consultants. Another modification would set the comptroller general's annuity at EX level II. (Discussed further below.)

Deputy Comptroller General's Appointment. The appointment process for the deputy comptroller general would be transformed, allowing the CG to appoint the deputy, after consultation with a special congressional commission. The new process would end the current arrangement in which the deputy, whose post has been vacant for nearly 30 years, is a presidential nominee subject to Senate confirmation.

Inspector General. The establishment of a statutory inspector general (IG) would replace the current administrative construct. The new office would mirror but not duplicate its counterparts in "designated federal entities" — usually the smaller agencies, boards, commissions, foundations, and government corporations, where the IG is appointed by and can be removed by the agency head — now operating under the Inspector General Act of 1978 (5 U.S.C. Appendix).[15]

Changes Affecting GAO's Auditing of the Intelligence Community

As noted above, the Government Accountability Office possess nearly unfettered jurisdiction to audit and investigate the federal government. GAO's access, however, may be precluded in certain situations: by the President, if it involves sensitive or classified records, such as foreign intelligence and counterintelligence activities; in instances where the records are statutorily exempted from disclosure (31 U.S.C. 716(d)); or in cases where an executive agency holds competing powers which prevent GAO access.[16]

The last of these proscriptions has led to conflicts between the Government Accountability Office and the Intelligence Community (IC), particularly the Central

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[14] U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, *Government Accountability Act of 2007*, hearings, 110th Cong., 2nd sess., March 14, 2008, available at [http://federalworkforce.oversight.house.gov/story.asp?ID=1804]; and Dan Friedman, "Panel targets GAO pay system," March 13, 2008, and Brittany R. Ballenstedt, "Lawmakers seek remedy for GAO pay reform," March 14, 2008, both in *Government Executive*, available at [http://www.govexec.com/story_page_pf.cfm?articleid].

[15] For background, see CRS Report 98-379, *Statutory Offices of Inspector General: Past and Present*, by Frederick M. Kaiser.

[16] See note 7 for statutory citations.

Intelligence Agency (CIA).[17] Legislation has been introduced in the 110th Congress to clarify GAO's auditing the IC, with hearings held in 2008.[18]

The CIA views its own statutory authority as keeping it off-limits to independent GAO audits and investigations. Under its interpretation, the CIA has declined to participate in GAO reviews (as well as in some congressional oversight hearings held by panels other than the Select Committees on Intelligence). Other IC components, however, have not asserted the same proscription to GAO audits. In contrast to the CIA's stand, for instance, the Department of Defense has issued the following instructions:

> It is DoD policy that the Department of Defense cooperate fully with the GAO and respond constructively to, and take appropriate corrective action on the basis of, GAO reports .... [But DoD is also to] be alert to identify errors of fact or erroneous interpretation in GAO reports, and to articulate the DoD position in such matters, as appropriate.[19]

GAO has taken exception to the CIA's position, emphasizing that the Office has authority to audit the Agency independently but lacks enforcement power.[20] If enacted, the Intelligence Community Audit Act would change this situation. These and similar proposals, which were first raised in the mid-1970s, are designed to

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[17] Background to the conflict is covered in Frederick M. Kaiser, "GAO Versus the CIA: Uphill Battles Against an Overpowering Force," *International Journal of Intelligence and Counterintelligence*, vol. 15, Summer 2003, pp. 330-389.

[18] The Intelligence Community Audit Act, H.R. 978 and S. 82, 110th Cong. U.S. Congress, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Government-wide Intelligence Community Management Reforms*, hearings, 110th Cong., 2nd sess., Feb. 29, 2008, available at [http://hsgac.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=526].

[19] Department of Defense Instruction 7650.02, November 20, 2006.

[20] Elaboration of GAO's support for such new authority and the DNI's (and the previous DCI's) opposition appears in: letter from David M. Walker, Comptroller General, to Hon. John D. Rockefeller, Chairman, and Hon. Christopher S. Bond, Vice Chairman, Senate Select Committee on Intelligence, March 1, 2007; and letter from J. M. McConnell, Director of National Intelligence, to Hon. John D. Rockefeller, Chairman, and Christopher S. Bond, Vice Chairman, Senate Select Committee on Intelligence, Mar. 7, 2007. See M.Z. Hemingway, "GAO wants more muscle," *Federal Times*, March 26, 2007, p. 1; and "GAO Seeks Greater Role in Oversight of Intelligence," *Secrecy News*, Oct. 3, 2007, available at [http://www.fas.org]. For the competing views of the disputes over independent GAO access, which date to the earliest days of the CIA, see U.S. Central Intelligence Agency, *DCI Affirmation of Policy for Dealing with the General Accounting Office (GAO)*, Memorandum for the Director of Central Intelligence, from Stanley L. Moskowitz, Director of Congressional Affairs, 7 July 1994; U.S. General Accounting Office, *Central Intelligence Agency: Observations on GAO Access to Information on CIA Programs and Activities*, statement of Henry J. Hinton, GAO-01-975T (2001); letters from the Comptroller General to the Director of National Intelligence (DNI), April 27, 2006, and to the Chairman and Ranking Minority Member of the Senate Committee on Homeland Security and Governmental Affairs, May 15, 2006, disagreeing with the DNI's position that the "review of intelligence activities is beyond the GAO's purview," as stated in *Information Sharing*, GAO-06-385 (2006), pp. 6 and 71.

