



Appendix A.

Institutional Support Resources for Legislative Oversight

Congress and its committees do not have sufficient resources or personnel to adequately pursue its oversight responsibilities alone. Thus, it must rely extensively on legislative, administrative, and non-governmental entities to provide it with timely, objective, and nonpartisan assistance in reviewing program performance. In addition to the Offices of Inspectors General, discussed in the text, they include: the Government Accountability Office (GAO); Congressional Research Service (CRS); the Offices of Chief Financial Officers (CFOs); the House general counsel; the Senate legal counsel; and the media.

A. Government Accountability Office¹

The Government Accountability Office was established in 1921 as an independent auditor of government agencies for the Congress. Over the years, Congress has expanded GAO's audit authority, added new responsibilities and duties, and strengthened GAO's ability to perform independently of the executive branch. GAO is under the direction and control of the comptroller general of the United States, who is appointed by the president from a list of candidates provided by the Congress and serves for a 15-year term. He or she is removable only by the passage of a joint resolution of removal by the Congress.

The key oversight support functions performed by the GAO are as follows:

- 1. Program Evaluator:** At the request of congressional committees and members, GAO evaluates whether programs are achieving their desired results, whether there are better ways to accomplish their statutory prescribed missions, whether government programs are being carried out in compliance with applicable laws and regulations, and whether data furnished to Congress on programs are accurate. GAO is required to do work requested by committee chairs and, as a matter of policy, assigns equal status to requests from ranking minority members and subcommittee leaders. GAO's policies for accepting and prioritizing mandates and requests are detailed in its *Congressional Protocols*.
- 2. Audits:** GAO determines whether funds are being spent legally and whether the agency's manner of accounting for them is acceptable.
- 3. Investigations:** GAO conducts special investigations of alleged violations of criminal or civil law through its Office of Special Investigations. Cases involve such matters as conflict of interest of federal officials, questions of ethics of federal officials, and procurement and contract fraud. Completed investigations are usually reported in writing.
- 4. Legal Services:** GAO provides opinions and comments on proposed bills and on the applicability and interpretation of appropriations laws and jurisprudence respecting statutorily assigned matters, adjudicates claims for and against the government, and resolves bid protests on government contracts. In addition, GAO occasionally assigns staff to work directly for congressional committees. In such cases, the staff assigned represent the committee and not GAO.

1. 31 U.S.C. §§701 et. seq.

B. Congressional Budget Office

Founded in 1974 by the Congressional Budget and Impoundment Control Act, Pub. L. 93-244, 2 U.S.C. §§ 601-603, the Congressional Budget Office (CBO), a legislative branch agency, produces independent analyses of budget and economic issues to support the congressional budget process. It was created to provide Congress with a legislative counterweight to the president's Office of Management and Budget (OMB). The agency is strictly nonpartisan and conducts objective, impartial analyses in producing dozens of reports and hundreds of cost estimates each year. The agency's role is purely analytical. It does not write bills, enforce budget rules, implement regulations, lobby Congress, or conduct audits.

The CBO director is appointed by the speaker of the House and the president pro tempore of the Senate jointly, after considering recommendations from the two budget committees. Directors are appointed for four-year terms and may be reappointed. A director serving at the expiration of a term may continue in office until his or her successor is appointed. By law, the CBO director is to be chosen without regard to political affiliation.

CBO staff, including the deputy director, are appointed by the director. CBO directors have established the firm tradition of retaining staff from their predecessors. Directors appoint all CBO staff solely on the basis of professional competence, without regard to political affiliation.

CBO provides budgetary and economic information in a variety of ways and at various points in the legislative process. These include:

