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## Legislative Oversight of the Executive Branch

*By Charlene Wear Simmons, Ph.D.*

*Prepared at the request of  
Assemblymember Joe Canciamilla*

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# Legislative Oversight of the Executive Branch

This CRB Report, which provides a general discussion of legislative oversight, was prepared at the request of Assemblymember Joe Canciamilla.

## Executive Branch Accountability

Accountability in the state's executive branch starts with the governor. Article V, Section 1 of the California Constitution vests "supreme executive power" in the governor. Subsequent court cases have affirmed that the governor's position prevails whenever conflict occurs among members of the executive branch, even if they are separately elected (i.e., the attorney general).<sup>1</sup> The California Constitution explicitly requires executive branch officers and agencies to provide the governor with "information relating to their duties" (Article V, Section 4). Government Code sections 12010 and 12011 further require the governor to be certain "that all offices are filled and their duties performed."<sup>2</sup>

The California Constitution charges the governor to report yearly to the legislature "on the condition of the State," at which time the governor may make recommendations (Article V, Section 3). At the federal level, the responsibility of the President and executive branch to provide information to the Congress rests in part on the requirement to report the State of the Union, on legislative primacy in the budget and authorization processes, and on legislative responsibilities for confirmation and impeachment of officials. The U.S. Supreme Court has found (in *Watkins v. United States*) that "The power of Congress to conduct investigations is inherent in the legislative process."<sup>3</sup> It is reasonable to infer that the California legislature's authority to review executive branch actions rests on a similar foundation, but the case law is not as well established.

The California legislature's role in executive branch accountability is evident in Government Code sections 10500 to 10356, which establish the Office of the Auditor General, charge it with performing performance audits as may be requested by the Joint Legislative Audit Committee, and provide that

Notwithstanding any other provision of law, the Auditor General during regular business hours shall have access to, and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence, files and other records, bank accounts, and money or other property, of any agency of the state, whether created by the Constitution or otherwise, and any public entity, including any city, county, and special district which receives state funds... (Section 10527)

## Legislative Oversight

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served. . . The informing function of Congress should be preferred even to its legislative function.

Woodrow Wilson, *Congressional Government*, 1885<sup>4</sup>

### *General Background*

When legislators hold agency administrators accountable for their actions, or failure to act, they are exercising legislative oversight. Legislative oversight is a broad term that encompasses a considerable amount of the legislature's work. For example, the California legislature oversees executive branch policies and activities, formally and informally, on a daily basis through discussion of appropriations and the budget, confirmation of the Governor's appointees, development of new legislation, and constituent casework. These activities are fundamental to democratic control of bureaucracy in an increasingly large and complex government.

One author defines legislative oversight as "behavior by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior."<sup>5</sup> Legislative oversight exposes "bureaucratic behavior to public scrutiny."<sup>6</sup> It "...reviews the actions of...departments, agencies, and commissions, and of the programs and policies they administer...[and] is a significant facet of congressional efforts to control administration and policy."<sup>7</sup> An integral component of the U.S. government's tripartite separation of powers and checks and balances, legislative oversight is part of "a harmonious system of mutual frustration."<sup>8</sup>

The rapid pace of social, economic and technological change in California places heavy demands on the legislature to make laws in a wide range of policy areas. One result has been increasing delegation of regulatory authority to the state's administrative agencies to formulate and implement public policy. In this context, legislative oversight is important to maintaining the checks and balances of representative government, and ensuring a vital legislative role in state government through review, monitoring and supervision of administration. Effective legislative review of executive branch actions responds to increasing public concerns about government performance.

Ensuring administrative accountability fulfills several different purposes.<sup>9</sup>

- Making laws work as intended with a minimum of waste and delay.
- Exercising lawful and sensible administrative discretion.

- Recommending new policies and propose changes in existing policies and programs as needed.
- Enhancing citizen confidence in the administrative institutions of government.

The more explicitly legislative intent is detailed in a statute, the easier it is for the legislature to review its implementation, since the criteria are relatively clear. In contrast, vague statutory language provides a wide scope for executive implementation, and invites involvement by the courts.

### *Congressional and California Legislative Oversight*

Congress has a well-developed oversight role, more so than the California legislature, and so provides a useful example. Historically, the oversight role of Congress has grown with the size and complexity of the U.S. government's administrative structure, and with increasing concerns about executive branch power and actions. Congressional oversight activities increased dramatically in the early 1970s, prompted in part by Vietnam and Watergate, and by concerns about the "Imperial Presidency."

Increasing congressional oversight activity appears also to be related to a changed perception of political priorities. Creating new programs is less appealing in a time of resource scarcity, when constituents are frustrated by government size and complexity. Congressional oversight of existing programs is a more politically attractive activity in that context, particularly when the Congress and Presidency are dominated by opposite parties.