"reaffirm the authority of the Comptroller General to audit and evaluate the programs, activities, and financial transactions of the intelligence community."[21]

GAO Resources

GAO's budget and staffing levels have varied since the mid-1990s, experiencing both downs and ups, with a current leveling off as continuing resolutions have tended to stabilize both figures.

The Government Accountability Office, like the other congressional support agencies, operates under a permanent authorization and an annual appropriation. A proposal in 1994, based on the recommendations of the Joint Committee on the Organization of Congress, would have mandated an eight-year authorization period for all congressional support agencies to replace their permanent authorizations.[22] No action, however, was taken on the recommendation.

Table 1 provides statistics on total new budget authority (gross) and on full-time equivalent employees (FTEs) for GAO from FY1995 through FY2009 (requested).

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[21] H.R. 978 and S. 82, 110th Congress. See U.S. Congress, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Government-wide Intelligence Community Reform*, hearings, 110th Cong., 2nd sess., February 29, 2009, available at [http://hsgac.senate.gov/indx.cfm?Fuseaction=Hearings]; and "Panel witnesses press for GAO audits of intelligence agencies," *Government Executive*, available at [http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0208/022908cdpm2.htm], February 29, 2008.

[22] Legislative Reorganization Act of 1994, S. 1824, 103rd Congress. The House and Senate Members of the Joint Committee issued separate reports, but both agreed to the specific recommendation of ending the permanent authorization status for congressional support agencies. U.S. Congress, Joint Committee on the Organization of the Congress, *Organization of the Congress: Final Report of the House Members*, H.Rept. 103-413, vol. I, 103rd Cong., 1st sess., p. 20, and *Organization of the Congress: Final Report of the Senate Members*, S.Rept. 103-215, 103rd Cong., 1st sess. (Washington: GPO, 1993), p. 17.

Table 1. GAO Resources, FY1995-FY2009

Fiscal Year	Total New Budget Authority (gross) (in millions of dollars)	FTEs[c]
2009[a]	549	3,251
2008	507.2[b]	3,100[c]
2007	488.6	3,152
2006	488	3,194
2005	475	3,215
2004	468	3,224
2003	458	3,269
2002	436	3,210
2001	405	3,110
2000	380	3,275
1999	368	3,275
1998	358	3,245
1997	359	3,341
1996	379	3,677
1995	448	4,342

a. The FY2009 amounts are GAO's requests. U.S. Office of Management and Budget (OMB), *Budget of the United States Government for Fiscal Year 2009, Appendix*, p. 47.

b. P.L. 110-161, Consolidated Appropriations Act for FY2008, Division H, provides $501 million in direct appropriations plus $7.5 million in transfers, for a total of $508.5 million. An across-the-board rescission of 0.25% reduces this amount by $1.27 million, leaving $507.2 million for FY2008.

c. Full-time equivalent employees (FTEs) are the maximum number of such positions authorized. The number of actual on-duty employees at any one time may be larger than the FTEs, because of part-time employment of some. Alternatively, the total of on-duty staff may be fewer than the FTEs, because of pre-hiring requirements, retirements, resignations, and/or insufficient funding to reach the authorized level. The FY2008 figure of 3,100 is the number GAO has estimated. OMB, *FY 2009 Budget*, *Appendix*, p. 47.

Budget Levels

GAO's budget authority and personnel levels have fluctuated since the mid-1990s. At that time, the office experienced a substantial cut in its funding, with a combined 25% reduction in total new budget authority for fiscal years 1996 and 1997, by comparison to its FY1995 total. This continued a downward trend that had begun in FY1992 and ebbed in FY1998. Since then, GAO's budget level has risen each year. And over the past decade, it has increased nearly 30%, from $358 million in FY1998 to $507.2 million in FY2008.

Personnel Levels

In the mid-1990s, GAO also saw a reduction in its personnel levels, as a result of the budget cuts. Because employee compensation constitutes about 80% of GAO's budget, its cost-saving actions resulted in a sizable staff downsizing at the time. According to 1997 testimony by the Acting Comptroller General, the cutbacks "have necessitated a loss of people. Today, as a result of those reductions, GAO staffing is at its lowest level since before World War II."[23]

In 1999, Comptroller General David Walker elaborated on the effects of the seven-year downsizing of GAO (from FY1992 through FY1998). One result was a 39% reduction in its workforce during that span, from 5,325 in FY1992 to 3,245 in FY1998. In 1999 testimony, the CG recounted that the office also

> instituted a reduction-in-force; closed regional offices; imposed a 5-year hiring freeze; eliminated performance rewards; curtailed technology investments; and reduced travel, training, supplies, and other support costs to achieve the overall mandated reduction in spending. GAO is now facing a number of critical human capital, information technology, and work process challenges that it needs to address.[24]

GAO's budget and personnel requests dealt with some of these areas since then. But the office has not seen its staff size exceed the 3,275 FTEs in FY1999 and FY2000; and it witnessed smaller numbers in the two following years (with 3,110 in FY2001 and 3,210 in FY2002). By comparison to these low figures, however, personnel levels rose to 3,269 FTEs in FY2003. Nonetheless, recent final FTE statistics show a continuing downsizing each year since FY2003 — from 3,269 in that year to 3,100 in FY2008, the lowest total since FY2001. The requested number of positions for FY2009 — 3,251 — would reverse this trend.

