



# NEWS RELEASE

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(PR-100-77 (11-29-77))

Statement by

John J. Early  
Director, Division of Bank Supervision

on H. R. 2176, the "Federal Banking Agency Audit Act"

before the

Senate Committee on Governmental Affairs  
United States Senate

November 29, 1977

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FEDERAL DEPOSIT INSURANCE  
CORPORATION

Mr. Chairman, we welcome this opportunity to testify in support of H. R. 2176, 95th Congress, the "Federal Banking Agency Audit Act," which passed the House of Representatives on October 14. Generally, the bill provides for periodic performance audits of the federal bank regulatory agencies by the General Accounting Office.

The FDIC, of course, has been subject to GAO audit of its financial operations for the past 32 years. Since 1950 this financial audit has been performed pursuant to Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827).

In addition to this routine financial audit of the FDIC, all three federal bank regulatory agencies were subject to a comprehensive GAO study of their bank regulatory and supervisory activities which was completed in February of this year. As a result of our satisfaction with the manner in which the GAO conducted this study, the FDIC withdrew its long standing opposition to GAO access to confidential records relating to individual open insured banks and agreed to permit GAO access to such records on a trial basis during the next three statutory audits of FDIC financial operations on the same basic terms under which such access was granted in connection with the GAO's recent study of Federal bank regulatory activities. Copies of our January 26, 1977 letter to the GAO in this regard and of our April 22, 1976 agreement with the GAO are attached for your convenient reference.

In our March 3, 1977 testimony on the House side on H. R. 2176 as introduced, we indicated that we had no objection to the basic thrust of the bill but recommended various amendments of the type contained in our April 26, 1976 agreement with GAO in order to safeguard the confidentiality of open bank examination reports and related confidential information in our files. All of our recommended amendments were incorporated in the revised H. R. 2176 as it passed the House.

The revised bill also contains a provision stating that nothing in the bill authorizes withholding of information by the GAO from "a duly authorized committee or subcommittee of the Congress," provided that "any information requested by such committee or subcommittee which [could not otherwise be disclosed by the GAO under the bill] shall be furnished to such committee or subcommittee only when sitting in executive session." It is our understanding that this provision would permit GAO personnel to testify before a closed session of a duly authorized congressional committee or subcommittee that has voted to require such testimony as to their recollection of the content of confidential agency records to which they had access during the course of an audit. The records themselves would have to be obtained by the committee or subcommittee directly from the audited agency. If this is not a correct interpretation of this provision in all respects, we would strongly recommend that it be amended to expressly so provide.

Another provision in the revised bill provides that nothing therein shall authorize the withholding of information by any officer or employee of [any Federal bank regulatory] agency from "a duly authorized committee or subcommittee of the Congress." Since nothing in the bill purports to authorize federal bank regulatory agencies to withhold information from the Congress, we do not object to this provision.

H. R. 2176 was also amended in three respects on the House floor. One such amendment would exclude from the proposed GAO audits all Federal Reserve activities relating to discount window operations, member bank reserves, margin requirements, and Regulation Q limitations. These are in addition to the exclusions for Federal Reserve monetary policy and foreign operations that were already in the bill. The House also amended the bill to limit GAO access to agency records to statistically meaningful samples of bank examination reports as well as to subject GAO personnel to criminal penalties for unauthorized disclosure of bank loan information.

While we have no particular objection to these House floor amendments, it should be pointed out that the Federal Reserve is only one of three agencies having so-called "Regulation Q" jurisdiction over ceiling rates of interest paid on deposits by insured financial institutions. There is no provision in the bill or in present law which excludes the interest rate control activities of the FDIC or the Federal Home Loan Bank Board from the scope of GAO audit jurisdiction. If there is merit to such an exclusion for the

Federal Reserve, Congress may want to consider whether it should be extended to cover the Regulation Q activities of the FDIC and the FHLBB.

We have worked closely with House staff in developing the confidentiality safeguards incorporated in the bill and we believe that these safeguards as presently contained in the bill should be adequate to preserve the confidential nature of the bank examination process. Accordingly, we continue to support enactment of H. R. 2176 and would be happy to work with your Committee in further perfecting this bill.

#### Attachments

January 26, 1977

Honorable Elmer B. Staats  
Comptroller General of the United States  
Washington, D.C. 20548

Dear Mr. Staats:

On April 22, 1976, you and I executed a Memorandum of Agreement between our organizations which provided operating guidelines for your conduct of a review and evaluation of our supervisory operations relating to banks under the jurisdiction of this Corporation. For purposes of that performance audit, the Memorandum of Agreement reversed a position long held by the Corporation on the question of GAO's access to bank examination reports and related records involving operating banks.