The Congressional Research Service lists the following purposes for congressional oversight:<sup>10</sup>

- Ensure executive compliance with legislative intent
- Improve the efficiency, effectiveness, and economy of governmental operations
- Evaluate program performance
- Prevent executive encroachment on legislative prerogatives and powers
- Investigate alleged instances of poor administration, arbitrary and capricious behavior, abuse, waste, dishonesty and fraud
- Assess agency officials' ability to manage and carry out program objectives
- Review and determine federal financial priorities
- Ensure that executive policies reflect the public interest
- Protect individual rights and liberties

Committees are a natural venue for legislative oversight, as they can focus on the discrete policies and programs within their jurisdictions. Committees of the U.S. Congress are charged by the Legislative Reorganization Act of 1946 with the responsibility to "exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee."<sup>11</sup> The 1970 amendments to the Legislative Reorganization Act required

biennial committee reports on oversight activities, authorized increased committee staff assistance, strengthened the Congressional Research Service (CRS) and required it to provide each new Congress with a list of the laws due to expire in each committee's jurisdiction.

The Congressional Budget and Impoundment Act of 1974, among other things, authorized Congressional committees to require agencies under their jurisdiction to evaluate and report on their programs, and directed the Government Accounting Office (GAO) to establish an office of program review and evaluation.<sup>12</sup> (GAO was created in 1921, in the Budget and Accounting Act.) The GAO is charged to "...increase the effectiveness with which the government is meeting its growing responsibilities and to help in bringing about improvements."<sup>13</sup> GAO audit reports may be requested by individual members, undertaken on its own initiative, or requested by any committee, subcommittee, or individual member of Congress. This policy differs in important respects from that of the California Legislature, which reserves all audit requests to the Joint Legislative Audit Committee (Government Code Section 10520). Congressional requestors are granted exclusive review of an audit that they have requested for up to 30 days, and then the audits are made public.

In general, congressional committees are required by house rules to "...review and study on a continuing basis, the application, administration, and execution of all laws within {their} jurisdiction."<sup>14</sup> House of Representatives Rule X (see Appendix I) specifies committee oversight responsibilities, and requires that committees with more than 20 members establish an oversight (or investigative) subcommittee. Some Senate committees also have permanent investigative subcommittees. Each House committee is required to publish an oversight plan at the outset of a new session (Appendix II contains 107<sup>th</sup> Congress Oversight Plans for the House Agriculture committee and Senate Government Affairs' Permanent Subcommittee on Investigations). Both houses create select and joint committees for special oversight purposes.

The Rules of the California legislature also establish broad oversight authority for committees. Joint Rule 36 provides that the Legislature of "... either house, or both houses jointly, may by resolution or statute provide for the appointment of committees to ascertain facts and to make recommendations as to any subject within the scope of legislative regulation or control." These committees may employ staff, adopt rules governing procedure, summon and subpoena witnesses, require the production of papers, and administer oaths.

Every department, commission, board, agency, officer, and employee of the state government, including the Legislative Counsel and the Attorney General and their subordinates, and of every political subdivision, county, city, or public district of or in this state, shall give and furnish to these committees and to their subcommittees upon request information, records, and documents as the committees deem necessary or proper for the achievement of the purposes for which the committee was created. (Joint Rule 36)



The California Joint Legislative Sunset Review Committee is an example of an oversight committee with explicit statutory authority (Government Code Sections 473-473.6), based upon "...the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and the Assembly..." The Joint Legislative Sunset Review Committee is charged with reviewing specified administrative boards, and receiving testimony from "...the Director of Consumer Affairs, the board involved, the public, and the regulated industry...[to]... demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare." The committee, which has successfully recommended a number of changes to the various boards and commissions, is authorized to act until January 1, 2004.

Each house of Congress has a committee that focuses broadly on government administration: Government Affairs (Senate) and Government Reform (House). These committees "...can investigate, hold hearings, make recommendation to other committees, and initiate resolutions and legislation in these areas." They have jurisdiction over the following areas:<sup>15</sup>

- overall economy and efficiency of government operations
- budgeting and accounting, other than appropriations
- reorganizations in the executive branch
- intergovernmental relationships
- legislative oversight procedures and practices
- reports of the General Accounting Office

Congress has also sought to increase its power of executive branch review by various devices including one-year authorizations, "sunset" of legislation, committee pre-clearances for certain executive actions, legislative review and possible veto or disapproval of executive branch actions (e.g., trade agreements, base closures) or regulations. The partisan affiliation of each branch affects oversight, as members of a party other than that of the President (or governor) are more likely to searchingly scrutinize executive branch operations.

According to one analysis, Congressional legislative oversight is most likely to occur when the following factors are present:

a legal basis for committee or individual [member] activities, and money available; adequate staff resources...; subject matter that is not unusually technical or complex...; activities ...that are centralized in one executive department; an issue with high visibility and large political payoffs;...a chairman...who is a strong advocate of oversight in a given area; unhappiness of key committee members with the conduct of executive personnel...; control of the house ...by one political party and of the presidency by the others; poor treatment of members of the Congress...by executive officials; [and] a member's strong interest in...the particular subject matter at hand.<sup>16</sup>

A later analysis found that scandal and policy crises are the two most important causes of Congressional oversight activities, followed by the reauthorization process, ineffectively run programs, sharp disagreements, and district and public concerns and complaints.<sup>17</sup>

*Tools and Techniques of Legislative Oversight*

Information is critical to effective oversight. Members of Congress rely on information provided by their constituents, committee staffs, GAO reports, interest groups, the news media, state and local officials, their legislative colleagues, and agency whistle-blowers (in ranked order of importance).<sup>18</sup> When Congressional committee staffs were asked to rank different oversight techniques in frequency of use, staff communication with agency personnel was ranked first, followed by program evaluations conducted by congressional support agencies (General Accounting Office, Congressional Research Service, and the Congressional Budget Office) and committee oversight hearings (see Table 1).<sup>19</sup> Evaluations by agencies of their own programs, as required by many legal reporting requirements, are not highly valued.

