



United States Government Accountability Office
Washington, DC 20548

March 1, 2007

The Honorable John D. Rockefeller IV
Chairman, Select Committee on Intelligence
United States Senate

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

This letter responds to your request for comments on S. 82, the “Intelligence Community Audit Act of 2007,” introduced on January 4, 2007. If enacted, S. 82 would amend title 31 of the United States Code to reaffirm the U.S. Government Accountability Office’s (GAO) authority to audit and evaluate financial transactions, programs, and activities of the Intelligence Community. This bill would also provide that GAO may conduct an audit or evaluation of intelligence sources and methods or covert actions only upon the request of the intelligence committees or congressional majority or minority leaders. GAO supports this bill and believes that if it is enacted, GAO would be better positioned to assist the Congress with its oversight functions relating to the Intelligence Community.

More specifically, this bill would reaffirm GAO’s authority, under existing statutory provisions, to audit and evaluate financial transactions, programs, and activities of elements of the Intelligence Community, and to access records necessary for such audits and evaluations. As discussed below, GAO has clear audit and access authority with respect to elements of the Intelligence Community,¹ subject to a few limited exceptions. However, over the years, the Department of Justice (DOJ) has questioned GAO’s authority in this area. In addition, the executive branch has not provided GAO the level of cooperation needed to conduct meaningful reviews of elements of the Intelligence Community. This issue has taken on new prominence and is of greater concern in the post-9/11 context, especially since the Director of National Intelligence has been assigned responsibilities that extend well beyond traditional intelligence activities. As discussed below, the implications of executive branch resistance to GAO’s work in the intelligence area were highlighted when the Office of the Director of National Intelligence (ODNI) refused to comment on GAO’s March 2006 report involving the government’s information sharing efforts, maintaining that DOJ had “previously advised” that “the review of intelligence

¹The Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458), which established a Director of National Intelligence, did not alter GAO’s authority to audit and evaluate financial transactions, programs, and activities of elements of the Intelligence Community.

activities is beyond the GAO's purview." We strongly disagree with this view. As explained in more detail in this response, GAO has broad statutory authority to audit and evaluate agency financial transactions, programs, and activities, and these authorities apply to reviews of elements of the Intelligence Community.²

Importantly, the bill, in reaffirming GAO's authorities, recognizes that GAO may conduct reviews, requested by relevant committees of jurisdiction, of matters relating to the management and administration of elements of the Intelligence Community in areas such as strategic planning, financial management, information technology, human capital, knowledge management, information sharing, and change management. In recognition of the heightened level of sensitivity of audits and evaluations relating to intelligence sources and methods or covert actions, this bill would restrict GAO audits and evaluations of intelligence sources and methods or covert actions to those requested by the intelligence committees or congressional majority or minority leaders. In addition, in the context of these reviews relating to intelligence sources and methods or covert actions, the bill contains several information security related provisions. The bill includes, for example, provisions (1) limiting GAO's reporting of results of such audits and evaluations to only the original requester, the Director of National Intelligence, and the head of the relevant element of the Intelligence Community and (2) requiring GAO to establish, after consultation with the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, procedures to protect such classified and other sensitive information from unauthorized disclosure.

Your request for our comments on S. 82 asked us to address three specific questions relating to GAO's interaction with the Intelligence Community. For ease of reference, we deal with the three questions in the following order: (1) GAO's authority, under present law, to audit and evaluate the financial transactions, programs, and activities of the Intelligence Community; (2) the history of the Intelligence Community's interaction with GAO; and (3) the benefits or drawbacks, if any, of obtaining GAO assistance in examining and reporting on the financial transactions, programs, and activities of the Intelligence Community.

1. GAO's authority, under present law, to audit and evaluate the financial transactions, programs, and activities of the Intelligence Community.