- **Cost Estimates for Individual Bills:** These estimates measure a proposed bill's impact on spending or revenues over a period of five to ten years. Each cost estimate contains a section describing the basis for the estimate. In a given year, CBO analyzes anywhere from 500 to 700 bills.
- **Budget Baseline and Economic Forecast Products:** These reports provide spending and revenue forecasts for expenditures already authorized and cover the 10-year congressional budget process. Congress uses these projections as a baseline for developing and reauthorizing legislation. As a result, CBO's projections are closely watched and are, at times, controversial. The projections are typically released annually in January and updated in August.
- **Analysis of the President's Budget:** Released every March, this report serves as an alternative cost estimate of the White House's proposed budget. CBO estimates the budgetary impact of the president's proposals using the agency's own economic forecast and estimating assumptions. CBO's independent re-estimation of the president's budget allows Congress to compare the administration's spending and revenue proposals with CBO's baseline spending and revenue projections and with other proposals using a consistent set of economic and technical assumptions.
- **Scorekeeping Reports for Enacted Legislation:** The CBO provides the budget and appropriations committees with frequent tabulations of congressional action affecting spending and revenues. Those scorekeeping reports provide information about whether legislative actions are consistent with spending and revenue levels set by the budget resolution.

CBO's conclusions are generally not challenged. However, many of the CBOs cost estimates of bills involve highly complex analytical methods. These methods are often scrutinized and used by members of Congress to advance or hinder progress of sensitive legislation. The CBO's March 2017 assessment of the proposed American Health Care Act (AHCA) to replace the Affordable Care Act (ACA) is a recent case in point. The CBO estimated that by the year 2026 a total of 24 million more Americans would be uninsured, for a total of 52 million, the opposite of what would have been the case under the ACA, and that in the near term premiums would increase by 15 to 20 percent. CBO also estimated that the federal deficit would have been reduced by \$337 billion over the next decade. The deficit reduction was less than anticipated by its proponents. The uninsured figures sharply contrasted with the administration's forecast of increased coverage, which expressed upset with the report. There was, however, no substantial challenge to the CBO estimates,

which were utilized by factions in both parties opposing the AHCA, and proved to be an important factor in the House's withdrawal of the bill from floor consideration.

C. Congressional Research Service

The Congressional Research Service (CRS) has a diverse professional staff of around 600 people. It has a broad mission to provide Congress with nonpartisan, confidential, timely, and objective information. Organized into five interdisciplinary research divisions (American Law, Domestic Social Policy, Foreign Affairs, Defense and Trade, Government and Finance, and Resources, Science and Industry).

CRS functions in some respects as Congress's own "think tank." Its reports, confidential memoranda, and studies on the issues before Congress are at least as sophisticated as those produced in the executive branch or in universities. Reports for Congress on specific issues take many forms: policy analyses, statistical reviews, economic studies, legal analyses, historical studies, and chronological reviews. Reports are available only to members and staff on the CRS website at <http://www.crs.gov>. The public may gain access to such reports through member offices or on public sites such as the FAS Project on Government Secrecy at <https://fas.org/blogs/secrecy.html>. CRS also prepares confidential memoranda for a specific office. These memoranda are solely for the use of the requesting office and are not distributed further unless permission has been granted by that office. Memoranda are often used by CRS attorneys and analysts to respond to inquiries focused on legislative or policy matters of individual member interest.

In addition, CRS provides personal briefings to members and staff, conducts issue and procedural workshops and seminars, prepares customized memoranda and reports to lawmakers, and often consults and advises committee staffs in the preparation for and conduct of oversight proceedings.

D. Offices of Chief Financial Officers

The Chief Financial Officers Act of 1990² and the Government Management Reform Act of 1994³ were designed to improve financial management throughout the federal government and provide additional sources of information, data, and materials that can aid congressional oversight endeavors by creating a new top management position, a chief financial officer (CFO) in the 24 largest government agencies. The CFOs for the 14 cabinet-level agencies and for the National Aeronautic Space Administration and the Environmental Protection Agency are presidential appointees.

The CFOs are required to prepare full financial statements covering all the activities of the individual departments and agencies, which are audited by the Government Accountability Office (GAO) annually. The CFOs also conduct audits of major subdivisions of these agencies. The GAO and CFO audits are disclosed to the public just the way the Securities and Exchange Commission discloses the annual statements of regulated companies, by publication on their websites. In addition, the 1994 Act requires the secretary of the treasury, in coordination with the director of the office of management and budget (OMB), to annually submit audited consolidated financial statements for the U.S. government to the president and Congress. GAO is required to audit and report on these consolidated statements as well. 31 U.S.C. § 331(e). The result is a very public score card as to whether these departments and agencies are accurately accounting for the care of public funds. These score cards provide a wealth of information for congressional committees as to how well and effectively individual agencies are administering their programs as well as how capably the central executive authorities are monitoring and assessing the fiscal and financial responsibilities of the bureaucracy.