<b>Table 1</b>	
<b>Frequency of Use of Oversight Techniques, 95<sup>th</sup> Congress</b>	
<i>Technique and Rank (with 1 the most important)</i>	
1	Committee staff communication with agency
2	Program evaluations by legislative support agencies (GAO, Congressional Research Service and Budget Office)
3	Oversight hearings
4	Staff investigations and field studies (other than for preparation of hearings)
5	Program reauthorization hearings
6	Program evaluations by committee staff
7	Hearings on bills to amend ongoing programs
8	Analysis of proposed agency rules and regulations
9	Member communication with agency
10	Agency reports required by Congress
11	Program evaluations done by agencies
12	Program evaluations by “outsiders”
Source: California Research Bureau, 2002, based on table in Joel Aberbach, 1990.	

The California legislature’s infrastructure supports effective and credible oversight. Knowledgeable committee staff and internal legislative research offices, such as the Senate Office of Research, are important resources. The Auditor General, Office of the Legislative Analyst, and the California Research Bureau provide legislative research and information services related to state policy issues and programs.

Oversight hearings can be comprehensive and focus on “the big picture,” or be narrowly targeted at particular problems/abuses. They may focus on making changes to a law, on a law’s implementation, on improper or ineffective administrative conduct, or seek to

stimulate public opinion. A hearing which merely invites administrative officials to describe their programs is of minimal value.

Preparing for a legislative oversight hearing is a time-consuming process, not unlike preparing for a trial. It requires a carefully defined focus guided by sufficient and competent staff. Relevant background information must be carefully researched and gathered. Agencies may be asked to submit information in writing and investigators may review records and question employees. Potential witnesses are identified. Committee rules may require that witnesses submit written statements in advance of a hearing, to assist in developing questions. Briefing books inform legislators about the main issues, summarize relevant information, and provide potential questions. Generally, the chair of the committee makes an opening statement that defines the subject matter of the hearing and establishes the key issues.

In its *Congressional Oversight Manual*, the Congressional Research Service summarizes the main investigative tools of oversight. These include the subpoena power, interviews and depositions conducted by committee staff, grants of immunity, application of the contempt power, and prosecutions for perjury and false statements. The *CRS Manual* notes that, “To get the right answer, you must ask the right questions.”<sup>20</sup>

The power of legislative inquiry is broad, but not unlimited. Legislative investigations must aid in the furtherance of a legitimate legislative function and ensure procedural fairness. They must fit within the scope of the authority that has been delegated to the investigating body, usually by legislative rules or resolution. The important goal is to prevent abuse of power. In addition, there are procedural requirements that deal with “...such matters as co-ordination with other committees, advance announcement of dates and purpose, submission of statements by witnesses before appearance, questioning of witnesses, voting, and reporting.”<sup>21</sup>

Congressional oversight of the federal executive branch is greatly facilitated by the fact that all committee hearings and floor debates are transcribed and become permanent printed records. The *Congressional Record* provides a verbatim account of floor debate. Joint Rule 15 (c) of the California legislature requires that the *Daily Journal* provide a “true and accurate account of the proceedings of the house, when not acting as a Committee of the Whole,” but the *Daily Journal* does not provide a verbatim account of floor debate.

Fewer bills are heard and enacted in Congress than in the California legislature, as individual proposals tend to be aggregated into larger committee bills. After a committee passes a bill, the committee publishes a committee report containing an official record of the debates surrounding the enactment, including verbatim testimony. (The transcription costs are paid from the house budget, not the committees’ budgets.) These detailed records enable the committees to subsequently hold the administration and interest groups accountable for commitments made at the time of passage. Committee reports also establish a record of legislative intent that assists the courts.

Finally, legislative oversight relies on a reliable and accessible record of official executive branch actions and publications. The Library of Congress ensures that Congress has access to a complete record of federal agency documents, and much more. California Government Code Section 14901 requires that "...the State Printer shall print a sufficient number of copies of each state publication as determined by the State Librarian...to meet the requirements for deposit in a 'library stockroom.'" State publication is broadly defined in Section 14902, and Section 14903 requires distribution by the State Printer of multiple copies to the California State Library and the University of California, Berkeley and Los Angeles, libraries. However many state agencies and departments are not regularly sending all of their documents to the libraries. Further, there is no state policy on keeping a record of agency Internet publications, which can disappear quickly.

