

GOVERNMENT ACCOUNTABILITY OFFICE IMPROVEMENT
 ACT

APRIL 12, 2013.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1162]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
 was referred the bill (H.R. 1162) to amend title 31, United States
 Code, to make improvements in the Government Accountability Of-
 fice, having considered the same, report favorably thereon without
 amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Government Accountability Office (GAO) is a legislative branch agency that examines how the federal government spends taxpayer dollars and investigates waste, fraud and abuse in federal programs. H.R. 1162 intends to increase the effectiveness of GAO by removing restrictions to necessary information when performing audits and investigations for the legislative branch.

The bill: strengthens GAO's ability to obtain information from the Executive Branch including pursuing civil action to obtain agency records; expands GAO's ability to obtain sworn testimony; expands access to specific categories of records that have been denied to GAO previously; requires GAO to prescribe policies to protect proprietary or trade secret information from public disclosure; and requires agency heads to send GAO report responses to all oversight Committees of jurisdiction.

BACKGROUND AND NEED FOR LEGISLATION

GAO's mission is "to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure accountability of the federal government for the benefit of the American people."¹ GAO provides valuable audits and analyses regarding government programs and activities on a range of topics at the request of congressional Committees and subcommittees. Congress must have current and complete information regarding federal program performance in order to both legislate effectively and to conduct meaningful oversight.

Each federal agency is required to provide information to the Comptroller General about the duties, powers, activities, organization and financial transactions of the agency.² The provisions in H.R. 1162 are designed to allow the Government Accountability Office to accomplish its mission more effectively by allowing it access to essential information. This bill will ensure GAO has the ability to obtain agency records, and to administer oaths to witnesses when auditing accounts and investigating fraud. It will allow the Comptroller General to seek a judicial remedy to enforce GAO's right to information under the law.

GAO has systematically been denied access to specific government data, which impedes its ability to examine program effectiveness and investigate fraud and abuse. Several federal agencies have asserted that the failure of its authorizing statutes to include GAO as an approved recipient of documents is an implicit exemption from GAO's broad authorization to obtain agency material. This bill will enhance GAO's ability to serve Congress and the American public by ensuring the agency has access to key data that it had previously been denied. This bill makes explicit in statute that GAO shall not be denied access to key data it needs to perform its work, such as data in the National Directory of New Hires, which is used to verify eligibility for federal programs, to detect or prevent fraud, and to identify improper payments. H.R. 1162 also

¹U.S. Government Accountability Office, About GAO available at <http://gao.gov/about/index.html>.

²31 U.S.C. section 716(a).

makes explicit that GAO shall not be denied access to Hart-Scott-Rodino pre-merger notification information, and information submitted pursuant to the Food, Drug and Cosmetic Act.

The statute governing GAO mandates the Comptroller General maintain the same level of confidentiality of information as is required by the head of the agency from which it is obtained. Additionally, the same penalties for unauthorized disclosure extend to GAO as is prescribed in statute for other users. This bill does not waive or supersede these requirements or any penalties for misuse. GAO has an exemplary record of protecting sensitive government information, including national security documents and tax return information. The legislation provides that GAO will rigorously maintain confidentiality regarding information obtained as a result of these provisions.

LEGISLATIVE HISTORY

Oversight and Government Reform Committee Chairman Issa and Ranking Member Cummings introduced H.R. 1162 on March 14, 2013. The bill was referred to the House Committee on Oversight and Government Reform. The Committee considered H.R. 1162 on March 20, 2013, and by voice vote ordered the bill favorably reported. No amendments were offered.

During the 112th Congress, the language in this bill was included in the version of the DATA Act (H.R. 2146) that was approved in a unanimous voice vote by the full House.

SECTION-BY-SECTION

Section 1: Short title.

The short title of the bill is the “Government Accountability Office Improvement Act.”

Section 2: Government Accountability Office Improvement.

Authority to Obtain Information: Section 2(a) reaffirms that Congress has authorized GAO to pursue civil actions if federal agencies withhold records from GAO. This section also authorizes the Comptroller General to make and retain copies of agency records.

Administering Oaths: Section 2(b) authorizes the Comptroller General to administer oaths for specific types of GAO investigations, including fraud investigations, attempts to defraud the United States, or misconduct by federal employees.

Access to Certain Information: Section 2(c) adds a new section to title 31 U.S.C. section 721, which makes clear that the Social Security Act, the Federal Food, Drug, and Cosmetic Act, and the Hart-Scott-Rodino Act do not limit GAO’s right to access information.

The new section 721(a) confirms GAO’s existing authority to review information at the Department of Health and Human Services, including the National Directory of New Hires.

The new section 721(b) confirms GAO’s existing authority to review trade secret information held by the Food and Drug Administration.

The new section 721(c) confirms that GAO has the authority to access pre-merger filing information with the Federal Trade Commission and the Department of Justice.

The new section 721(d) requires GAO to prescribe policies and procedures necessary to protect proprietary or trade secret information from public disclosure. This section states that it does not modify 18 U.S.C. section 1905, which prohibits disclosure of trade secret or other sensitive information, or affect the applicability of section 716(e) including the protections against unauthorized disclosure contained therein.

The new section 721(e) confirms that specific references to statutes in this bill should not be construed to affect access by GAO to other information that is not referenced.

Agency Reports: This section amends 31 U.S.C. section 720(b) allowing agencies to report on both actions taken and planned actions in response to GAO recommendations. This section expands the list of recipients of an agency report to include GAO and the Congressional Committees of jurisdiction over the agency program or activity that is the subject of the recommendation.