GAO has broad statutory authority under title 31 of the United States Code to evaluate agency programs and investigate matters related to the receipt, disbursement, and use of public money. See 31 U.S.C. §§ 712 and 717. GAO also has authority, under section 3524(a) of title 31, to audit unvouchered expenditures (i.e., those accounted for only on the approval, authorization, or certificate of an executive branch official) to decide if the expenditures were authorized by law and made. An

² DOJ's position and our analysis is set forth in more detail in GAO, *Information Sharing: The Federal Government Needs to Establish Policies and Processes for Sharing Terrorism and Sensitive but Unclassified Information*, GAO-06-385 (Washington, D.C.: Mar. 17, 2006).

exemption from GAO's authority to audit unvouchered expenditures, in section 3524(c), provides that the President may exempt financial transactions about sensitive foreign intelligence or foreign counterintelligence activities or sensitive law enforcement investigations if an audit would expose the identifying details of an active investigation or endanger investigative or domestic intelligence sources involved in the investigation. In addition, under section 3524(d)(2), GAO's authority with respect to unvouchered expenditures "does not affect [CIA's] authority under section 8(b) of the Central Intelligence Act of 1949 (50 U.S.C. § 403j(b))...."³ These provisions preclude GAO from auditing Central Intelligence Agency (CIA) expenditures of a confidential, extraordinary, or emergency nature that are accounted for solely on the certificate of the CIA Director.

To carry out its audit and evaluation authorities, GAO has a broad right of access to agency records. Under 31 U.S.C. § 716, federal agencies are required to provide GAO with information about their duties, powers, activities, organization, and financial transactions. In concert with our statutory audit and evaluation authority, this provision gives GAO a broad right of access to agency records, including records of the Intelligence Community. GAO's access statute authorizes enforcement of GAO's access rights through a series of steps specified in the statute, including the filing of a civil action to compel production of records in federal district court. However, GAO may not bring an action to enforce its statutory right of access to a record relating to activities the President designates as foreign intelligence or counterintelligence activities. See 31 U.S.C. § 716(d)(1)(A).

While GAO has authority to perform audits and evaluations of elements of the Intelligence Community, DOJ has, for many years, taken a contrary view. In a 1988 Office of Legal Counsel (OLC) opinion addressing GAO's authority to review intelligence activities in the context of foreign policy, OLC asserted that by enacting the current intelligence oversight framework, codified at 50 U.S.C. § 413, the Congress intended the intelligence committees to maintain exclusive oversight with respect to intelligence activities, foreclosing reviews by GAO.⁴ Although section 413 codified practices to simplify the congressional intelligence oversight process, we strongly disagree with DOJ's view that the intelligence oversight framework statutorily precludes GAO reviews in the intelligence arena.⁵ Neither section 413 nor

³ Section 403j(b) of title 50 provides that "[t]he sums made available to the Agency [CIA] may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

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

⁵ The logic behind DOJ's argument, that section 413 implicitly repeals GAO's audit and access authority to conduct reviews of elements of the Intelligence Community, rests upon a statutory interpretation that is disfavored by the courts. It is a cardinal rule of federal statutory construction that repeals by implication are not favored. Where there are two acts upon the same subject, effect should be given to both if possible. (See *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936)). Only where two statutes cannot be harmonized by reasonable interpretation, do they conflict and one must prevail. (See, *Radzanower v. Touche Ross*, 426 U.S. 148, 154 (1976) citing *United States v. United*

its legislative history states that the procedures established therein constitute the exclusive mechanism for congressional oversight of intelligence activities. As explained above, GAO's statutory authorities permit us to evaluate a wide range of activities in the Intelligence Community, subject to a few limited statutory exceptions.⁶

The reaffirmation provisions in the bill should help to ensure that GAO's audit and access authorities are not misconstrued in the future. One particularly helpful provision in this regard is the proposed new section 3523a(e) of title 31, specifying that no "provision of law shall be construed as restricting or limiting the authority of the Comptroller General to audit and evaluate, or obtain access to the records of, elements of the intelligence community absent specific statutory language restricting or limiting such audits, evaluations, or access to records." This provision makes clear that, unless otherwise specified by law, GAO maintains the right to evaluate and access the records of elements of the Intelligence Community pursuant to its authorities in title 31 of the United States Code. A more detailed description of GAO's key statutory authorities is provided in enclosure I to this letter.