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## ENDNOTES

- <sup>1</sup> Joseph R. Grodin, Calvin R. Massey, Richard B. Cunningham, *The California State Constitution* (Westport, Conn.: Greenwood Press, 1993), 107.
- <sup>2</sup> Joseph R. Grodin, Calvin R. Massey, Richard B. Cunningham, *The California State Constitution*, 108.
- <sup>3</sup> Congressional Research Service, *Congressional Oversight Manual* (Washington, D.C.: Congressional Research Service, 1995), 32. See 354 U.S. 178, 187 (1957)
- <sup>4</sup> Frederick C. Mosher, *The GAO: The Quest for Accountability in American Government* (Boulder, Colorado: Westview Press, 1979), 259, quoting Woodrow Wilson.
- <sup>5</sup> Morris S. Ogul, *Congress Oversees the Bureaucracy* (Pittsburgh: University of Pittsburgh Press, 1976), 11.
- <sup>6</sup> Joel D. Aberbach, *Keeping a Watchful Eye; The Politics of Congressional Oversight* (Washington, D.C.: The Brookings Institution, 1990), ix.
- <sup>7</sup> Joel D. Aberbach, *Keeping a Watchful Eye; The Politics of Congressional Oversight*, 2.
- <sup>8</sup> Joel D. Aberbach, *Keeping a Watchful Eye; The Politics of Congressional Oversight*, quoting Richard Hofstadler, 3.
- <sup>9</sup> Bernard Rosen, *Holding Government Bureaucracies Accountable* (N.Y.: Praeger, 1982), 4.
- <sup>10</sup> Congressional Research Service, *Congressional Oversight Manual* (Washington, D.C.: Congressional Research Service, 1995), 4.
- <sup>11</sup> Morris S. Ogul, *Congress Oversees the Bureaucracy*, 5.
- <sup>12</sup> Joel D. Aberbach, *Keeping a Watchful Eye; The Politics of Congressional Oversight*, 27.
- <sup>13</sup> Frederick C. Mosher, *The GAO: The Quest for Accountability in American Government* (Boulder, Colorado: Westview Press, 1979), 2.
- <sup>14</sup> Congressional Research Service, *Congressional Oversight Manual* (Washington, D.C.: Congressional Research Service, 1995), 11.
- <sup>15</sup> Bernard Rosen, *Holding Government Bureaucracies Accountable*, 58.
- <sup>16</sup> Morris S. Ogul, *Congress Oversees the Bureaucracy*, 21-22.
- <sup>17</sup> Joel D. Aberbach, *Keeping a Watchful Eye; The Politics of Congressional Oversight*, 112.
- <sup>18</sup> Bernard Rosen, *Holding Government Bureaucracies Accountable* (Westport, Conn.: Praeger, 1990), 50.
- <sup>19</sup> Joel D. Aberbach, *Keeping a Watchful Eye; The Politics of Congressional Oversight*, 131.
- <sup>20</sup> Congressional Research Service, *Congressional Oversight Manual* (Washington, D.C.: Congressional Research Service, 1995), 32-37, 48.
- <sup>21</sup> Bernard Rosen, *Holding Government Bureaucracies Accountable*, 57.



# Appendix I

## House of Representatives Rule X: General oversight responsibilities

### Clause 2.

- a. The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in--
  - (1) its analysis, appraisal, and evaluation of--
    - (A) the application, administration, execution, and effectiveness of Federal laws; and
    - (B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and
  - (2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.
- (b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis--
  - (A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;
  - (B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;
  - (C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and
  - (D) future research and forecasting on subjects within its jurisdiction.
- (2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.
- (c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible--

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in its plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority; and

(C) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Government Reform shall report to the House the oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.



# Appendix II

## Senate Government Affairs Permanent Subcommittee on Investigations, 107<sup>th</sup> Congress Committee Oversight Plan

### PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

#### Ongoing Investigations

COLLECTION OF FEES & FINES: A September 1999 report the General Accounting Office ("GAO") prepared at the request of Chairman Collins found that the Federal Communications Commission ("FCC") has been routinely failing to collect regulatory fees because it does not have sufficient information to identify all of the telecommunications companies that must pay fees and to determine whether the companies have paid the full amounts required. GAO also found errors in FCC's reports to the Department of Treasury on its uncollected balance of approximately \$15 million in civil monetary penalties, making it difficult to evaluate the effectiveness of the collection of monetary penalties.

Based on this evidence, the Subcommittee has begun to examine the larger question of whether there are deficiencies in the collection of fees and fines by the federal government in general. Information from other GAO and Executive Department reports indicates that the failure to collect fees and fines may be significant. At the end of Fiscal Year 1997, the federal government reported over \$1 trillion in outstanding non-tax receivables and guaranteed loans. According to the Department of the Treasury, \$51.9 billion of that was delinquent.

The Subcommittee will review the volume of fees and fines the federal government imposes, the accounting practices it uses to track collection, and the amounts it collects. The investigation will also examine the activities of the Treasury Department's Financial Management Center. This investigation is based on the Subcommittee's jurisdiction to study and investigate "the efficiency and economy of operations of all branches of the Government including the possible existence of . . . mismanagement [and] incompetence . . ."

DEPARTMENT OF INTERIOR'S HANDLING OF FOIA REQUESTS: For the last thirty years, the Freedom of Information Act ("FOIA") has provided the public with a means to require federal agencies to respond to written requests for information. FOIA codifies a general policy of full agency disclosure unless the information sought is exempted under clearly delineated statutory language. The law provides the public with access to identifiable, existing

records of federal departments and agencies without the necessity of demonstrating a need for the requested material or even a reason for the request. The burden of proof for withholding material sought by the public is on the government.

