



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

February 25, 2009

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate

The Honorable Barbara Boxer
United States Senate

The Honorable Bill Nelson
United States Senate

Subject: *NASA Workforce: Responses to Follow-up Questions regarding the National Aeronautics and Space Administration's Use of Term Appointments*

GAO recently completed an engagement regarding the use of term appointments by the National Aeronautics and Space Administration (NASA) for civil servant positions.¹ Congress expanded NASA's ability to use term appointments to fill civil service positions in 2004 through the passage of the NASA Flexibility Act of 2004 (Pub. L. No. 108-201). NASA sought this flexibility to ensure that it could hire and retain the workforce it desired. In October 2008, we briefed your committee on the results of our review, and were asked to respond to additional questions several members on your committee had regarding NASA's use of term appointments. Based on our previous and recently completed work and knowledge of the subject areas, our responses follow:

1. What policies and procedures are in place to protect the independence of scientists and engineers hired under term appointment authority?

NASA does not have any policies designed specifically to protect the independence of term-appointed scientists and engineers; however, federal whistleblower laws and NASA policies that protect the independence of career/career-conditional appointees also apply to term appointees. NASA stated that it makes no distinction between term and career/career-conditional appointees in any policies regarding employee working conditions.

¹ The joint explanatory statement accompanying the Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161) directed GAO to review NASA's use of term appointments for civil servant positions.

Furthermore, term appointees are not distinguishable from career/career-conditional employees in any manner apparent to the workforce (for example, through different employee badges). Additionally, membership in unions working on behalf of NASA's workforce is open to NASA employees regardless of appointment status. NASA employees who believe they have been treated unfairly or who believe the independence of their research has been compromised have full access to the NASA Ombuds Program and the NASA Office of Inspector General to lodge complaints or air grievances, again, regardless of whether they are term or career/career-conditional appointees.²

NASA Information Dissemination Policies

NASA has taken a number of steps to mitigate the risk that interference with the dissemination of information and research will be used by the agency to curtail the independence of term-appointed scientists and engineers. NASA has policies in place regarding the dissemination of "public information" which applies to all NASA employees regardless of appointment status.³ Title 14, Part 1213 of the Code of Federal Regulations—Release of Information to News and Information Media, lays out NASA's policies regarding the release of public information.

Section 102 of 14 C.F.R. Part 1213 states

(a) NASA, a scientific and technical Agency, is committed to a culture of openness with the media and public that values the free exchange of ideas, data, and information as part of scientific and technical inquiry. Scientific and technical information from or about Agency programs and projects will be accurate and unfiltered.

(b) Consistent with NASA statutory responsibility, NASA will "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof." Release of public information concerning NASA activities and the results of NASA activities will be made in a timely, equitable, accurate, and complete manner.

(c) To ensure timely release of information, NASA will endeavor to ensure cooperation and coordination among the Agency's scientific, engineering, and public affairs communities.

² In 2005, NASA established the NASA Ombuds Program to provide NASA employees, on-site contractors, summer students, nonappropriated funded employees, and other NASA Center residents an "informal, independent, confidential and neutral means of communicating and facilitating the resolution of safety, organizational performance, and mission related issues without fear of retaliation. All NASA Centers and the Jet Propulsion Laboratory have Ombuds who will listen to an employee's issues, explore options, and weigh the pros and cons of various options for resolution" See also, NASA Policy Directive 2025.1, NASA Ombuds Program.

³ Public information includes "information in any form provided to news and information media, especially information that has the potential to generate significant media or public interest or inquiry." Public information includes, for example, press releases, media advisories, news features, and web postings. 14 C.F.R. §1213.100 (2008).

(d) In keeping with the desire for a culture of openness, NASA employees may, consistent with this policy, speak to the press and the public about their work.

(e) This policy does not authorize or require disclosure of information that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) or otherwise restricted by statute, regulation, Executive Order, or other Executive Branch policy or NASA policy (e.g., Office of Management and Budget (OMB) Circulars, NASA Policy Directives). Examples of information not releasable under this policy include, without limitation, information that is, or is marked as, classified information, procurement sensitive information, information subject to the Privacy Act, other sensitive but unclassified information, and information subject to privilege, such as pre-decisional information or attorney-client communications.⁴

According to a frequently asked questions guide provided to agency employees, NASA policy “guarantees that NASA scientists may communicate their conclusions to the media, but requires that they draw a distinction between professional conclusions and personal views that may go beyond the scope of their specific technical work, or beyond the purview of the agency.”

These policies were distributed throughout the agency, posted on the agency’s web site, and affirmed in an email message from NASA’s Administrator on March 30, 2006.