2. History of the Intelligence Community's interaction with GAO.

Historically, GAO's work relating to the Intelligence Community has been limited.⁷ In July 2001, GAO provided detailed testimony on our long-standing problems in attempting to perform reviews at the CIA.⁸ As we testified, in principle, GAO has broad authority to evaluate CIA programs. In practice, however, the CIA's level of cooperation has limited our ability to evaluate CIA programs. We have not actively audited the CIA since the early 1960s, when we discontinued such work because the CIA was not providing us with sufficient access to information to effectively perform our mission. The issue has arisen since then from time to time as our work has

Continental Tuna Corp., 425 U.S. 164, 168 (1976). These two statutory frameworks clearly can be read in concert with each other.

⁶ DOJ's position and our analysis is set forth in more detail in GAO-06-385.

⁷ However, GAO has performed some reviews of particular programs or activities of intelligence agencies. For example, we have conducted several studies involving intelligence agency reorganization, combating terrorism, analyses of national intelligence estimates, managing sensitive information, homeland security, and computer security that involved certain portions of the Intelligence Community. See, for example, *Defense Intelligence: Efforts to Reorganize Defense Intelligence and Support Military Operations*, GAO/C-NSIAD-95-13 (Washington, D.C.: June 12, 1995); *Foreign Missile Threats: Analytic Soundness of Certain National Intelligence Estimates*, GAO/C-NSIAD-96-14 (Washington, D.C.: Aug. 30, 1996); *Foreign Missile Threats: Analytic Soundness of Certain National Intelligence Estimates*, GAO-96-225 (Washington, D.C.: Aug. 30, 1996); *Foreign Missile Threats: Analytic Soundness of National Intelligence Estimate 95-19*, GAO/T-NSIAD-97-53 (Washington, D.C.: Dec. 4, 1996); *Combating Terrorism: More Interagency Coordination Needed to Reduce Risks in Overseas Arrests*, GAO/C-NSIAD-00-2 (Washington, D.C.: June 8, 2000); *Managing Sensitive Information: DOD Can More Effectively Reduce the Risk of Classification Errors*, GAO-06-706 (Washington, D.C.: June 30, 2006); *Information Technology: FBI Needs an Enterprise Architecture to Guide Its Modernization Activities*, GAO-03-959 (Washington, D.C.: Sept. 25, 2003); and *Information Technology: Foundational Steps Being Taken to Make Needed FBI Systems Modernization Management Improvements*, GAO-04-842 (Washington, D.C.: Sept. 10, 2004).

⁸ GAO, *Central Intelligence Agency: Observations on GAO Access to Information on CIA Programs and Activities*, GAO-01-975T (Washington, D.C.: July 18, 2001).

required some level of access to CIA programs and information. However, given a lack of requests from the Congress, and in particular the intelligence committees, for specific work at the CIA and our limited resources, we have made a conscious decision not to further pursue the issue. Today, our dealings with the CIA are mostly limited to requesting information that relates either to governmentwide reviews or analyses of threats to U.S. national security on which the CIA might have some information. The CIA either provides us with the requested information, provides the information with some restrictions, or does not provide the information at all. In general, we are most successful at getting access to CIA information when we request threat assessments and the CIA does not perceive our audits as oversight of its activities.

In the post 9/11 context, GAO and congressional oversight of the Intelligence Community has taken on new prominence. The 9/11 Commission Report documented failures of information sharing among agencies prior to the events of 9/11, and stressed the importance of intelligence analysis that draws on all relevant sources of information. Traditionally, there have been legal and policy barriers that prohibited the sharing of law enforcement and intelligence information, but in the aftermath of 9/11, some of these restrictions have been altered. As part of the effort to improve information sharing, the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458) required the President to establish an Information Sharing Environment (ISE) and to designate a Program Manager to plan for and oversee its implementation. The ISE is to facilitate the sharing of “terrorism information,” a broadly defined term that encompasses information extending well beyond the boundaries of what is traditionally considered intelligence information and activities. In December 2005 the President charged ODNI⁹ (which houses the Program Manager for the ISE) with responsibility for overseeing all aspects of information sharing within the federal government and between the federal government and nonfederal governments and entities, including areas of information sharing clearly outside the purview of the Intelligence Community—notably, procedures for sharing sensitive but unclassified information unrelated to homeland security, law enforcement, and terrorism.