Personnel System

Legislation enacted in 2004 granted the Comptroller General certain personnel flexibilities over the GAO workforce. This augmented authority from 1980, 1988, and 2000, which provided the basis for the personnel system at GAO.

Antecedent Authority. The General Accounting Office Personnel Act of 1980 was designed to construct an "independent personnel system" (P.L. 96-191, 94 Stat. 27). The new structure replaced GAO's reliance on requirements from several executive branch entities, especially the Office of Personnel Management (OPM) and

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[23] James F. Hinchman, Acting Comptroller General, U.S. General Accounting Office, *Fiscal Year 1998 Budget Estimates for the U.S. General Accounting Office*, GAO T-OCG-97-01 (Washington: GAO, 1997), p. 4. See also *GAO's Downsizing Efforts*, GAO T-OCG-96-4 (Washington: GAO, 1996).

[24] U.S. Congress, House Subcommittee on Legislative Appropriations, *Legislative Branch Appropriations for 2000*, hearings, 106th Cong., 1st sess. (Washington: GPO, 1999), part 2, pp. 203-204. Also, see GAO testimonies on this matter: T-OCG-99-22 and T-OCG-99-24 (Washington: GAO, 1999), pp. 8-10 and 19.

the Merit System Protection Board. According to the Senate Committee on Governmental Affairs, which reported the proposal favorably, "this independence from regulation by executive branch entities is the principal objective of the legislation."[25] The change, requested by the Comptroller General, was seen as necessary to remove even the appearance of a conflict of interest, as GAO had increased oversight of these agencies and the federal personnel system.[26] This first installment gave the CG authority to "appoint, pay, assign, and direct such personnel as the Comptroller General determines necessary to discharge the duties and functions of the General Accounting Office" (94 Stat. 27). Accompanying this general grant were requirements to meet specified provisions of Title 5 of the *U.S. Code*, which set merit system principles and prohibit certain personnel practices, among other matters (94 Stat. 27).

Amendments to the personnel act were approved in 1988 (P.L. 100-426, 102 Stat. 1598-1602). These revised provisions concerned GAO's personnel appeals board membership and judicial review of its decisions. The amendments also changed the retirement qualifications for the Comptroller General and Deputy, allowing them to remain in office past the otherwise mandatory retirement age of 70; and the statutory changes brought the CG's survivor benefits into conformity with those available to federal judges.

In 2000, the CG's powers over personnel were enhanced through a three-year pilot program allowing for specific personnel flexibilities (P.L. 106-303, 114 Stat. 1063-1070).[27] This legislation gave qualified authority to the Comptroller General to offer certain voluntary separation incentives, along with early retirements, and to implement a reduction in force.

Additional Authority in 2004. The GAO Human Capital Reform Act of 2004 (P.L. 108-271) granted the Comptroller General additional authority over pay and personnel. The enactment allows the Comptroller General to offer early retirement and buy-out incentives; establish an exchange program with the private sector; and make employee relocation benefits more flexible.[28] Another far-reaching

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[25] U.S. Senate Committee on Governmental Affairs, *General Accounting Office Personnel Act of 1979*, S.Rept. 96-540, 96th Cong., 1st sess. (Washington: GPO, 1979), p. 2.

[26] Ibid.

[27] An article on changes at GAO at the time is by Susannah Zak Figura, "The Human Touch," *Government Executive*, September 2000, pp. 22-27.

[28] See U.S. Congress, Senate Committee on Governmental Affairs, *GAO Human Capital Reform Act of 2003*, S.Rept. 108-216, 108th Cong., 1st sess. (Washington: GPO, 2003); U.S. Congress, House Committee on Government Reform, *GAO Human Capital Reform Act of 2003*, H.Rept. 108-380 (Washington: GPO, 2003); U.S. Congress, House Committee on Government Reform and Senate Committee on Governmental Affairs, hearings on H.R. 2751 and S. 1522, 108th Cong., 1st sess., respectively; U.S. General Accounting Office, *GAO: Additional Human Capital Flexibilities Are Needed*, Statement by David M. Walker, Comptroller General, Report GAO-03-1024T (Washington: GAO, 2003); and U.S. General Accounting Office, *GAO's Proposed Human Capital Legislation: View of the Employee Advisory Council*, Statement by Christopher A. Keisling, Council Member, Report GAO-03-

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provision permits him to set annual pay raises tied more closely with performance appraisal ratings (as opposed to granting automatic yearly increases). In so doing, the CG could also use factors other than the Consumer Price Index, Employment Cost Index, and locality pay surveys to determine the amounts.[29] Other sections, emerging after congressional committee deliberations, are designed to meet several objectives: protect the merit principle of "equal pay for work of equal value," keep the pay rates of employees who have been demoted because of workforce restructuring or job reclassification at their current levels, and set qualifications on exchanges with the private sector.

As described by the Comptroller General, the overall transformation is intended to "further GAO's ability to enhance our performance, assure our accountability, and ensure that we can attract, retain, motivate, and reward a quality and high-performing workforce currently and in future years."[30] Changes in this realm and their source — coming from Congress's largest support agency and its chief examiner of executive personnel systems — attracted widespread attention and considerations of a number of matters connected with it, both favorable and not.

