

GAO ACCESS AND OVERSIGHT ACT OF 2016

SEPTEMBER 19, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5690]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5690) to ensure the Government Accountability Office has adequate access to information, 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 United States Government Accountability Office (GAO) is an independent, non-partisan agency that reports to Congress and conducts audits and evaluations to improve the performance and accountability of the federal government. H.R. 5690, the GAO Access and Oversight Act, would increase the effectiveness of GAO by clarifying and strengthening the GAO's ability to obtain information when performing audits and investigations.

BACKGROUND AND NEED FOR LEGISLATION

GAO informs Congress, federal agencies, and the public about how well federal government programs are meeting their objectives and whether federal funds are being spent efficiently and effectively.

To help ensure GAO is able to meet its responsibilities, Congress granted the agency a statutory right of access to information by requiring each federal agency to provide information to the Comptroller General about the duties, powers, activities, organization, and financial transactions of the agency.¹ Despite the clear language of GAO's governing statute, the Department of Health and Human Services (HHS) has denied GAO access to specific government data, such as the National Director of New Hires (NDNH). HHS argues that 42 U.S.C. § 653(l), the Federal Parent Locator Service (FPLS), limits disclosure of information in the NDNH.² HHS specifically asserts that the failure of the Social Security Act to include GAO as an approved recipient of information is an implicit exemption from GAO's broad authorization to obtain agency material.

In 2011, the Department of Justice's Office of Legal Counsel concluded that 42 U.S.C. § 653(l) prohibits HHS from providing GAO access to personally identifiable NDNH information.³

The NDNH is used to verify eligibility for federal programs, and is a useful tool to detect and prevent fraud and identify improper payments. H.R. 5690 clarifies that GAO is granted access to the NDNH database, thereby increasing GAO's effectiveness in carrying out its responsibilities. Specifically, H.R. 5690 makes clear that GAO shall not be denied access to data such as the NDNH and that GAO's governing statute supersedes the Social Security Act regarding access to information.

H.R. 5690 also ensures that GAO has the ability to seek a judicial remedy to enforce GAO's right to information under the law by authorizing GAO to pursue civil actions if federal agencies withhold records from GAO.

LEGISLATIVE HISTORY

H.R. 5690, the GAO Access and Oversight Act of 2016, was introduced on July 8, 2016 by Representative Buddy Carter (R-GA) and

¹ 31 U.S.C. § 716(a).

² Office of Legal Counsel, Memorandum Opinion for the Acting Gen. Counsel, Dep't of Health and Human Services (Aug. 23, 2011).

³ Office of Legal Counsel, Memorandum Opinion for the Acting Gen. Counsel, Dep't of Health and Human Services (Aug. 23, 2011) <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2016/03/18/2011-08-23-gao-access-ndnh.pdf> (Last visited 080816).

referred to the Committee on Oversight and Government Reform. Representative Tammy Duckworth (D-IL) is an original cosponsor. On July 12, 2016, the Committee on Oversight and Government Reform ordered H.R. 5690 favorably reported, without amendment, by voice vote.

Companion legislation, S. 2849, was introduced by Senator Ben Sasse in the United States Senate, and was approved without amendment by the Committee on Homeland Security and Governmental Affairs (HSGAC) on July 25, 2016 by voice vote.

During the 113th Congress, the language in this bill was included in the Government Accountability Office Improvement Act (H.R. 1162) and was approved by the House of Representatives on April 15, 2013 by a vote of 408–0. H.R. 1162 was approved without amendment by HSGAC on December 17, 2013 by voice vote. During the 112th Congress, the language in this bill was included in the Digital Accountability and Transparency (DATA) Act of 2012 (H.R. 2146) and was approved by the House of Representatives on April 25, 2012 by voice vote.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the “GAO Access and Oversight Act of 2016.”

Section 2. Access to certain information

Section 2(a) amends Subchapter II of chapter 7 of title 31, United States Code to make clear that no provision of the Social Security Act limits GAO’s authority to access information, including the NDNH.

Section 2(b) allows 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.

Section 2(c) reaffirms that Congress has authorized GAO to pursue civil actions if federal agencies withhold records from GAO.

EXPLANATION OF AMENDMENTS

No amendments to H.R. 5690 were offered during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On July 12, 2016 the Committee met in open session and ordered reported favorably the bill, H.R. 5690, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 5690.

CORRESPONDENCE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SEP 16 2016

September 14, 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515


Dear Chairman Chaffetz,

On July 12, 2016, the Committee on Oversight and Government Reform reported H.R. 5690, the GAO Access and Oversight Act of 2016, as amended, favorably to the House. Section 2, dealing with Access to Certain Information, amends access to the National Directory of New Hires (42 U.S.C. 653(l)) which is within the jurisdiction of the Committee on Ways and Means. As a result of your having consulted with the Committee concerning the provision of the bill that falls within our Rule X jurisdiction, I agree not to seek a sequential referral so that the bill may proceed expeditiously to the House floor.

The Committee on Ways and Means takes this action with the mutual understanding that, by forgoing consideration of H.R. 5690 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and the Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues that fall within our Rule X jurisdiction. The Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for such request.

Finally, I would appreciate your response to this letter confirming this understanding, and would ask that a copy of our exchange of letters on this matter be included in *the Congressional Record* during floor consideration thereof.