In March of 2006, GAO issued a report on information sharing efforts in the federal government.¹⁰ We requested comments on a draft of this report from ODNI, in light of the pivotal role that the office has been given regarding information sharing efforts. ODNI, however, declined to comment on our draft report, stating that the review of intelligence activities is beyond GAO’s purview. We strongly disagreed with that assertion in our report, and also emphasized that our report did not involve an evaluation of the conduct of actual intelligence activities. We expressed concern in

⁹ Since 9/11, the passage of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458) transferred many functions of the Director of Central Intelligence—including the Community Management Staff, security oversight (which also affects information sharing), and the National Intelligence Council—to ODNI.

¹⁰ See GAO-06-385.

the report, and in a subsequent letter to the Director of National Intelligence,¹¹ that in this case and in others the executive branch has appeared to take an overly broad interpretation of what constitutes “intelligence activities.”¹² As we advised the Director of National Intelligence, this broad interpretation can have the practical effect of shielding homeland security missions and other critical executive branch activities from GAO and key congressional committee oversight.

In addition to the information sharing context, there are other functions in which GAO’s work would require interaction with ODNI. These functions include, for example, human capital management, such as the security clearance process; areas identified in GAO’s High-Risk Series,¹³ such as bringing a number of different agencies under one organization; and the concept of a Chief Management Officer (CMO).

ODNI has started to engage in discussions with us. GAO staff recently held a meeting with the Director and Deputy Director for Legislative Affairs in ODNI’s Office of Legislative Affairs on a wide range of matters. For example, ODNI has responded to GAO’s requests for briefings and meetings, and provided GAO with finished intelligence products and similar types of information—with some exceptions concerning the National Counterterrorism Center.

Since 9/11, various studies and reports have been issued, such as the Silberman-Robb Commission report,¹⁴ that highlight the many challenges and problems the Intelligence Community faces and the need for major business transformation throughout the related entities. These reports and studies contain recommendations and suggestions for change, such as improving information sharing and management of the Intelligence Community, that are worthy of follow-up and oversight. GAO is prepared to engage constructively with the Intelligence Community in its overall business transformation effort. We have significant knowledge and experience that can be of benefit to the Intelligence Community in connection with a broad range of transformation issues. We are also prepared to help get the objective and fact-based information the committee needs for its oversight role. One possible approach could initially involve work with the individual intelligence agencies to examine, at a fairly high level, their business strategies, plans, processes, procedures, alignments, and systems (see enc. III). An alternative approach could involve doing one or more targeted horizontal and functional reviews of key acquisition and contract management, human capital, and/or knowledge sharing issues within the Intelligence Community, as outlined in enclosure IV.

¹¹ See the April 27, 2006, letter from Comptroller General David M. Walker to then Director of National Intelligence John D. Negroponte in enc. II to this letter.

¹² See, for example, GAO, *Homeland Security: Efforts to Improve Information Sharing Need to Be Strengthened*, GAO-03-760 (Washington D.C.: Aug. 27, 2003).

¹³ GAO, *High-Risk Series: An Update*, GAO-07-310 (Washington, D.C.: January 2007).

¹⁴ See The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States* (Washington, D.C.: Mar. 31, 2005).

3. The benefits or drawbacks, if any, of obtaining GAO assistance in examining and reporting on the financial transactions, programs, and activities of the Intelligence Community.

Finally, you asked us to address the benefits or drawbacks, if any, of obtaining the assistance of GAO, whether on the initiative of the Intelligence Community or either the House or Senate intelligence committee, in examining and reporting on the financial transactions, programs, and activities of the Intelligence Community. The benefits that GAO can provide the committee, the Congress, and the Intelligence Community would be significant.

First, GAO efficiently uses its resources to meet the needs of the Congress and exercises the independence and objectivity necessary to ensure that its work and products not only conform to applicable professional standards, but that its work is professional, objective, fact-based, nonpartisan, nonideological, fair, and balanced.

Second, GAO has the capability to form multidisciplinary teams, including accountants, analysts, program evaluators, cost analysts, attorneys, information technology specialists, economists, methodologists, engineers, and expert consultants to provide a total picture on a given issue. These multidisciplinary teams have experience in examining many other government agencies and programs, such as strategic planning, organizational alignment, human capital management, financial management systems, acquisition and contract management, information technology architectures and systems, knowledge management, and specific program and activity knowledge across most key government functions. In addition, GAO has long-standing and ongoing work in the national security, homeland security, and international affairs issue areas that give it a contextual sophistication for reviewing Intelligence Community issues. Each year, GAO's work results in major improvements and efficiencies in government operations and billions of dollars in financial benefits.