In 1996, the first year all 24 agencies were audited, only six were able to receive clean GAO audit opinions. By 2002, 21 of the 24 received clean audit opinions. For fiscal year 2016 GAO stated that it was unable to issue clean audit opinions for the Departments of Defense (DOD) and Housing and Urban Development, the National Science Foundation and the Smithsonian Institution. GAO particularly noted that the Defense Department has not been able to obtain a clean audit for many years.

2. P.L. 101-57.

3. P.L. 103-356.

Perhaps more significantly, GAO's report concluded that its audit of the government's consolidated financial statements for fiscal years 2016 and 2015 prevented it from expressing an opinion on their sustainability because of "material weaknesses" and "significant uncertainties" with respect to internal controls over fiscal reporting and other limitations on its audit task. GAO explained:

The federal government is not able to demonstrate the reliability of significant portions of the accompanying accrual-based consolidated financial statements as of and for the fiscal years ended September 30, 2016, and 2015, principally resulting from limitations related to certain material weaknesses in internal control over financial reporting and other limitations affecting the reliability of these financial statements and the scope of our work. ... As a result of these limitations, readers are cautioned that amounts reported in the accrual-based consolidated statements may not be reliable.

The federal government did not maintain adequate systems or have sufficient appropriate evidence to support certain material information reported in the accompanying accrual based consolidated financial statements. The underlying material weaknesses in internal control, which have existed for years, contributed to our disclaimer of opinion on the accrual-based consolidated financial statements.

Among the weaknesses identified was the federal government's inability satisfactorily to determine that property, plant, and equipment and inventories and related property, primarily held by DOD, were properly reported; to support significant portions of the reported net cost of operations, most notably related to DOD, and to adequately reconcile disbursement activity balances between federal entities; and to reasonably assure that the consolidated financial statements are (1) consistent with the underlying audited entities' financial statements, (2) properly balanced, and (3) in accordance with U.S. generally accepted accounting principle.

The GAO's Independent Audit Report appears as part of the Fiscal Year 2016 Financial Report of the United States Government, 237-266 (January 12, 2017) accessible at [https://www.fiscal.treasury.gov/fsreports/rpt/16frusg/011120fr_\(Final\).pdf](https://www.fiscal.treasury.gov/fsreports/rpt/16frusg/011120fr_(Final).pdf) and at the GAO website <https://www.gao.gov/products/gao-17-283R-61k>.

E. Senate Legal Counsel

The Office of Senate Legal Counsel was created by Title VII of the Ethics in Government Act of 1978⁴ "to serve the institution of Congress rather than the partisan interests of one party or another."⁵ The counsel and deputy counsel are appointed by the president pro tempore of the Senate upon the recommendation of the majority and minority leaders. The appointment of each is made effective by a resolution of the Senate, and each may be removed from office by a resolution of the Senate. The term of appointment of the counsel and deputy counsel is two Congresses. The appointment of the counsel and deputy counsel and the counsel's appointment of assistant Senate legal counsel are required to be made without regard to political affiliation. The office is responsible to a bipartisan Joint Leadership Group, which is comprised of the majority and minority leaders, the president pro tempore, and the chair and ranking minority member of the Committees on the Judiciary and on Rules and Administration.

The act specifies the activities of the office, two of which are of immediate interest to committee oversight concerns: representing committees of the Senate in proceedings to aid them in investigations, and advising committees and officers of the Senate. As discussed in detail in Chapter 3, the Senate legal counsel may represent a committee in seeking an immunity order from a U.S. district court if so authorized by the committee. It may also represent a committee or subcommittee in a civil action to enforce a subpoena if authorized by a Senate resolution. There have been seven such authorizations since the passage of the act. Civil actions may not be brought against executive branch officers or employees of the federal government acting in their official capacities.

The Ethics Act details a number of advisory functions of the Office of Senate Legal Counsel. Principal among these

4. P.L. 95-520, §§ 701 *et seq.*, codified principally in 2 U.S.C. §§ 288, *et seq.*

5. S. REP. No. 95-170, 95th Cong., 2nd sess. 84 (1978).

are the responsibility of advising members, committees, and officers of the Senate with respect to subpoenas, and the responsibility of advising committees about their promulgation and implementation of rules and procedures for congressional investigations. The office also provides advice about legal questions that arise during the course of investigations.