FOIA provides that agencies shall "promptly" release records upon request, but this directive has been marked by lengthy delays in obtaining a response even to the most simple requests. The Subcommittee has received several complaints about delays in the handling of FOIA requests by the Department of Interior ("DOI"). Preliminary indications are that DOI has repeatedly ignored the temporal and substantive requirements of FOIA.

This investigation will examine how DOI processes its FOIA requests and why DOI has apparently fallen short in complying with the requirements of FOIA. The investigation falls within the Subcommittee's jurisdiction "to study or investigate the efficiency and economy of operations of all branches of the Government[.]"

*MORTGAGE FRAUD*: This investigation concentrates on sub-prime lending and predatory lending practices. The practice of mortgage "flipping" -- where individuals ("flippers") pose as legitimate real estate investors to sell homes at artificially inflated prices -- creates the false illusion of a robust real estate market through the use of phony paperwork and deceptive sales pitches. In Baltimore, flippers have purchased hundreds of rundown houses over the past three years and resold them -- sometimes within hours -- to unsuspecting, unsophisticated buyers. Often, buyers pay inflated prices and high debt results in foreclosure, abandonment, or bankruptcy. Buyers are left with their credit ratings tarnished and neighborhoods are left with boarded-up houses.

While flipping itself is not illegal, it crosses the line when sellers falsify documents to lure buyers and lenders, including the Federal Housing Authority, into investing more money in a house than it is worth. This investigation is based on the Subcommittee's jurisdiction to study and investigate "all . . . aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety[.]" and on its jurisdiction to investigate "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud[.]"

*FRAUD ON THE INTERNET*: With a growing number of American households having access to the Internet through personal computers, the use of the Internet for consumer purchases, banking, and other electronic commerce is increasing rapidly. Law enforcement agencies have identified credit card fraud as a significant problem with Internet commerce. In addition, financial institutions and other businesses with online financial services have been affected by unauthorized criminal intrusions into their systems. For example, published reports indicate that "electronic bank robberies" net on average approximately \$250,000 but that only 2 percent of those "cybercrimes" are detected and

investigated. (These statistics compare poorly to "conventional bank robberies" which on average net approximately \$7,500, with 80 percent of the robbers eventually caught.) For the last several years, the Subcommittee has examined the extent to which fraud and criminal activities are affecting commerce on the Internet. This investigation is based on the Subcommittee's jurisdiction to study and investigate "investment fraud schemes, commodity and security fraud, [and] computer fraud[.]" The first hearing, concentrating on traditional fraud perpetrated over the Internet, was held on February 10, 1998. At that hearing, the Subcommittee heard testimony from several witnesses, including representatives of the National Fraud Information Center and America Online, a victim of Internet fraud, and the Chairman of the Federal Trade Commission. A second set of hearings, held on March 22 and 23, 1999, examined securities fraud on the Internet. The Subcommittee's current investigation focuses on the widespread availability of false identification on the Internet and the criminal uses to which such identification is devoted.

**MEDICARE FRAUD:** Health care comprises about 1/7th of the nation's economy, and it is clear from published reports and criminal prosecutions that waste, fraud, abuse, and mismanagement are part of this system. Government-financed programs are no exception. Because of this vulnerability to waste and fraud, the GAO has consistently identified Medicare as one of the federal government's high risk programs, that is, a program subject to a significant risk of waste, fraud and abuse.

In June 1997, the Subcommittee initiated a comprehensive investigation of waste, fraud, abuse, and mismanagement in government health insurance programs, including Medicare. This investigation is based on the Subcommittee's jurisdiction to study and investigate "the efficiency and economy of operations of all branches of government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government." The Subcommittee held an overview hearing on June 26, 1997. Officials from the Federal Bureau of Investigation, GAO, the Department of Health and Human Services' Office of Inspector General ("HHS-OIG"), and Health Care Financing Administration ("HCFA"), as well as representatives from the private sector, testified about the growing problem of fraud in the Medicare program.

The Subcommittee held a second hearing on January 29, 1998, focusing on the enrollment procedures for Medicare providers. The Subcommittee received testimony from a convicted Medicare fraud felon, a Subcommittee investigator,

and representatives of HHS-OIG and HCFA. This hearing revealed a dangerous and growing trend in Medicare fraud: fraudulent providers are participating in the system with the sole and explicit purpose of robbing it. The Subcommittee held a field hearing in Chicago, Illinois on December 9, 1998. This hearing focused on successful Medicare fraud prevention and enforcement efforts, including the Operation Restore Trust Project and a local senior citizen outreach and education program operated in Illinois. The current phase of this investigation is focusing on the process by which HCFA settles or compromises overpayment claims with Medicare providers. The Subcommittee has scheduled a hearing on this subject for March 23, 2000, and will hear testimony from GAO as well as past and current HCFA officials.