Third, GAO has a broad perspective through performing extensive domestic and overseas fieldwork across the entire spectrum of federal departments and agencies, providing an in-depth, "end-to-end" perspective on crosscutting government programs and activities, such as multiple agencies' activities abroad and the coordination challenges they face.

Fourth, GAO operates with agreed-upon rules of engagement and agency protocols, including formal entrance and exit conferences with agency officials. For example, at an exit conference, GAO provides the agency with a statement of fact to confirm that the critical facts and key information used to formulate GAO's analyses and findings are current, correct, and complete. Agency issues and additional information can be incorporated into GAO's analysis and observations, and agency comments on draft reports are included in GAO products so clients can see the agency's views.

Fifth, GAO provides its clients with the information they need—when they need it. GAO uses a wide variety of products to meet its clients' information needs and time frames, including briefings, congressional testimony, reports, and legal opinions.

Finally, unlike individual inspectors general, GAO can reach across multiple agencies governmentwide in crosscutting reviews to examine and identify challenges and ways to improve Intelligence Community management and business processes and results (much of which would not require getting into sources and methods). For example, GAO can review the following types of transactions, programs, and activities:

- Intelligence Community transformation initiatives, metrics, and results.
- Collection management, processing, exploitation, and dissemination.
- Budget scrubs, “quick looks,”¹⁵ and drill-down acquisition reviews of programs in the National Intelligence Program and Military Intelligence Program.

Others have suggested some concerns related to GAO examining and reporting on the financial transactions, programs, and activities of the Intelligence Community. These concerns include (1) a limited number of personnel at GAO with proper sensitive compartmented information (SCI) access; (2) public or wide availability of GAO reports; (3) the lack of GAO facilities approved to store SCI material; (4) the lack of insight into unique Intelligence Community authorities, policies, and practices; and (5) potential duplication or overlap of GAO work with that of inspectors general and other audit organizations.

We believe we can effectively address these potential concerns. First, GAO already has a number of personnel with SCI access, especially within our multidisciplinary teams, and GAO would work with the Intelligence Community to expand the number of analysts with the appropriate access. GAO has already embarked on that process. Second, GAO tightly controls and limits dissemination of the results of its classified work,¹⁶ both written and oral, which are tailored to the needs of its client (e.g., intelligence or other committees of jurisdiction and the intelligence agencies' leadership). I am prepared to consider further restrictions, if necessary, on the dissemination of GAO's work results relating to the Intelligence Community. Third, while GAO headquarters currently does not have facilities approved to store SCI material, GAO personnel can conduct their reviews in agency-provided space. GAO currently is assessing the need to store SCI material at its headquarters. In addition, GAO's Dayton Office has access to facilities approved to process and store SCI material at Wright-Patterson Air Force Base, Ohio. Fourth, regarding a need for insight into unique Intelligence Community authorities, policies, and practices, GAO's work overall is deeply rooted in an understanding of authorities and policies when examining programs and activities. Although we have not formally been conducting reviews in the Intelligence Community, we regularly engage in discussions with

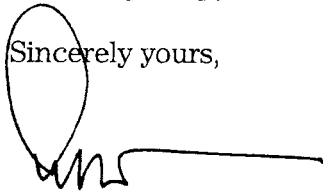
¹⁵ A GAO “quick look” assessment is a “temperature check” on a program's development progress and risk using a knowledge-based approach that reflects best practices of successful programs.

¹⁶ GAO is required by statute to maintain the same level of confidentiality for a record as is required of the head of the agency from which it is obtained.

officials, many of whom have dual-hatted responsibilities. Finally, inspectors general play a valuable and important role and we recognize that the Intelligence Community already has some degree of oversight through existing organizations. However, GAO already coordinates with inspectors general and other audit organizations to avoid overlap and duplication when reviewing other agencies' programs and activities and would continue to do so for its work in the Intelligence Community.