Sincerely,



Kevin Brady
Chairman

cc: The Honorable Paul Ryan
The Honorable Elijah Cummings
The Honorable Sander Levin
Mr. Tom Wickham, Jr., Parliamentarian

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

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September 15, 2016

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
1102 Longworth HOB
Washington, D.C. 20515

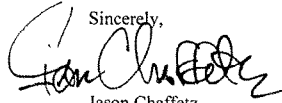
Dear Mr. Chairman:

Thank you for your letter regarding H.R. 5690, the GAO Access and Oversight Act of 2016. As you noted, certain provisions of the bill related to access to the National Directory of New Hires (42 U.S.C. 653(l)) appear to fall within the jurisdiction of the Committee on Ways and Means. I agree that your letter in no way diminishes or alters the jurisdiction of the Committee on Ways and Means with response to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or any similar legislation.

I appreciate your willingness to forego a sequential referral of the bill in the interest of expediting this legislation for floor consideration. I will include a copy of our letter exchange on H.R. 5690 in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your assistance with this matter.

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Elijah E. Cummings
The Honorable Sander M. Levin
The Honorable Thomas J. Wickham, Parliamentarian

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 ensures the Government Accountability Office has adequate access to information. 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 of the bill are to ensure the Government Accountability Office has adequate access to information.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill 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

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

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

This bill 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)(1) 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 this bill. However, clause 3(d)(2)(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 of 1974.

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 this bill from the Director of Congressional Budget Office:

AUGUST 1, 2016.

Hon. JASON CHAFFETZ,
*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. 5690, the GAO Access and Oversight Act of 2016.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5690—GAO Access and Oversight Act of 2016

CBO estimates that enacting H.R. 5690 would have no significant effect on the federal budget. The legislation would amend federal law to clarify that the Government Accountability Office (GAO) has the authority to obtain certain records and information.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 5690 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5690 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On June 24, 2016, CBO transmitted a cost estimate for S. 2849, the GAO Access and Oversight Act of 2016, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 25, 2016. The two pieces of legislation are similar, and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, 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, and 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

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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

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§ 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 the duties of the Comptroller General (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 to get the information. This subsection does not apply to expenditures made under section 3524 or 3526(e) of this title.

(b)(1) When an agency record is not made available to the Comptroller General within a reasonable time, the Comptroller General may make a written request to the head of the agency. The request shall state the authority for inspecting the records and the reason for the inspection. The head of the agency has 20 days after receiving the request to respond. The response shall describe the record withheld and the reason the record is being withheld. If the Comp-

troller General is not given an opportunity to inspect the record within the 20-day period, the Comptroller General may file a report with the President, the Director of the Office of Management and Budget, the Attorney General, the head of the agency, and Congress.

(2) Through an attorney the Comptroller General designates in writing, the Comptroller General may bring a civil action in the district court of the United States for the District of Columbia to require the head of the agency to produce a record—

(A) after 20 days after a report is filed under paragraph (1) of this subsection; and

(B) subject to subsection (d) of this section.

(3) The Attorney General may represent the head of the agency. The court may punish a failure to obey an order of the court under this subsection as a contempt of court.

(c)(1) Subject to subsection (d) of this section, the Comptroller General may subpoena a record of a person not in the United States Government when the record is not made available to the Comptroller General to which the Comptroller General has access by law or by agreement of that person from whom access is sought. A subpoena shall identify the record and the authority for the inspection and may be issued by the Comptroller General. The Comptroller General may have an individual serve a subpoena under this subsection by delivering a copy to the person named in the subpoena or by mailing a copy of the subpoena by certified or registered mail, return receipt requested, to the residence or principal place of business of the person. Proof of service is shown by a verified return by the individual serving the subpoena that states how the subpoena was served or by the return receipt signed by the person served.

(2) If a person residing, found, or doing business in a judicial district refuses to comply with a subpoena issued under paragraph (1) of this subsection, the Comptroller General, through an attorney the Comptroller General designates in writing, may bring a civil action in that district court to require the person to produce the record. The court has jurisdiction of the action and may punish a failure to obey an order of the court under this subsection as a contempt of court.

(d)(1) The Comptroller General may not bring a civil action for a record withheld under subsection (b) of this section or issue a subpoena under subsection (c) of this section if—

(A) the record related to activities the President designates as foreign intelligence or counterintelligence activities;

(B) the record is specifically exempted from disclosure to the Comptroller General by a statute that—

(i) without discretion requires that the record be withheld from the Comptroller General;

(ii) establishes particular criteria for withholding the record from the Comptroller General; or

(iii) refers to particular types of records to be withheld from the Comptroller General; or

(C) by the 20th day after a report is filed under subsection (b)(1) of this section, the President or the Director certifies to the Comptroller General and Congress that a record could be withheld under section 552(b)(5) or (7) of title 5 and disclosure

reasonably could be expected to impair substantially the operations of the Government.

(2) The President or the Director may not delegate certification under paragraph (1)(C) of this subsection. A certification shall include a complete explanation of the reasons for the certification.

(e)(1) The Comptroller General shall maintain the same level of confidentiality for a record made available under this section as is required of the head of the agency from which it is obtained. Officers and employees of the Government Accountability Office are subject to the same statutory penalties for unauthorized disclosure or use as officers or employees of the agency.

(2) The Comptroller General shall keep information described in section 552(b)(6) of title 5 that the Comptroller General obtains in a way that prevents unwarranted invasions of personal privacy.

(3) This section does not authorize information to be withheld from Congress.

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§ 720. Agency reports

(a) In this section, “agency” means a department, agency, or instrumentality of the United States Government (except a mixed-ownership Government corporation) or the District of Columbia government.

(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

(2) the Committees on Appropriations of both Houses of Congress in the first request for appropriations submitted more than 60 days after the date of the report.

§ 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 any record under section 716 of this title.

(b) The specific reference to a statute in subsection (a) shall not be construed to affect access by the Government Accountability Office to information under statutes that are not so referenced.

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