Followup Study and Ongoing Considerations. A followup report — issued in mid-2005 under the auspices of the IBM Center for the Business of Government — provides initial responses to these questions, based on an examination of the changes under GAO's new personnel system.[31]

The report concluded that GAO successfully used human capital management, broadly defined, to drive its organizational transformation.[32] The authors extended

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[28] (...continued)
1020T (Washington: GAO, 2003); and GAO, *Fiscal Year 2004 Budget Request (2003)*. A summary of GAO's implementation appears in GAO, *2006 Report on GAO's Use of the Provisions in the GAO Personnel Flexibilities Act of 2000 and the GAO Human Capital Reform Act of 2004*, Report GAO-07-289SP (2007). See also Mollie Ziegler, "GAO shifts to market wages," *Federal Times*, January 28, 2005, p. 1; and Stephen Barr, "GAO Chief Aims to Raise the Bar on Pay Raises," *Washington Post*, July 6, 2003, p. C2, and "Other Agencies May Learn from GAO's Pay, Classification Review," *Washington Post*, May 13, 2004, p. B2.

[29] GAO contracted with Watson Wyatt to assist in developing a new market-based compensation system for the agency's employees. "Contract Awarded to Develop Market-Based Pay Scales for Analysts, Attorneys, and Specialists," *GAO Management News*, vol. 31, July 26-30, 2004.

[30] Walker, *GAO: Additional Human Capital Flexibilities Are Needed*, p. 5.

[31] Walters and Thompson, *The Transformation of GAO*.

[32] Ibid., p. 4. In terms of its review of GAO's experience, however, the IBM report has certain limitations. Importantly, it does not provide details about the methodology used to analyze and assess the office's new personnel system, the changes it generated, and their perceived impact, raising some questions about its reliability. The study, for instance, neglects to spell out the interview schedule, questions asked, and characteristics of the participants (e.g., upper versus lower grade levels, organization officials versus employee association leaders, and management versus staff). The review also reports data from a (continued...)

this notion, recommending that "other agencies would do well to heed the lessons of the federal government's chief accountability office as they go about the critical work of reinventing their own personnel systems.... In particular, GAO has five basic lessons to teach the rest of the federal government."[33] These are the need to move cautiously when pushing major change; the need for strong workforce planning; the need to emphasize more targeted recruitment, hiring, and retention policies; the need to beef up investments in systems for the selection and training of managers; and the need for a fair, unbiased, and transparent system for employee appeals.[34]

Despite this endorsement, the IBM study recognized that some executive agencies — the majority of whose personnel have moved out from under the traditional civil service — may be reluctant or limited in adopting the GAO model, in light of the important differences between GAO (a legislative branch support agency) and executive agencies that carry out public policy directly and immediately.[35] By comparison to GAO, these policy-implementing organizations are usually much larger; experience different levels of autonomy for entities within the agency or department; are more organizationally varied; and exhibit more functional diversity and mission multiplicity, resulting in cross-cutting and shared jurisdictions with other executive entities.

The GAO pay-for-performance implementation, along with similar efforts in executive agencies, have raised concerns over several other matters in congressional

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[32] (...continued)
GAO employee feedback survey supporting its findings about perceived improvements in the organizational climate, staff development, staff utilization, and leadership. The survey lists the percent of employees responding favorably to particular statements, including differences between staff and upper level management. Ibid., pp. 25-26. But the perceived improvements from 2003 to 2004 increase from only 1% to 3% for the average in each category. Perhaps because the levels were in the 60 and 70 percentage range, the increases do not appear to be statistically significant. Furthermore, the report neither discusses how the survey was developed and administered nor provides data on several workforce characteristics which could put the responses into a comparative perspective: missing, for example, are the number of respondents (in totality and in each area) as well as their representativeness of the GAO workforce in terms of staff, management positions, grade level, and seniority as well as gender and race.

[33] Ibid., p. 6.

[34] Ibid. Other organizational transformations — based on the "best practices" from the public and private sector, regarding open communications between employees and management, centralized authority and accountability, and senior management open support for new policies and programs — are also contained in the report. Ibid., pp. 20 and 24.

[35] Ibid., pp. 5-6 and 22. The inability or piecemeal approach to a similar transformation could arise because of differences between a policy-implementing executive agency and a legislative support agency (in terms of missions, functions, authority, organization, and procedures). It could also arise because of concerns from some stakeholders, such as federal employee unions, about several matters: whether certain executive agencies could meet the GAO standards (due to different organizational cultures and conditions, for instance); what unintended consequences might occur; how the new managerial powers might be manipulated or misused; and what the full cost of implementation would be.

hearings in the 110th Congress.[36] These include whether the changes are implemented fairly and impartially across the board, whether the plan's criteria and standards are clear and appropriate, whether the measurements used to compare personnel in GAO and elsewhere lead to valid and reliable conclusions, whether the changes produce the desired results, whether they have an adverse effect on employee morale, and whether they prompt (or endorse) requests for similar authority in other government entities. Earlier, the office's pay-ban determinations had been challenged by 308 employees, resulting in a favorable settlement for 12.[37]

Employee Representation. As an outgrowth of the pay-for-performance dispute and other matters, eligible GAO analysts voted on September 19, 2007, to establish a local affiliate of the International Federation of Professional and Technical Employees (IFPTE), which will represent all bargaining unit employees on all matters that are subject to collective bargaining.[38] The new unit, supported by a two-