I would welcome the opportunity to meet with you to discuss a possible framework that would allow GAO to be more helpful to your committee and the Congress to better provide oversight of the financial transactions, programs, and activities of the Intelligence Community. As I have stated before, the nation has a major stake in the success of the Intelligence Community's transformation initiatives, and I believe GAO can provide a wealth of expertise and experience in the most critical areas. I am also sending this letter to Senators Akaka and Lautenberg, sponsors of S. 82, and providing a copy to Director McConnell.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and some smaller, less distinct marks.

David M. Walker
Comptroller General
of the United States

Enclosures - 4

cc: The Honorable Daniel K. Akaka
The Honorable Frank R. Lautenberg
The Honorable J.M. McConnell, Director
Office of the Director of National Intelligence

Key GAO Audit and Access Authorities

GAO's Audit and Evaluation Authority

GAO has broad statutory authority under title 31 of the United States Code to audit and evaluate agency¹ financial transactions, programs, and activities. Although GAO reviews in the intelligence area are subject to certain limited restrictions, as discussed below, audits and evaluations of financial transactions, programs, and activities of the Intelligence Community are clearly within the scope of GAO's statutory authority. Under 31 U.S.C. § 712, GAO has authority to investigate all matters related to the receipt, disbursement, and use of public money. Section 717 of title 31, U.S.C., authorizes GAO to evaluate the results of programs and activities of federal agencies, on GAO's own initiative or when requested by either House of Congress or a committee of jurisdiction. Section 3523(a) of title 31 authorizes GAO to audit the financial transactions of each agency, except as specifically provided by law.

GAO also has authority, under section 3524(a) of title 31, to audit unvouchered expenditures (i.e., those accounted for solely on the certificate of an executive branch official) to decide if the expenditures were authorized by law and made. An exemption from GAO's authority to audit unvouchered expenditures, in section 3524(c), provides that the President may exempt financial transactions about sensitive foreign intelligence or foreign counterintelligence activities or sensitive law enforcement investigations if an audit would expose the identifying details of an active investigation or endanger investigative or domestic intelligence sources involved in the investigation. In addition, under section 3524(d)(2), GAO's authority with respect to unvouchered expenditures "does not affect [CIA's] authority under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. § 403j(b))...."² These provisions preclude GAO from auditing CIA expenditures of a confidential, extraordinary, or emergency nature that are accounted for solely on the certificate of the CIA Director.

GAO's Access-to-Records Authority

To carry out these audit and evaluation authorities, GAO has a broad statutory right of access to agency records. Under 31 U.S.C. § 716(a), federal agencies are required to provide GAO with information about their duties, powers, activities, organization, and financial transactions. In concert with our statutory audit and evaluation

¹ The term "agency" is defined in several different GAO provisions in title 31, and none of these definitions exclude elements of the Intelligence Community categorically or individually. Specific exclusions from the definition of the term "agency" include, for example, a section 701 exclusion of the legislative branch and the Supreme Court, and a section 717 exclusion of mixed-ownership Government corporations.

² Section 403j(b) of title 50 provides that "[t]he sums made available to the Agency [CIA] may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

Key GAO Audit and Access Authorities

authority, this provision gives GAO an unrestricted right of access to agency records, including records of the Intelligence Community. When an agency does not make a record available to GAO within a reasonable period of time, GAO may issue a written request (“demand letter”) to the agency head specifying the record needed and the authority for accessing the record. Should the agency fail to release the record to GAO, GAO has the authority to enforce its requests for records by filing a civil action to compel production of records in federal district court.

Section 716 provides for enforcement of GAO’s right of access to records, setting forth a series of steps, including the filing of a civil action to compel production of records in federal district court. A limitation in section 716, while not restricting GAO’s basic statutory right of access, acts to limit GAO’s ability to compel production of particular records through a court action. More specifically, under section 716(d)(1), GAO is precluded from bringing a civil action to compel the production of a record if

- (1) the record relates to activities the President has designated as foreign intelligence or counterintelligence activities;
- (2) the record is specifically exempt from disclosure to GAO by statute; or
- (3) the President or the Director of the Office of Management and Budget certifies to the Congress and GAO that a record could be withheld under specified FOIA exemptions³ and that disclosure reasonably could be expected to impair substantially the operations of the government.