NASA also has policies in place regarding what it terms scientific and technical information (STI).⁵ These policies, NASA Policy Directive (NPD) 2200.1A and NASA Procedural Requirements (NPR) 2200.2B define the process by which this material should be managed and disseminated. NPD 2200.1A describes the management of STI and the role of the Chief Information Officer in managing this information. NPR 2200.2B provides details on the requirements for documentation, approval, and dissemination of STI.

These policies do not directly address the issue of interference in the work of scientists and engineers except in the broadest terms. Section P.1 (Purpose) of NPR 2200.2B states

In accordance with the National Aeronautics and Space Act of 1958, as amended, NASA shall “provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof.” Unless a determination is made that public dissemination of information must be prohibited or

⁴ 4 C.F.R. § 1213.102 (2008).

⁵ According NASA Procedural Requirements, NPR 2200.2B—Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information, scientific and technical information is defined as “the results (facts, analyses, and conclusions) of basic and applied scientific, technical, and related engineering research and development. STI also includes management, industrial, and economic information relevant to this research.”

restricted, NASA information is made available to the public.⁶

Previous work by GAO found NASA's policies regarding the dissemination of research results to be generally clear.⁷ Furthermore, in response to recommendations made by GAO in the report, NASA has undertaken formal training for managers, researchers, and public affairs staff to further clarify procedures and update employees on NASA policies related to dissemination of research and NASA's communications policy. In addition, the agency also implemented a second GAO recommendation by reviewing its March 2006 communications policy to ensure that it clearly identifies a process for appealing decisions regarding dissemination of research.

In response to a complaint regarding NASA's review, approval, and release of STI at Johnson Space Center, NASA's Office of Inspector General undertook an audit of the review processes at Johnson Space Center, Goddard Space Flight Center, Langley Research Center, and Marshall Space Flight Center. The Inspector General's report was released June 2, 2008, and concluded that there was, "no evidence... that the STI review process was used as a means to suppress scientific research at Goddard, Johnson, Langley, and Marshall."⁸ The audit report also noted specifically that "the roles and responsibilities for the review, approval, and release of NASA STI were adequately defined and documented in NASA's guidance." However, at the four Centers audited, the guidance was not always implemented effectively. The improper implementation of the guidance found by the NASA Inspector General related to NPR 2200.2B, Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. The Inspector General reported that out of the 4,702 STI items it investigated, 413 (8.8 percent) were released without proper review, including 19 that were released after rejection and 31 that were released without ever being submitted for review.⁹

2. What are the rates of conversion from term to career or career-conditional appointments?

In September 2008, GAO reported that since the passage of the NASA Flexibility Act of 2004, NASA has increased both the use of term appointments and the rate at which term appointments are converted to career/career-conditional appointments. To date, two-thirds (66 percent) of all term appointments made across NASA in fiscal year 2005 have been converted to career/career-conditional appointments. Fourteen percent of term appointees hired in fiscal year 2005 remain in their initial appointment, 15 percent have

⁶ NPR 2200.2B at P.1.

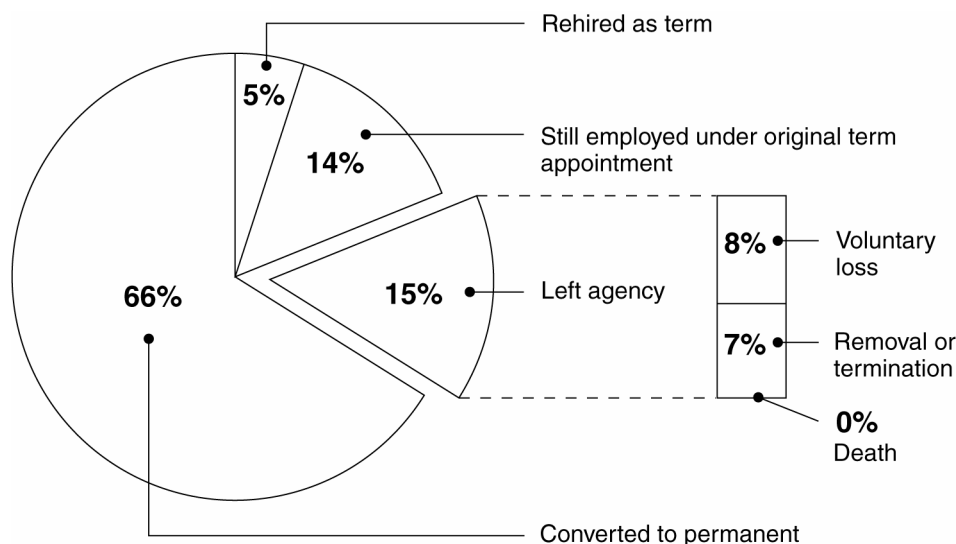
⁷ GAO, *Federal Research: Policies Guiding the Dissemination of Scientific Research from Selected Agencies Should Be Clarified and Better Communicated*, GAO-07-653 (Washington, D.C.: May 17, 2007).