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[36] These and other personnel matters have been looked into in the 110th Congress. U.S. House Subcommittee on the Federal Workforce, Postal Service, and District of Columbia, *Status of Federal Personnel Reform*, hearing, 110th Cong., 1st sess., March 8, 2007, and Government Accountability Act of 2007, hearing, 110th Cong., 2nd sess., March 14, 2008; and jointly with the Senate Subcommittee on Government Management, the Federal Workforce, and the District of Columbia, *GAO's Personnel Reform Efforts*, joint hearing, 110th Cong., 1st sess., May 22, 2007. Press coverage appears in: *Government Executive*, Brittany R. Ballenstedt, "Lawmakers probe GAO decision on pay adjustments," March 7, 2007, "Lawmakers grill GAO chief over pay decisions," May 22, 2007, and "GAO to challenge eligibility of employees to unionize," June 1, 2007, all available at [http://www.govexec.com]; Kelly McCormack, "Subcommittee hears testimony on GAO pay system," *The Hill*, March 13, 2007, p. 6; M. Z. Hemingway, "Comptroller general pans CRS study of GAO pay," *Federal Times*, March 12, 2007, p. 1; Stephen Barr, "Congress Questions Pay Restructuring at GAO," *Washington Post*, May 23, 2007, p. D4; Dan Friedman, "Panel targets GAO pay system," *Government Executive*, March 13, 2008; and Brittany R. Ballenstedt, "Lawmakers seek remedy for GAO pay reform," *Government Executive*, March 14, 2008.

[37] In early 2007, 12 of the 308 employees reached a settlement with GAO, receiving compensation benefits as if they had been promoted a year before. The employees had filed an appeal before the GAO Appeals Board (U.S. Government Accountability Office, Personnel Appeals Board, *Petitioner v. Government Accountability Office, Respondent*, February 2006). The settlement was reached, however, before a hearing was held; and the claims were not adjudicated by the Board. Press coverage by Britanny R. Ballenstedt, "GAO settles pay dispute with 12 of 308 senior analysis," April 27, 2007, *Government Executive* at [http://www.govexec.com].

[38] "CG Discusses Immediate Impact of Union Election on GAO Operations, *GAO Management News*, vol. 35, October 15, 2007, p. 1; and *Joint Statement of the Government Accountability Office and the International Federation of Professional and Technical Engineers*, July 18, 2007. For background and press coverage, see U.S. House Committee on Appropriations, *Legislative Branch Appropriations Bill, 2008*, H.Rept. 110-198, 110th Cong., 1st sess., p. 33; Britanny R. Ballenstedt, "Union to file for first-ever election at GAO," May 7, 2007, "More than 200 GAO employees to petition for back pay," May 15, 2007, "GAO to challenge eligibility of employees to unionize," June 1, 2007, "Union files unfair labor practice charge against GAO chief," June 22, 2007, "GAO, union reach agreement to hold election," July 19, 2007, "GAO analysts vote for union representation,"

(continued...)

to-one margin of the voting employees (among the 1,813 eligible), marks the first such employee organization in GAO history.[39]

Appointment of the Comptroller General and Deputy

Since its inception in 1921 as the General Accounting Office, the Government Accountability Office has been headed by only seven Comptrollers General.[40] **Table 2** lists them in chronological order.

Table 2. Comptrollers General, 1921-Present

Comptroller General	Dates of Service
John Raymond McCarl	1921-1936
Fred Herbert Brown	1939-1940
Lindsay C. Warren	1940-1954
Joseph Campbell	1955-1965
Elmer B. Staats	1966-1981
Charles A. Bowsher	1981-1996
David M. Walker	1998-2008

When the comptroller general post is vacant, GAO has been headed by an acting comptroller general, as it is now. The longest absence of a confirmed Comptroller General was three years, 1936-1939. The second longest was the two-year vacancy from September 30, 1996, when Charles Bowsher ended his term, until November 9, 1998, when David Walker began his.

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[38] (...continued)
Sept. 20, 2007, and "Rising Expectations," November 7, 2007; Karen Rutzick, "GAO employees move toward vote on union representation," January 23, 2007, all in *Government Executive* [http://www.govexec.com]; M.Z. Hemingway, "Labor strife hits GAO," *Federal Times*, May 14, 2007, p. 4, and "GAO chief fights to keep union out," *Federal Times*, June 11, 2007, p. 1; Richard W. Walker, "GAO analysts vote for union representation," at [http://www.FCW.com]; and Stephen Barr, "In a First, GAO Analysts Vote to Join a Union," *Washington Post*, September 21, 2007, p. D4.

[39] In early 2008, the union and GAO reached a tentative contract agreement, which affects employee pay scales, including those based on performance ratings, as well as eligibility for annual pay increases. Brittany Ballenstedt, "GAO, union reach agreement on 2008 pay raises," *Government Executive*, available at [http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0208/021108b1.htm], February 11, 2008; and Stephen Barr, "GAO and Its New Union Reach Agreement on Raises, *Washington Post*, February 12, 2008, p. D4.

[40] See note 2, above; and Trask, *GAO History*, pp. 7-20, 22, 25-38, 43-57, and 59-94.