*MONEY LAUNDERING:* In 1999, the Subcommittee's Minority staff initiated an investigation into money laundering activities that use services provided by banks and other financial entities operating within the United States. This investigation, which arose from a preliminary inquiry initiated by the Subcommittee Minority during the 105th Congress, is examining the dimensions of the problem, how banks and other financial service providers are responding to the risks and challenges posed by money laundering, and the efforts of federal regulators and law enforcement to detect, halt and prevent such activities. On November 9 and 10, 1999, the Subcommittee held its first set of hearings examining how criminals utilize private banking services to launder their ill-gotten gain. The investigation continues to focus on such aspects of money laundering as correspondent banking; services provided by nonbank financial entities such as brokers; use of offshore bank accounts, corporations, trusts and other means to disguise criminal proceeds; and the efforts of financial entities, federal regulators, and law enforcement to limit money laundering activities within the United States. Money laundering is estimated to involve more than \$500 billion annually in illegal proceeds, including the proceeds of organized crime and narcotics trafficking. This investigation builds upon Subcommittee hearings held in the 1980s that contributed significantly to defining the problem and focusing national and international resources on it. It falls within the Subcommittee's traditional jurisdiction to investigate "organized criminal activities which may ... utilize the facilities of interstate or international commerce" and "the use of offshore banking and corporate facilities to carry out criminal objectives."

*EMERGING SECURITIES FRAUD:* There is growing evidence of fraud in the sale of small company stocks, ranging from putting out false financial statements to bribing brokers to peddle shares to customers by inflating their market value. After purchases are made by unwitting investors taken in by such tactics, insiders "dump" their shares for considerable gain, with the consequent rapid decline in the stock's value borne by the exploited investors. Consumers often lose thousands and thousands of dollars when the stock prices fall

after this fraudulent manipulation. This investigation is based on the Subcommittee's jurisdiction to study and investigate ". . . investment fraud schemes, commodity and security fraud, [and] computer fraud . . ."

On September 22, 1997, the Subcommittee conducted its first hearing on this matter. Officials from the Securities and Exchange Commission, NASD-Regulation, Inc., state regulators, and victims testified about the growing problem of securities fraud. A second set of hearings, which were held on March 22 and 23, 1999, examined the fraudulent sale of securities over the Internet.

On September 16, 1999, the Subcommittee's third hearing provided an overview of the "day trading" phenomenon. Day trading is a highly risky activity for the average investor. Securities regulators estimate that more than 75 percent of retail investors who engage in day trading lose a substantial percentage, if not all, of their capital. The Subcommittee has determined that, in the aggregate, day traders pay approximately \$16 per trade at the fifteen firms examined in this investigation. These firms estimated – in the aggregate – that their customers execute twenty-nine trades per day. Thus, the average day trader at these firms must generate a daily trading profit of \$464, each and every day, simply to break even. On an annualized basis, assuming twenty trading days per month, the average day trader must generate a trading profit in excess of \$111,360 to achieve profitability for the year. Moreover, certain day trading firms appear to engage in fraudulent or questionable practices – including deceptive advertising, forgery, and margin abuses – that serve to increase risks to day traders.

On February 24 and 25, 2000, the Subcommittee held a second set of hearings on day trading which presented the results of the Subcommittee's in-depth investigation of the day trading industry. The hearing focused on three case study firms. At the hearings, the Subcommittee heard testimony from former day trading customers, past and current employees of day trading firms and securities regulators.



## Oversight Plan, House Committee on Agriculture, 107th Congress

TO: The Honorable Dan Burton, Chairman  
House Committee on Government Reform

The Honorable Robert W. Ney, Chairman  
House Committee on House Administration

FROM: The Honorable Larry Combest, Chairman  
House Committee on Agriculture

DATE: February 15, 2001

SUBJECT: Oversight Plan for the House Committee on Agriculture for the 107th Congress

Pursuant to Rule X, clause 2(d)(1) of the Rules of the U.S. House of Representatives for the 107th Congress, I submit the following plan to fulfill the General Oversight Responsibilities reporting requirements. This outline was prepared in consultation with the Ranking Member, was presented to the full Committee for its consideration, and is now offered for your consideration relative to your responsibilities under the Rules. If you have any questions regarding this outline, do not hesitate to contact me.

### OVERSIGHT PLAN HOUSE COMMITTEE ON AGRICULTURE 107TH CONGRESS

The Committee expects to exercise appropriate oversight activity with regard to the following issues:

#### **1996 FARM BILL AND CURRENT AGRICULTURAL ECONOMIC CONDITIONS:**

- The U.S. Department of Agriculture's (USDA) implementation of the Federal Agricultural Improvement and Reform Act of 1996;
- Current status U.S. farm economy;
- Implementation of crop and market loss assistance provided in fiscal year 2001;
- USDA's implementation of the Nonrecourse Marketing Assistance Loans and Loan Deficiency Payments provisions;
- The impact of the continuation of the milk price support program on U.S. dairy producers, and viability of current purchase price formulas;

- Operation of specialty crop programs; and
- Ways to improve the 1996 Farm Bill to strengthen the safety net for U.S. agricultural producers.

#### **FEDERAL CROP INSURANCE AND RISK MANAGEMENT:**

- Administration of the Federal Crop Insurance Program, including implementation of crop insurance provisions contained in the Agricultural Risk Protection Act of 2000;
- USDA implementation of statutory provisions designed to reduce crop insurance program waste and improve program integrity;
- Proposed policy options regarding insurance options for revenue and gross margin protection;
- Implementation of dairy forward contracting pilot project and expansion of dairy options pilot program; and
- Implementation of the Commodity Futures Modernization Act of 2000.