³ The two specified FOIA exemptions at 5 U.S.C. §§ 552(b)(5) or (7) relate to deliberative process and law enforcement information, respectively.

**Comptroller General's April 27, 2006, Letter to the
Director of National Intelligence**



United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

April 27, 2006

The Honorable John D. Negroponte
Director of National Intelligence
Office of the Director of National Intelligence
Washington, DC 20511

Dear Director Negroponte:

As we noted in our recent report on information sharing efforts in the federal government,¹ we were disappointed by your office's decision not to comment on our report. We placed information sharing on GAO's high-risk list because of its critical importance to our nation's security, and because federal agencies have not done an adequate job of sharing information in the past. The Congress has significant interest in this issue and has relied on GAO to a great extent to perform work on its behalf. As you know, the President has tasked your office with key coordinating roles in furtherance of the information sharing effort, including assisting in the standardization of procedures for sensitive but unclassified information.

Your office's letter declining to comment on our report stated that the review of intelligence activities is beyond GAO's purview. We strongly disagree with this assertion. There has been a longstanding disagreement between GAO and the executive branch, primarily the Department of Justice, over the scope of GAO's authority to perform reviews relating to "intelligence activities." As explained in our report, we disagree with the Justice Department's position and believe that GAO's statutory audit and access authorities permit us to evaluate a wide range of activities in the intelligence community, subject to a few limited statutory exceptions.² At the same time, we recognize that we can only perform meaningful reviews of intelligence activities with the cooperation of the intelligence community. Given this, and the sensitivities surrounding intelligence oversight, as a matter of policy we have done work on traditional "intelligence activities" only at the request of the congressional intelligence committees. Requests for reviews of such intelligence activities have been infrequent.³

¹ GAO, *Information Sharing: The Federal Government Needs to Establish Policies and Processes for Sharing Terrorism and Sensitive But Unclassified Information*, GAO-06-385 (Washington D.C.: Mar. 17, 2006).

² These include narrow statutory limitations on our audits of certain "unvouchered" accounts, 31 U.S.C. § 3624, and on our authority to compel access to certain foreign intelligence and counterintelligence information, 31 U.S.C. § 716(d)(1)(A).

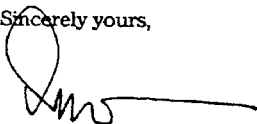
³ We have done a number of reviews looking at programs of the intelligence community that did not involve "intelligence activities." For example, we have performed reviews looking at the computer modernization efforts of the Federal Bureau of Investigation.

Comptroller General's April 27, 2006, Letter to the
Director of National Intelligence

Importantly, our recent report for key homeland security oversight committees did not involve the evaluation of the conduct of actual intelligence activities. Rather, our review addressed the procedures in place to facilitate the sharing of a broad range of information across all levels of government, including sensitive but unclassified information. In this case and in others, the executive branch has appeared to adopt an overly broad interpretation of what constitutes "intelligence activities." This broad interpretation can have the practical effect of shielding homeland security missions and other critical executive branch activities from GAO and key congressional committee oversight. In our view, this is both inappropriate and not in Congress' or the nation's interest.

In addition to helping the Congress in its oversight and other activities, I believe that GAO could be helpful to your office's own transformation efforts as you seek to fulfill the many statutory missions that have been assigned to you. GAO has a wealth of expertise and a broad government-wide perspective in connection with a range of key areas such as strategic planning, financial management, information technology, human capital, knowledge management, and change management. My hope is that we will work together to establish a cooperative and productive relationship in the future.

Sincerely yours,



David M. Walker
Comptroller General
of the United States

Business Transformation

Dramatic changes to the overall security environment and constrained budgets have produced increasing demands on the Intelligence Community to undertake a fundamental transformation to enhance accountability and effectiveness by strengthening management and creating synergies with one another. The objectives of GAO's work would be as follows:

- Examine how the Intelligence Community can apply key management principles, processes, and practices to help transform its business operations.
- Examine the extent to which individual intelligence agencies have an adequate management infrastructure (including strategic planning, acquisition, financial management, information technology management, human capital management, and knowledge sharing) that focuses on achieving results and ensuring accountability.
- Identify synergies across the agencies and opportunities to achieve improved efficiency and effectiveness.