Current Process

Under GAO's current statutory charter, the Comptroller General and Deputy Comptroller General are nominated by the President, following recommendations from a special congressional commission, and are confirmed by the Senate.

When a vacancy occurs in the office of the Comptroller General or the Deputy, a special congressional commission, consisting of members of both chambers and both parties, is established to recommend individuals to the President for appointment.[41] Added by the General Accounting Office Act of 1980 (94 Stat. 314-315), this process became operational the following year. Under the arrangement, the recommending commission consists of the Speaker of the House, the President pro tempore of the Senate, the majority and minority leaders of the House and Senate, the chairmen and ranking minority members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform, and, when the Deputy's post is vacant, the Comptroller General. The commission determines the criteria and standards for its nominees.

The current process includes examination of the backgrounds and future plans of potential nominees, including, of course, their credentials, accomplishments, and relevant work experience in the private sector and public office. These examinations are conducted by the commission members and staff through interviews and meetings with the candidates, as well as with interested and knowledgeable parties, and a review of relevant materials and documents. Later examinations are held by the Senate Committee on Homeland Security and Governmental Affairs, which reports the nomination to the full Senate.[42]

The commission must recommend at least three individuals but the President may ask for additional names for consideration (or nominate someone else). The original bill called for five names to be submitted. However, the number was reduced, according to the report of the Senate Committee on Governmental Affairs, because "three names is a more realistic figure. Considering the high qualifications for the Office of Comptroller and Deputy Comptroller General, a requirement to generate five names might be extremely difficult to satisfy."[43]

The reporting panel also recognized that the President could still nominate an individual not recommended by the commission, in light of "the President's authority under the Appointments Clause.... However, it is expected that the President would

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[41] A proposal from GAO would change the process for the deputy, by allowing the CG to appoint the deputy, after consultation with the congressional commission (H.R. 3268, 110th Congress, described above).

[42] For the most recent illustration, see U.S. Congress, Senate Committee on Governmental Affairs, *Nominations of Edward J. Gleiman, Dana B. Covington, and David M. Walker*, hearings, 105th Cong., 2nd sess. (Washington: GPO, 1998), pp. 17-18 and 70-130.

[43] U.S. Congress, Senate Committee on Governmental Affairs, *General Accounting Office Act of 1980*, S.Rept. 96-570, 96th Cong., 2nd sess. (Washington: GPO, 1980), p. 10. Despite the scaling back to three recommendations, eight names were submitted the first time the new procedure was used, in 1981.

give great weight to the Commission's recommendations."[44] This expectation has been met. On the two occasions since the 1980 enactment when a vacancy in the office of Comptroller General arose, Presidents Reagan in 1981 and Clinton in 1998 each selected a nominee from the initial congressional list.

The provision for a bicameral commission gives both chambers of Congress a formal and direct role in selecting the head of this legislative branch agency. The Senate Committee on Governmental Affairs endorsed the new arrangement:

> In view of the relationship between the Comptroller General and the Congress, the Committee believes it is appropriate that both Houses be given a role in the selection process.... [The new provision] reflects the special interests of both Houses in the choice of an individual whose primary function is to provide assistance to Congress.[45]

The current unique nomination process has not been used for the post of Deputy Comptroller General, which has remained vacant since the 1980 enactment. Instead of a confirmed Deputy, the Comptroller General has relied upon his own appointee(s) in one or two posts over the past several decades. Early in this period, a single special assistant to the comptroller general served as second in command. Currently, two officials — the chief operating officer and the chief mission support officer — carry out the appropriate duties and functions.

Recent Nominations

The new nomination process went into effect in 1981, resulting in the appointment of Charles A. Bowsher, whose 15-year term expired in September, 1996.[46]

A second congressional commission met afterwards, to recommend a successor. On January 22, 1998, the commission sent the names of three individuals who "had received majority support from the members of the Commission" to President Clinton for his consideration, as provided in the 1980 statute.[47] Independently, six

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[44] Ibid.

[45] Ibid., p. 9.

[46] U.S. Congress, Senate Committee on Governmental Affairs, *Nomination of Charles A. Bowsher*, hearing, 97th Cong., 1st sess. (Washington: GPO, 1981); "Nomination of Charles A. Bowsher to Be Comptroller General of the United States," *Congressional Record*, vol. 127, September 29, 1981; and U.S. President Ronald Reagan, "Remarks Announcing Intention to Nominate Charles A. Bowsher" (July 9, 1981), *Public Papers of the Presidents: Ronald Reagan, 1981* (Washington: GPO, 1982), pp. 612-614. Bowsher was one of eight persons recommended by the commission, which had an equal number of Democrats and Republicans. See Trask, *GAO History*, p. 97; "Accountant Bowsher Named New GAO Head," *Congressional Quarterly*, July 18, 1981, p. 1301; and Greg Rushford, "Veteran of Capital Hardball Chosen for Top GAO Post," *Federal Times*, July 20, 1981, p. 6.

[47] Letter from Senate Majority Leader Trent Lott and Speaker of the House Newt Gingrich, to President William Clinton, January 22, 1998, regarding recommendations for Comptroller

(continued...)

days later, Democratic members of the commission submitted four additional names.[48] On October 5, 1998, President Clinton nominated David M. Walker, one of the three original recommendations of the commission majority. He was confirmed by the Senate on October 21, following hearings by the Governmental Affairs Committee on October 7, and its favorable report on October 9.[49] Walker began his term of office on November 9, 1998.