#### **AGRICULTURAL TRADE:**

- The Administration's plans for new trade agreements (Free Trade Area of the Americas and the FTA with Chile) and expansion of existing trade agreements affecting U.S. agriculture, including the World Trade Organization (WTO) Agricultural Agreement, and accession of countries, such as China, to the WTO;
- USDA's implementation of trade agreements and related issues to ensure compliance of other countries' trade obligations, including:
  - Organization for Economic and Cooperative Development (OECD) negotiations on USDA's export credit guarantees;
  - WTO dispute settlement provisions, European Union (EU) issues such as the EU meat hormone ban, tariff rate quotas, EU crop subsidies, biotechnology, and state trading enterprises;
  - Issues relating to the North American Free Trade Agreement (NAFTA), including Canada's use of high tariffs for dairy, poultry, eggs, barley, and margarine products and Canadian exports of wheat, barley, and other agricultural commodities into the U.S.; and
  - Harmonization of sanitary and phytosanitary standards (SPS), including those provided by international organizations and incorporation of new technologies and products into SPS standards;
- Planning for the trade title of the 2002 farm bill and Public Law 480, including third country monetization, maximum administrative funding levels, the Farmer-to-Farmer Program, and expanded authority for sales on credit;



- Food assistance programs to ensure that program goals are being met in the most recent uses of the program, including the Global Food for Education Pilot Program;
- Extension of trade promotion negotiating authority;
- Implementation of agriculture sanctions reform and the expansion of sanctions reform;
- Examination of which markets offer the greatest opportunity to increase sales of U.S. agricultural product, such as Asia or Latin America, and what forums are best suited to open those markets, such as the FTAA, APEC, or the WTO;
- Impact of the Trade and Development Act of 2000 on U.S. agriculture (Africa, CBI, carousel);
- The current status of sugar and other sweeteners including stuffed molasses and high fructose corn syrup especially with regard to Mexico and Canada; and
- The Conservation Reserve Program (CRP) as it relates to WTO guidelines.

#### **AGRICULTURAL RESEARCH AND PROMOTION:**

- USDA's implementation of the Agricultural Research, Extension, and Education Reform Act of 1998, including provisions regarding competitive and special grants and precision agriculture;
- The U.S. regulatory process and foreign government's process governing biotechnology relevant to production agriculture, as well as the federal agencies responsible for such regulation and research, including but not limited to the Animal and Plant Health Inspection Service (APHIS), the Food and Drug Administration (FDA), and the Environmental Protection Agency (EPA);
- Implementation of research provisions of the Agricultural Risk Protection Act of 2000;
- Administration of the Agricultural Research Service's research stations and worksites;
- Administration of USDA's agricultural marketing and promotion programs; and
- Federal efforts to facilitate research and development of aquacultural enterprises, specifically focusing on the activities of the Joint Committee on Aquaculture, chaired by the Secretary of Agriculture and including the Secretaries of Interior and Commerce.

#### **CONSERVATION AND THE ENVIRONMENT:**

- Budget and program activities of USDA's Natural Resource Conservation Service (NRCS);
- NRCS administration of the Environmental Quality Incentives Program;
- The regulatory activities of the NRCS and the EPA regarding concentrated animal feeding operations (including safe harbor agreements, proposed rules, and National Pollutant Discharge Elimination System permits) and their impact on the livestock industry and other agricultural producers;
- EPA's final rules on total maximum daily loads and their effects of agricultural producers;
- EPA's plan of action regarding hypoxia in the Gulf of Mexico;
- Administration of the CRP and Conservation Reserve Enhancement Programs and related issues such as buffers, filterstrips and continuous signup;
- Implementation of the Small Watershed Rehabilitation Act;
- Potential impacts of the EPA's National Ambient Air Quality for ozone and particulate matter on agricultural producers;

- Potential consequences for production agriculture in the United States should the mandates contained in the Kyoto Protocol to the United Nations' Framework Convention on Climate Change be implemented by treaty, law, or regulation;
- Impact of regulatory activities carried out pursuant to the Endangered Species Act, or any proposed legislative changes to such Act, on agricultural producers;
- Impact of laws or regulations relative to the rights of agricultural producers to use legally acquired property, ranging from actual federal acquisition to regulatory actions that restrict or prohibit lawful activities that affect the value of private property;
- Impact of EPA's regulatory activity relative to methyl bromide on production agriculture in the U.S.;
- EPA's implementation of the Food Quality Protection Act (FQPA); and
- Impact of U.S. Supreme Court's recent decision regarding isolated wetlands and the migratory bird rule and the effects on inland wetlands.