EXPLANATION OF AMENDMENTS

No amendments were offered to H.R. 1162.

COMMITTEE CONSIDERATION

On March 20, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 1162, by voice vote, a quorum being present.

CORRESPONDENCE

APRIL 10, 2013.

Hon. BOB GOODLATTE,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding the Committee on the Judiciary's jurisdictional interest in H.R. 1162, the "Government Accountability Office Improvements Act," and your willingness to forego consideration of H.R. 1162 by your committee.

I agree that the Judiciary Committee has a valid jurisdictional interest in certain provisions of H.R. 1162 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 1162. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation, should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,

DARRELL ISSA,
Chairman.

APRIL 8, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN ISSA, I am writing concerning H.R. 1162, the “Government Accountability Office Improvements Act,” which your Committee reported on March 20, 2013.

H.R. 1162 contains provisions within the Committee on the Judiciary’s rule X jurisdiction. As a result of your having consulted with the Committee and making requested changes to the provisions in question, and in order to expedite this bill for floor consideration, the Committee on the Judiciary will forego action on the bill. This is being done on the basis of our mutual understanding that doing so will in no way diminish or alter the jurisdiction of the Committee on the Judiciary with respect to the appointment of conferees, or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,

BOB GOODLATTE,
Chairman.

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 the terms and conditions of employment or access to public services and accommodations. This bill increases the effectiveness of GAO by removing restrictions to necessary information when performing audits and investigations for the legislative branch. As such this bill does not relate to employment or access to public services and accommodations.

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.

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.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1162 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section

21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This legislation directs the Comptroller General to prescribe policies and procedures that are necessary to protect from public disclosure proprietary or trade secret information obtained from this legislation.

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 MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported 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. 1162 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 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. 1162. 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. 1162 from the Director of Congressional Budget Office:

APRIL 1, 2013.

Hon. DARRELL ISSA,
*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. 1162, the Government Accountability Office Improvement Act.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 1162—Government Accountability Office Improvement Act

H.R. 1162 would provide additional authorities to the Government Accountability Office (GAO), including the ability to obtain certain records and information, and to administer oaths. The legislation also would require GAO to establish procedures to protect certain proprietary information that it collects when carrying out its responsibilities.

CBO estimates that implementing the legislation would have no significant impact on the federal budget because it would not significantly add to GAO's administrative costs. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1162 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring the District of Columbia to report information to Congressional committees and GAO. CBO estimates that the cost to comply with the mandate would be minimal and would not exceed the threshold established in UMRA for intergovernmental mandates (\$75 million in 2013, adjusted annually for inflation).

H.R. 1162 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Elizabeth Cove Delisle (for the impact on state and local governments). The estimate was 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

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SUBTITLE I—GENERAL

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CHAPTER 7—GOVERNMENT ACCOUNTABILITY OFFICE

SUBCHAPTER I—DEFINITIONS AND GENERAL ORGANIZATION

Sec.

701. Definitions.

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SUBCHAPTER II—GENERAL DUTIES AND POWERS

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721. Access to certain information.

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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 when auditing and settling accounts and, with the prior express approval of the Comptroller General, when investigating fraud or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States.

* * * * *

§ 716. Availability of information and inspection of records

(a)(1) The Comptroller General is authorized to obtain such agency records as the Comptroller General requires to discharge his duties (including audit, evaluation, and investigative duties), including through the bringing of civil actions under this section. In reviewing a civil action under this section, the court shall recognize the continuing force and effect of the authorization in the preceding sentence until such time as the authorization is repealed pursuant to law.

[(a)] (2) 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]** *inspect, and make and retain copies of, an agency record* to get the information. This subsection does not apply to expenditures made under section 3524 or 3526(e) of this title.

* * * * *

§ 720. Agency reports

(a) * * *

(b) When the Comptroller General makes a report that includes a recommendation to the head of an agency, the head of the agency shall submit a written statement on action taken *or planned* on the recommendation by the head of the agency. The statement shall be submitted to—

[(1) the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of

Representatives before the 61st day after the date of the report; and

(1) *the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the congressional committees with jurisdiction over the agency program or activity that is the subject of the recommendation, and the Government Accountability Office before the 61st day after the date of the report; and*

* * * * *

§ 721. Access to certain information

(a) *No provision of the Social Security Act, including section 453(l) of that Act (42 U.S.C. 653(l)), shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information or to inspect or copy any record under section 716 of this title.*

(b) *No provision of the Federal Food, Drug, and Cosmetic Act, including section 301(j) of that Act (21 U.S.C. 331(j)), shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information or to inspect or copy any record under section 716 of this title.*

(c) *No provision of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435) and the amendments made by that Act shall be construed to limit, amend, or supersede the authority of the Comptroller General to obtain any information or to inspect or copy any record under section 716 of this title, including with respect to any information disclosed to the Assistant Attorney General of the Antitrust Division of the Department of Justice or the Federal Trade Commission for purposes of pre-merger review under section 7A of the Clayton Act (15 U.S.C. 18a).*

(d)(1) *The Comptroller General shall prescribe such policies and procedures as are necessary to protect from public disclosure proprietary or trade secret information obtained consistent with this section.*

(2) *Nothing in this section shall be construed to—*

(A) *alter or amend the prohibitions against the disclosure of trade secret or other sensitive information prohibited by section 1905 of title 18 and other applicable laws; or*

(B) *affect the applicability of section 716(e) of this title, including the protections against unauthorized disclosure contained in that section, to information obtained consistent with this section.*

(e) *Specific references to statutes in this section shall not be construed to affect access by the Government Accountability Office to information under statutes that are not so referenced.*

* * * * *