The two-year interregnum marked the second longest period without a confirmed Comptroller General. And the nearly 10 months before the President submitted a nomination based on the congressional commission's recommendation prompted interest in making the Comptroller General position exclusively a legislative branch officer. But this was not acted on.[50] By so doing, Congress would have made the appointment itself, as it does, for instance, with the Director of the Congressional Budget Office.[51] (By comparison, other legislative branch offices — the Librarian of Congress, Architect of the Capitol, and Public Printer, who heads the Government Printing Office — are filled by presidential nominees who are confirmed by the Senate.)

Removal, Retirement, and Resignation

The Comptroller General is limited to a single 15-year term, a statutory provision[52] designed to protect the officer's independence, professional integrity, and objectivity. Of the seven Comptrollers General, three served the full term. (See **Table 2**.) The four with shorter tenures include David Walker, who will have served for nine years and four months when his resignation takes effect (November 9, 1998, to March 12, 2008). The remaining three who left early, coincidentally in succession, were Brown, one year, resignation; Warren, 14 years, retirement; and Campbell, 10 ½ years, retirement. All three cited ill health as the reason for leaving.

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[47] (...continued)
General. See also Stephen Barr, "GOP Leaders Offer Three to Head GAO," *Washington Post*, January 27, 1998, p. A15.

[48] "Democrats, Objecting to Republican Move, Send 7 Names to Clinton for GAO," *Washington Post*, February 2, 1998, p. A17.

[49] *Congressional Record*, vol. 144, October 21, 1998, p. S12980. See also Robert Pear, "A C.P.A. at Center Stage: David Michael Walker," *New York Times*, October 23, 1998, p. A14; and Senate Committee on Governmental Affairs, *Nomination of ... David M. Walker*.

[50] "GOP May Seek to Strip Clinton of Power to Name GAO Head," *CQ Daily Monitor*, July 29, 1998, p. 5.

[51] Earlier proposals along this line, incidentally, were raised in the mid-1970s, prior to the change setting up the congressional commission to make recommendations to the President. See Mosher, *The GAO*, p. 288. The bills introduced in 1975 were H.R. 8616, 94th Cong., 1st sess., sponsored by Rep. Jack Brooks, and S. 2066, 94th Cong., 1st sess., sponsored by Sen. Lee Metcalf, with hearings on the latter. U.S. Congress, Senate Committee on Government Operations, Subcommittee on Reports, Accounting, and Management, *GAO Legislation*, hearing, part 1, 94th Cong., 1st sess. (Washington: GPO, 1975).

[52] 31 U.S.C. 43.

Removal

The Comptroller General or Deputy may be removed by impeachment or by adoption of a joint resolution of Congress. Removal by joint resolution can occur only after notice and an opportunity for a hearing and only for certain specified reasons: permanent disability, inefficiency, neglect of duty, malfeasance, felony conviction, or conduct involving moral turpitude. No Comptroller General or Deputy has been subject to either impeachment or removal by a joint resolution.

Retirement and Annuity

The current requirement creates an unequaled retirement system for the Comptroller General, by comparison with other government officials and employees. It provides that a CG who retires after at least 10 years in office "is entitled to receive an annuity for life equal to the pay the Comptroller General is receiving on completion of the term or at the time of retirement" (31 U.S.C. 772(a)). In addition to this benefit, an annuity for a retired CG "shall be increased at the same time that, and by the same percent as the percentage by which, annuities are increased under section 8340(b) of Title 5" (31 U.S.C. 777(a)). As a qualification, this annuity "may not be more than the basic pay of the Comptroller General" (31 U.S.C. 777(b)).

This special retirement system was added in 1953.[53] In considering the legislation, the Senate Committee on Government Operations received the views of both the Civil Service Commission (CSC) and the Comptroller General. The Committee stated that the new retirement system for the Comptroller General was

> designed to conform to the particular nature of the office, which witnesses testified was similar in character, tenure and independence to the office of a Federal judge, and that its provisions are designed to conform to retirement benefits provided for Federal judges.[54]

The post was regarded as "unique," in a statement on behalf of the Chairman of the Civil Service Commission, who favored the retirement provision for several reasons.

> The Comptroller General is unique in that he is (a) independent of Executive control, (b) cannot be removed except by the Congress, and (c) is not eligible for reappointment after serving a 15-year term.[55]

A letter to the Committee from the CSC elaborated on these and other rationales. It noted that the Comptroller General's duties were "important and complex," demanding "the appointment of a mature man," who would not necessarily have had

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[53] P.L. 83-161, Comptroller General — Retirement.

[54] U.S. Congress, Senate Committee on Government Operations, *Comptroller General, Retirement*, S.Rept. 594, 83rd Cong., 1st sess. (Washington: GPO, 1953), p. 1.