#### **U.S. FOREST SERVICE ADMINISTRATION:**

- United States Forest Service (USFS) management of the National Forest System, including the agency's fiscal and financial accountability, strategic planning and performance measurement under the Government Performance and Results Act, efforts to address the nation's declining forest health, and federal laws and regulations affecting the management of private forest lands;
- USFS management of public lands under its jurisdiction, including a review of agency policy governing grazing and other uses of these lands which require users to secure a permit;
- Impacts of implementation delay in last-minute regulations affecting federal lands, including the forest roadless policy, transportation policy, and planning regulations;
- Impact of the Southern Forests Assessment, an interagency study on the sustainability of southern forest practices;
- Review of programs that strengthen and support private forestland management; and
- Review of the USFS/Bureau of Land Management report on co-location and combination of services and operations.

#### **USDA GENERAL ADMINISTRATION:**

- Implementation of the Freedom to E-File Act;
- Implementation and streamlining of USDA's Common Computing Environment;
- Administration of USDA operations, including reorganization efforts, administrative convergence, management improvements, compliance with the Government Performance and Results Act, and the impact on client services;
- Implementation of USDA's Civil Rights settlement; and
- Confidentiality of information provided to USDA by agricultural producers.

#### **FARM CREDIT, RURAL DEVELOPMENT, AND THE RURAL ECONOMY:**

- Farm credit legislation expiring in 2002;
- Farm Credit Administration's (FCA) regulatory responsibilities regarding the Farm Credit System, as well as their individual and collective efforts to ensure the System's financial soundness;
- Availability of credit to agricultural producers in light of low commodity prices;

- Review of the FCA's national charter proposal and its potential effects on the viability of the Farm Credit System;
- Review of a report from the Center for the Study of Rural America ("Beyond Agriculture: New Policies for Rural America," Kansas City Federal Reserve Bank);
- Impact of the rural equity investment legislative proposal;
- Status of the Rural Business-Cooperative Service's Business and Industry loan program;
- Potential impact of electrical industry deregulation on agricultural producers and rural residents;
- Implementation of rural development policies and authorities provided in the Federal Agriculture Improvement and Reform Act of 1996;
- Implementation of the Secure Rural Schools and Community Self-Determination Act of 2000; and
- Implementation of rural satellite bill to ensure that implementation regulations are upholding the stated in intent of Congress and there is sufficient local participation in the decision-making process.

#### **WELFARE REFORM AND FOOD NUTRITION PROGRAMS:**

- Administration of the food stamp program and the replacement for cash welfare programs (Temporary Assistance for Needy Families (TANF)), which expire 2002, including:
  - The simplified food stamp program and waiver authority provided to states to ensure that states have the necessary flexibility to simplify the program;
  - Food stamp program expansion done by regulation in November 2000 (such as non-citizen eligibility and transitional food stamp benefits);
  - Harmonization of TANF and food stamp programs by states, especially the application procedures and work requirements;
  - Implementation of work requirements and sanctions for able-bodied individuals and use of waivers by states to allow able-bodied persons, aged eighteen to fifty, to receive benefits;
  - Funding levels for work programs for able-bodied individuals versus other individuals;
  - Implementation of the state's use of electronic benefits transfer (EBT) systems to improve the distribution of food benefits (all states must implement EBT by 2002);
  - Effectiveness of provisions designed to curb food stamp trafficking and fraud;
  - Effectiveness of the food stamp quality control system;
  - Implementation and funding levels for the Emergency Food Assistance program, formerly known as TEFAP and other commodity distribution programs; and
  - Nutrition monitoring oversight.

#### **FOOD SAFETY, MARKETING, AND MISCELLANEOUS ISSUES:**

- USDA's Food Safety Inspection Service's administration of the meat and poultry inspection laws and the Food and Drug Administration's food inspection activities, including seafood and seafood products to ensure that policies and resources are focused on developing scientifically sound systems for food safety assurance;
- USDA's efforts to educate consumers regarding safe food handling practices, the development of pre-exposure and post-exposure interventions to reduce the frequency and severity of food borne illnesses, expanded research and development of pathogen

reduction technologies, as well as streamlined, science-based policies relative to assessment and approval of food safety technologies;

- USDA's implementation of new protocols for meat, poultry, eggs, or seafood safety inspection, including the implementation of Hazard Analysis Critical Control Point (HACCP) for medium and small sized plants;
- Impact of lawsuits challenging aspects of food safety inspection modernization efforts including authority to establish and enforce microbiological performance standards and HACCP based inspection models;
- The issue of new drug development, approval, and availability for animal agriculture as well as the implementation of the Animal Drug Availability Act;
- USDA's proposed rule on organic standards;
- USDA's implementation of mandatory livestock price reporting;
- Effectiveness of the Grain Inspection, Packers and Stockyards Administration (GIPSA) in monitoring the potential for market manipulation in the livestock industry;
- Concentration of agribusiness and the potential impact on agricultural producers;
- Adequacy of agricultural labor and the agricultural guest worker program, H2A;
- Review implementation of Plant Protection Act of 2000;
- Current functioning of animal health protection programs and legislative proposals to consolidate and modernize legislative authorities;
- Current state of readiness to deal with emerging and exotic animal and plant diseases as well as threats of intentional introduction of animal and plant diseases and food borne pathogens;
- Federal efforts to reduce threats to human, animal, and plant health due to predatory and invasive species;
- Impact of judicial settlements to expand applicability of animal care programs to mice, rats, and birds used in research; and
- Proposals to expand applicability of animal care programs to gamebirds.