More recently, some of your people involved in the audit of our financial transactions have reopened this question with Mr. John J. Early, Director of our Division of Bank Supervision. It is my understanding that these GAO representatives are interested in the Corporation's current and future reaction to a request for continuing access to open bank examination material in the course of your financial audits. As I further understand it, this access in conjunction with your audits of the Corporation's financial transactions might underlie what could be considered as periodic operational audits of our bank examination and related supervisory processes. Such access would make unnecessary your recent qualifications of your audits of the FDIC.

We were not happy that your first draft report on the performance audit was "leaked" but we have no reason to assume your people were the ones who leaked the document. Likewise, we assume you will continue to take all reasonable precautions to avoid future leaks while your reports are in the preparation and editing stages. Certainly your record in this regard with respect to previous audits of our financial condition has been excellent.

As you can tell from my comments to you regarding your draft report on the performance audit, and particularly from the comments of our Division of Bank Supervision, we believe that GAO overlooked what we consider to be some significant actions which the Corporation had taken in bank examination during the past year or two. I attribute this oversight not to any reason other than the speed with which your agency was required to perform a very large and very difficult job.

Honorable Elmer B. Staats  
January 26, 1977  
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I am inclined, therefore, to permit GAO to have access to the examination reports of open and operating banks during its annual financial audit of the FDIC provided that the basic terms under which those examination reports are reviewed are consistent with the terms in our Memorandum of Agreement of April 22, 1976. So that both your agency and ours can have a period of time to see whether this new approach is helpful, I would suggest that such access be available for the next three financial audits. In effect, we would be holding in abeyance our traditional arguments during this three-year period during which we judge whether this additional access is helpful to our two agencies.

Very truly yours,

/s/ Robert E. Barnett

Robert E. Barnett  
Chairman



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-114831

April 22, 1976

HAND DELIVERY

Mr. Robert E. Barnett  
Chairman, Federal Deposit  
Insurance Corporation  
Room 6023  
550 17th Street, N.W.  
Washington, D. C. 20429

Dear Mr. Barnett:

Enclosed are two copies of the Memorandum of Agreement between our Offices that will enable us to perform the review and evaluation of FDIC's bank supervision and regulation requested by the House Committee on Banking, Currency and Housing. I have signed both copies. One is for retention by you, and one for our records after you have signed it.

Once the Memorandum has been signed, we intend to transmit a copy to Chairman Reuss and Subcommittee Chairman St Germain, and to ask that they inform us in writing that the agreement is compatible with the Committee's request and its needs. We will furnish you with copies of that correspondence, and we can then proceed with the review.

I want to thank you and your representatives for the cooperation given us in arriving at the terms of the agreement. We look forward to continued excellent relations with your Office during this review.

Sincerely,

A handwritten signature in cursive script, appearing to read "James B. Sturt".

Comptroller General  
of the United States

Enclosures

MEMORANDUM OF AGREEMENT  
BETWEEN  
FEDERAL DEPOSIT INSURANCE CORPORATION  
AND  
THE COMPTROLLER GENERAL OF THE U. S.

I. PURPOSE

On January 24, 1976, the Chairman, Subcommittee on Domestic Monetary Policy of the Committee on Banking, Currency and Housing, United States House of Representatives, requested the Comptroller General of the United States, through the General Accounting Office (GAO), to conduct a review and evaluation of the supervisory responsibilities relating to banks under the jurisdiction of the Federal Deposit Insurance Corporation (FDIC). This request was reiterated by letter of February 5, 1976, from the Committee to the Chairman, FDIC.

The Chairman has consented to such a review, evaluation, and report by GAO.

II. OPERATIVE PROVISIONS

The Comptroller General, on behalf of the General Accounting Office, and the Chairman, on behalf of FDIC, therefore agree to the following:

(1) Scope of Review and Evaluation

(a) GAO will undertake a review of FDIC to evaluate FDIC's effectiveness in discharging its bank supervision and regulatory responsibilities. This review will include, but not be limited to, the procedures

used by FDIC bank examiners in their periodic on-site examinations of insured nonmember State banks, the manner in which the findings and conclusions of bank examiners are reported, the manner in which financial data is collected from the banks and used by FDIC, the systems employed by FDIC to identify and attempt to achieve correction of problems occurring at particular banks, the recruiting and training of bank examiners, and the methods by which FDIC reviews its own performance and plans for its future needs.

(b) The GAO review will include, but not be limited to, the following types of bank examination performed by FDIC: commercial, compliance, trust, mutual savings banks, and electronic data processing control evaluations.