The act also provides that the counsel shall perform such other duties consistent with the nonpartisan purposes and limitations of Title VII as the Senate may direct. Thus, in 1980, the office was used in the investigation examining President Carter's brother Billy's connection to Libya. The office worked under the direction of the chair and vice-chair of the subcommittee charged with the conduct of that investigation. Members of the office have also undertaken special assignments such as the Senate's investigation of "Abscam" and other undercover activities, the impeachment proceedings of Judge Harry Claiborne, Judge Walter L. Nixon, Jr., and Judge Alcee L. Hastings, Jr., and the confirmation hearings of Supreme Court Justice Clarence E. Thomas. The office was called upon to assist in the Senate's conduct of the impeachment trial of President Clinton.

In addition, the counsel's office provides information and advice to members, officers, and employees on a wide range of legal and administrative matters relating to Senate business. Unlike the House practice, the Senate legal counsel plays no formal role in the review and issuance of subpoenas. However, since it may become involved in civil enforcement proceedings, it has welcomed the opportunity to review proposed subpoenas for form and substance prior to their issuance by committees.

F. House General Counsel

The House Office of General Counsel has evolved since the mid-1970s, from its original role as a legal adviser to the clerk of the House on matters within its jurisdiction, to serving as counsel for the House as an institution. At the beginning of the 103rd Congress, it was made a separate House office, reporting directly to the Speaker, and charged with the responsibility "of providing legal assistance and representation to the House." This office plays a similar role to the Senate legal counsel with respect to oversight assistance to committees and protection of institutional prerogatives, but there are some differences.

The general counsel, deputy general counsel, and other attorneys of the House Office of General Counsel are appointed by the Speaker and serve at his or her pleasure. The office "function[s] pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group," which consists of the speaker, the majority leader, majority whip, minority leader, and minority whip. The office has statutory authority to appear before state or federal courts in the course of performing its functions (*see* 2 U.S.C. § 130f). The office may file friend-of-the-court briefs on behalf of the Speaker and the Bipartisan Legal Advisory Group in litigation involving the institutional interests of the House. Where authorized by statute or resolution, the office may represent the House itself or a committee in judicial proceedings.⁶ The office also represents House officers in litigation affecting the institutional interests and prerogatives of the House. Finally, the office defends the House, its committees, officers, and employees in civil litigation relating to their official responsibilities, or when they have been subpoenaed to testify or to produce House records (*see* House Rule VIII).

Unlike Senate committees, House committees may only issue subpoenas under the seal of the clerk of the House. In practice, committees often work closely with the Office of General Counsel in drafting subpoenas, and every subpoena issued by a committee is reviewed by the office for substance and form. Committees frequently seek the advice and assistance of the Office of General Counsel in dealing with various asserted constitutional, statutory, and common-law privileges in responding to executive agencies and officials that resist congressional oversight and navigating the statutory process for obtaining a contempt citation with respect to a recalcitrant witness.

6. *See, e.g.*, House Committee on the Judiciary v. Miers, 558 F. Supp. 2d 53 (D.D.C. 2008) (litigation to enforce subpoenas against former and present presidential advisers authorized by House resolution); Comm. on Oversight and Government Reform v. Holder, 979 F. Supp. 2d 1, 4 (D.D.C. 2013) (House authorization to judicially enforce subpoena sufficient to support jurisdiction and standing); U.S. House of Representatives v. Burwell, 130 F. Supp. 3d 53, 81 (D.D.C. 2015) (House resolution authorizing enforcement of challenge to alleged violation of Appropriations Clause sufficient to support jurisdiction and standing); Department of Commerce v. U.S. House of Representatives, 525 U.S. 316 (1999) (litigation in which the general counsel was authorized by statute, P.L. 105-119 § 209(b) (1997), to represent the House in a challenge to the legality of the Department of Commerce's plan to use statistical sampling in the 2000 census).