A self-certification approach has been used successfully by legislative branch agencies to address management improvement and streamlining in response to the mandate contained in House Report 108-577 that accompanied the Legislative Branch Appropriations Act for Fiscal Year 2005.

- A diagnostic survey can be completed by the intelligence agencies to help them, the committee, and GAO diagnose opportunities to transform the organization, improve management of functional areas, and create synergies across agencies to achieve improved efficiency and effectiveness.
- The diagnostic survey, developed by GAO, is based on past work and best practices identified in transforming organizations and improving key management functions. The survey was built upon our past mandated work, including the development of a baseline budget review, practices for organizational transformations, and the general management reviews of selected agencies.
- As part of a constructive engagement, GAO could work with the committee and the intelligence agencies to design and administer the survey instrument, compile and organize agency responses, and identify improvement opportunities in key areas, including acquisition, human capital, and knowledge sharing.
- Based on the responses, and collaborating with the committee, GAO would identify individual agency and crosscutting improvement opportunities and areas where greater collaboration on management issues could strengthen performance. Again, in consultation with the committee, GAO would also identify targeted opportunities for additional detailed work at individual agencies and across the Intelligence Community.

Potential Targeted Review Areas

Acquisition Review Options

The Director of National Intelligence (DNI) has established a Senior Acquisition Executive (SAE) who is considering whether to do a GAO-like “quick look” report¹ to identify what is being acquired by the intelligence agencies and the status of the programs. The Silberman-Robb Commission report suggests a revamping of the Intelligence Community budget and oversight structure in terms of mission areas, including acquisition initiatives. To provide additional insight into specific programs, using GAO’s criteria based on commercial best practices, GAO could

1. examine cost, schedule, and performance status and risks for specific acquisitions, such as the Future Imagery Architecture;
2. prepare a classified “quick look” report to identify a number of major acquisitions and their cost and schedule goals and program status and risks; and/or
3. determine whether the DNI has knowledge-based acquisition policies and effective management structures and decision processes for oversight and decision making on major acquisitions.

Human Capital Review Options

Recent studies highlight the major influx of new employees, gaps in skill sets and expertise, internal and external training and exposure issues, lack of a knowledge and skills inventory, and need for a longer term focus on research in the Intelligence Community. We have found that strategic human capital management must be the centerpiece of any serious change management initiative to transform the culture of government organizations. In light of the DNI’s challenge to manage 15 separate intelligence agencies, GAO could assess selected agencies’ human capital strategic planning efforts. GAO could

1. determine whether top-level leadership is involved in strategic planning for intelligence personnel and strategic plans for intelligence personnel are well aligned with the overall mission of the Intelligence Community or, at the very least, aligned with the mission of the respective agency, and whether the plans are results-oriented and based on data about the future intelligence workforce and
2. assess intelligence agencies’ development and implementation of human capital strategic workforce plans and determine whether plans include analyses of gaps between existing and needed critical skills and competencies, and recruitment, retention, succession planning, and skills enhancement strategies to address identified gaps.

¹ A GAO “quick look” assessment is a “temperature check” on a program’s development progress and risk using a knowledge-based approach that reflects best practices of successful programs. GAO’s detailed reviews of individual systems normally provide for a fuller treatment of risk elements.

Potential Targeted Review Areas

Knowledge Sharing Review Options

One of the most pressing challenges in intelligence reform is improving knowledge sharing within and across the community. Addressing this “horizontal” challenge requires removing the specific management, technical, and cultural barriers that limit collaboration and competitive analyses. Numerous commissions, reports, and reviews of intelligence challenges highlight significant knowledge sharing problems, including over compartmentalization, lack of appropriate knowledge sharing systems, and poor collaboration among technical collectors and analysts. To support congressional oversight efforts GAO could

1. review Intelligence Community compartment management policies, procedures, and practices, and identify management tools for improving administration, control, review, and oversight of compartments to improve knowledge sharing across the community;
2. review Intelligence Community efforts to acquire and implement information systems to support knowledge sharing among Intelligence Community agencies and national centers supporting the DNI; and
3. identify the specific challenges that impede collaboration among technical collectors and subject matter analysts, and determine the key factors that can foster a more interdisciplinary and collaborative analytical community.