(c) In conducting the review described in subparagraphs (a) and (b), GAO will consider, as appropriate in the judgment of the Comptroller General, practices, procedures, and policies in existence prior to and at the time of this review.

(2) Access to Records

FDIC will afford authorized GAO personnel access to, and permission to examine, all of its records, books, and documents and other material relating to the bank supervisory and regulatory functions of FDIC. Included in such documents are bank examination reports, together with workpapers and correspondence files related to such reports,

whether or not a part of the report, and all without any deletions. The GAO review will be conducted in such a manner as to cause a minimum of disruption in the normal operations of the FDIC.

Mutually agreeable arrangements will be made with respect to availability of FDIC records in current, active use and to interviews of agency officials.

Authorized GAO personnel will be permitted to make whatever notes or whatever copies they deem necessary during the review, all to be contained in the GAO workpapers. These workpapers will be safeguarded in accordance with paragraph (6) of this Agreement.

(3) Authorized GAO Personnel

(a) The Comptroller General will have sole authority for assigning the GAO personnel to be engaged in the review.

(b) GAO will provide FDIC with a list of its personnel authorized to have access to FDIC records in connection with this review and evaluation at the time this agreement

is executed, with the list updated as changes occur. Assigned GAO personnel will carry official GAO credentials that will be presented to FDIC personnel on request.

(c) To the extent possible, GAO will use auditors with experience in reviewing reports of depository institutions.

(4) FDIC Liaison Official; Facilities

(a) FDIC will designate a liaison official to facilitate the GAO access to FDIC records and personnel for the purpose of this review.

(b) FDIC will provide GAO with suitable, lockable office space and furniture, telephone and access to copying facilities. These working facilities will be adequate for up to ten GAO auditors, the exact number to be determined later.

(5) Procedures

(a) This review and evaluation will be conducted in accordance with audit procedures and standards prescribed by the Comptroller General, subject to the terms of this agreement.

(b) The selection of examination reports for GAO review will be made on a sampling basis determined by the GAO to be adequate for the purposes of the review, after consultation with FDIC. Depending on the purpose of the audit tests, it may be necessary to select more than one sample.

(c) In making its review, the GAO will interview FDIC personnel, including, but not limited to, bank examiners

and regional directors, in order to obtain an adequate understanding of all phases of FDIC bank supervision and regulatory responsibilities. GAO will not evaluate the accuracy of the examiner's factual findings by conducting separate examinations of the banks involved.

(d) The GAO will prepare a report to the Congress with its conclusions as to the matters specified in paragraph (1). An advance draft of the GAO report will be made available to FDIC, which will be afforded an adequate opportunity to comment on the contents of the proposed report. The final report will include as an addendum any written comments submitted by the Chairman, FDIC.

(6) Safeguarding the Identity  
of Banks and Customers

In making its review, GAO will safeguard the identity of banks and bank customers as follows:

(a) All GAO workpapers, and whatever FDIC documents or records come into GAO possession during the review will remain on the premises of FDIC. Such material will be maintained in such a way as to prevent unauthorized access. When not in use, such material will be kept in secure, locked file cabinets.

(b) GAO, in its report and otherwise outside of GAO, will not (i) identify bank customers; (ii) identify any bank; or (iii) provide detail that can lead to identification of any bank or bank customer. Within these limitations,

GAO, in its report and otherwise outside of GAO, may discuss the condition or operations of a particular bank.

(c) The limitations of this paragraph shall not prohibit GAO or its employees from discussing particular banks or bank customers: (i) with officials of the Federal Reserve System or of the Comptroller of the Currency if those agencies were involved in transactions or supervisory procedures related to such bank or bank customers; or (ii) with officials of FDIC.

(d) Upon completion of the review and issuance of the report, all GAO files and workpapers will be retained for a period of ten years. They will be kept on the premises of FDIC for one year from the date of issuance of the report, provided, however, that authorized GAO auditors shall have the continued right of access to such material during that time period. After one year from the date of issuance of the GAO report, FDIC may send the GAO files and workpapers to the Federal Records Center for storage for an additional nine years, provided, however, that FDIC will recall such files and workpapers from storage at GAO request so that GAO personnel may have access to them on the premises of FDIC. On or after ten years from the date of issuance of the GAO report, FDIC may direct destruction of the files and workpapers unless notified to the contrary by GAO.

(7) Field Activities

To the extent the conduct of the review will be outside of the Washington, D. C., area, mutually agreeable procedures, consonant with the Agreement, will be developed concerning access to and security of records.

Robert E. Barnett  
Chairman, Federal Deposit  
Insurance Corporation

April 22, 1976  
Date

James B. Stults  
Comptroller General  
of the United States

April 22, 1976  
Date