Further, the Office of General Counsel represents the interests of House committees in judicial proceedings in a variety of circumstances. The office represents committees in federal court on applications for immunity orders pursuant to 18 U.S.C. § 6005; files briefs as friend-of-the-court in cases affecting House committee investigations; defends against attempts to obtain direct or indirect judicial interference with congressional subpoenas or other investigatory activity; represents committees seeking to prevent compelled disclosure of non-public information relating to their investigatory or other legislative activities; and appears in court on behalf of committees seeking judicial assistance in obtaining access to documents or information, such as documents that are under seal or materials which may be protected by Rule 6(e) of the Federal Rules of Criminal Procedure.

Like the Senate legal counsel's office, the House general counsel's office also devotes a large portion of its time to providing informal advice to individual members and committees.

G. Non-Governmental Organizations (NGOs)

There has been a dramatic rise in recent years in the formation of non-government organizations (NGOs) that have taken increasingly active roles in exposing improper government activities as well as attempting to influence government policy. They include broad-based membership and other types of organizations—which may be organized around very expansive themes of “good government”—such as the Center for Responsive Politics, Citizens Against Waste, Common Cause, Congress Watch, the Constitution Project, the Government Accountability Project, Judicial Watch, OMB Watch, and the Project on Government Oversight (POGO), among many others. These groups are often significant players in shaping and influencing public opinion through the media, and in Congress by way of testimony at hearings in which they are often able to present very professional and competent studies, reports, and statistical analyses.

The “good government” groups have also had a significant impact on the political culture and the standard of what we should expect and tolerate from our government and its officials, not only through the media and lobbying in Congress, but also through legal and administrative action. One early example will illustrate. In 1968, the House of Representatives took the historic step of establishing as a standing committee a committee on ethics, called the House Committee on Standards of Official Conduct. This committee would propose rules on conduct, giving advice to members and staff, and would initiate disciplinary hearings against sitting members for misconduct. It was not until 1976, however, and only upon the initiation and persistence of an NGO, Common Cause, that the House Committee on Standards began its first investigation and disciplinary hearing against a sitting member of Congress. A petition and complaint was filed on behalf of Common Cause by 44 members of the House of Representatives.

H. The Role of the Press and Media Coverage

The intensity of press and media coverage of governmental operations has increased over the last three decades, and has been particularly heightened by the advent of internet communications. Many people in Washington, including commentators and others in the media, now talk about the “new rules” of media coverage of public officials, while many public officials believe that we are facing not so much “new rules,” but rather “no rules.” There is now very little about a public official that is considered “off limits” to the media. Since two then-young reporters from the Washington Post (Woodward and Bernstein) made their names uncovering the “Watergate” burglary and cover-up, scores and scores of eager reporters and Woodward and Bernstein “wanna-bes” are looking for the next Watergate, and rushing stories of “scandal” and “corruption” to the press, the electronic media, and increasingly onto the internet. The Watergate exposures spawned an era of “investigative journalism” characterized by the dedication of press resources to careful, long-term inquiries.

While such traditional press inquiries are still engaged in frequently, the internet has sped up the news cycle significantly. No longer is the media dominated by a late evening deadline for a morning newspaper, nor even getting a story for the 6:00 P.M. or 11:00 P.M. television news cycle. Rather, the internet has made for hourly news cycles, which often force reporters and commentators into hurried stories with less corroboration and background to beat the competition to a “breaking” story of scandal or corruption. For all its faults and criticisms directed its way, however, an independent and vigorous free press remains a crucial vanguard against corruption in government. Transparency, openness, and disclosure in government is of little value if information cannot be communicated to the general populace through a source totally independent from the

government. Indeed, much of what we call regulation in the context of ethics is really only disclosure and not necessarily a limit on certain conduct. Today, an aggressive, free, and independent press and media remain an essential resource in uncovering and publicizing corruption and maladministration, and an indispensable asset for investigating committees to assist them in becoming aware of governmental failures or in engendering necessary public support for legislative action by publicizing the results of committee probes. But committees and their members must be wary of those who disparage the investigators, the readers, the writers, the listeners, the speakers and the thinkers; and in this time of “alternate facts” and those who confuse reality with reality TV, they must be suspicious of those who repeat falsehoods while insisting, against all evidence, that they are true. To defend freedom, committees must demand, and get, fact.