[55] Ibid., pp. 1-2.

previous government experience and might not after leaving the post.[56] The resulting condition is that "upon completion of his term, the Comptroller General will normally be of such advanced age as to deter, if not prohibit, his acceptance of employment in other pursuits."[57]

Lindsay Warren, the Comptroller General at the time, echoed these sentiments. The fixed 15-year term, without the possibility of reappointment,

> is too long for such an officer to retain other ties, and too short to provide lifetime security or sufficient longevity to buy an annuity under the Civil Service Retirement System.... Important and complex duties of the position dictate the appointment of a mature man, who, upon completion of his term, would normally be beyond the age when he might seek new fields of activity.... the Office is a part of the legislative branch of the Government, and is of a semijudicial nature.[58]

An attempt to transform the CG's retirement system was advanced by the House Appropriations Committee in the 110th Congress. The panel included a proviso

> that repeals the unique Comptroller General Retirement system for any individual appointed Comptroller General after the enactment of this Act. Future appointments to this position will be covered under the standard Federal Employees Retirement System (FERS).[59]

Of the seven Comptrollers General, two — Lindsay Warren and Joseph Campbell — retired after going beyond the 10-year threshold (which was made available in 1954).[60]

Resignation

Throughout GAO's history, only two of the seven Comptrollers General have resigned from office. Fred Herbert Brown served a little over one year (April 11, 1939, to June 19, 1940), leaving after suffering a stroke.[61] David M. Walker resigned in order to head a newly established public interest foundation.[62] He will have served as Comptroller General for nine years and four months (November 9, 1998, to March 12, 2008), thus, falling short of the 10-year threshold to be eligible for the CG's retirement annuity.

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[56] Letter from the Acting Assistant Executive Director, Civil Service Commission, July 15, 1953, to Hon. Joseph R. McCarthy, Chairman, Senate Committee on Government Operations. Ibid. pp. 3-4

[57] Ibid., p. 4.

[58] Letter from Lindsay Warren, Comptroller General, ibid.

[59] U.S. House Committee on Appropriations, *Legislative Branch Appropriations Act, 2008*, H.Rept. 110-198, 110th Cong., 1st sess., p. 34. The proposal was eliminated in conference.

[60] Trask, *History of GAO*, pp. 38 and 57.

[61] Trask, *History of GAO*, p. 22.

[62] See note 2 above.

Concluding Summary

Created in 1921, the General Accounting Office, now the Government Accountability Office, is Congress's largest support agency, with a budget of more than $507 million and an authorized staff of more than 3,100 for FY2008. The office has been headed by only seven comptrollers general over its eight-decade history; with a vacancy currently, it operates under an acting CG. GAO has been granted broad jurisdiction over the executive and substantial independence from it as well as extensive authority to gain access to its records and to investigate, audit, and evaluate its operations.[63] These attributes support a wide variety of services and activities, most connected with legislative oversight of the executive, that GAO can initiative on its own or, more usually, at the request of Congress, its Members, and panels.

In the mid-1990s, GAO underwent a substantial downsizing — in funding and staffing — in part because of congressional criticism of its perceived orientation towards the previous two administrations and concerns about its missions and roles. Since then, questions have arisen over other matters: the process (and resulting delay) for selecting the Comptroller General; the absence of a confirmed Deputy for more than two decades; and the unsuccessful attempt to gain access to information from a presidentially established panel, headed by the Vice President.

Notwithstanding these developments, GAO has experienced a regular increase in its annual budget over the past nine years. Bills have been introduced in the 110th Congress which would clarify GAO's jurisdiction over the intelligence community. Another proposal (from GAO, incorporated in H.R. 3268, and S. 2564) would create an office of inspector general and transform current arrangements affecting employee pay and benefits, the CG's annuity level, and appointment of the deputy. Earlier, in 2004, the Comptroller General garnered new authority over pay and personnel in the re-designated Government Accountability Office. A followup study a year later, under the auspices of the IBM Center for the Business of Government, found benefits in GAO's use of human capital management to drive its organizational transformation. The authors recommended that executive agencies — notwithstanding their differences with a legislative branch support agency — "heed the lessons of the government's chief accountability office as they go about the

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[63] GAO is one of a number of comparable organizations worldwide — collectively known as Supreme Audit Institutions (SAIs) — that audit, investigate, and/or review government activities, operations, and programs. These counterparts have similar but not identical responsibilities, functions, powers, and degrees of independence (from the entities they audit and investigate), reflected to a degree in their different titles: e.g., the Supreme Chamber of Control (in Poland), Court of Audit (Belgium), Office of the Comptroller and Auditor General (Ireland), National Audit Office and Northern Ireland Audit Office (United Kingdom), Tribunal of Contras (Portugal), and Cour des Comptes (France). Among them, GAO probably ranks highest across such key criteria as independence, authority, jurisdiction, functions, and resources. Although there is no current, systematic comparison of SAIs internationally, descriptions of individual ones are found in International Organization of Supreme Audit Institutions, *Survey and Description of Selective National Audit Offices* (loose-leaf collection) (Vienna: INTOSAI, 1996); National Audit Office, *State Audit in the European Union* (London: NAO, 1996); and S. N. Swaroop, *Supreme Audit Institutions in Different Countries* (New Delhi: Ashish Publishing House, 1991).

critical work of reinventing their own personnel systems." Despite this endorsement, the changes in GAO (as well as parallel ones in executive agencies) prompted concerns over the implementation and impact of the new personnel flexibilities authority and pay. Legislation and hearings on the personnel and pay system have arisen in the 110th Congress. The same developments contributed, in 2007, to the establishment of an employee union with collective bargaining rights and, in 2008, to a new contract for eligible employees. crsphpgw