⁸ NASA Office of Inspector General, *Actions Needed to Ensure Scientific and Technical Information Is Adequately Reviewed at Goddard Space Flight Center, Johnson Space Center, Langley Research Center, and Marshall Space Flight Center*, Report No. IG-08-017 (Washington, D.C., 2008).

⁹ Ibid.

left NASA, and 5 percent were re-hired under a new term appointment (fig. 1). Of the 539 term appointments made agencywide in 2006, 62 percent have been converted to career/career-conditional appointments to date; of those made in 2007 and 2008, 14 percent and 2 percent have been converted respectively. Lower conversion rates in later years are likely due to the fact individuals hired in these years are at the beginning of their appointments.

Figure 1: Outcomes of NASA Term Appointments 2005 Hires



Total term hires in FY 2005 = 502

Source: NASA.

NASA's centers vary in size and the degree to which they use term appointments. There is also variety in the conversion rates across centers. The conversion rate to date of term appointees hired in fiscal year 2005 ranges from 27 percent (6 of 22) at Glenn Research Center to 90 percent (162 of 180) at Johnson Space Center. Tables 1 through 4 depict the number and percentage (rounded to the nearest whole percent) of term appointments converted to career/career-conditional appointments to date in each fiscal year from 2005 through 2009, at NASA as a whole and at each center. The tables follow those hired in fiscal years 2005 through 2008.

The NASA Flexibility Act of 2004 gave NASA the authority to make term appointments with a maximum length of 6 years. However, due to the differing durations of term appointments and the fact that only 4 years have elapsed since the NASA Flexibility Act was enacted, it is difficult to get a complete outlook on the conversion trends. For many term appointees hired since 2005, decisions regarding conversion, re-appointment to a new term, or separation will only now be beginning to occur and some decisions will not occur for a number of years yet. Agencywide, 14 percent of term appointees hired in 2005 remain in their original appointment. For those hired after 2005, that percent increases dramatically.

Table 1: Conversion of Fiscal Year 2005 NASA Term Appointees by Center

Center ^a	Total hired in fiscal year 2005	Converted to career/career-conditional by fiscal year					Year to date 2009	Converted to date	Remaining in original appointment
		2005	2006	2007	2008				
ARC	10	0 (0%)	1 (10%)	3 (30%)	1 (10%)	0 (0%)	5 (50%)	1 (10%)	
DFRC	13	0 (0%)	0 (0%)	7 (54%)	2 (15%)	0 (0%)	9 (69%)	1 (8%)	
GRC	22	0 (0%)	2 (9%)	0 (0%)	3 (14%)	1 (5%)	6 (27%)	14 (64%)	
GSFC	66	0 (0%)	7 (11%)	15 (23%)	11 (17%)	2 (3%)	35 (53%)	18 (27%)	
JSC	180	0 (0%)	28 (16%)	121 (67%)	12 (7%)	1 (1%)	162 (90%)	3 (2%)	
KSC	130	0 (0%)	31 (24%)	46 (35%)	9 (7%)	0 (0%)	86 (66%)	13 (10%)	
LaRC	24	4 (17%)	1 (4%)	0 (0%)	3 (13%)	0 (0%)	8 (33%)	4 (17%)	
MSFC	27	0 (0%)	1 (4%)	1 (4%)	6 (22%)	0 (0%)	8 (30%)	11 (41%)	
SSC	6	0 (0%)	3 (50%)	0 (0%)	0 (0%)	0 (0%)	3 (50%)	0 (0%)	
HQ	24	2 (8%)	2 (8%)	4 (17%)	1 (4%)	0 (0%)	9 (38%)	4 (17%)	
Totals	502	6 (1%)	76 (15%)	197 (39%)	48 (10%)	4 (1%)	331 (66%)	69 (14%)	

^a Center abbreviations above include: Ames Research Center (ARC), Dryden Flight Research Center (DFRC), Glenn Research Center (GRC), Goddard Space Flight Center (GSFC), Johnson Space Center (JSC), Kennedy Space Center (KSC), Langley Research Center (LaRC), Marshall Space Flight Center (MSFC), Stennis Space Center (SSC), and Headquarters.

Table 2: Conversion of Fiscal Year 2006 NASA Term Appointees by Center

Center ^a	Total hired in fiscal year 2006	Converted to career/career-conditional by year				Year to date 2009	Converted to date	Remaining in original appointment
		2006	2007	2008				
ARC	36	0 (0%)	3 (8%)	1 (3%)	7 (19%)	11 (31%)	20 (56%)	
DFRC	31	0 (0%)	0 (0%)	25 (81%)	0 (0%)	25 (81%)	3 (10%)	
GRC	17	0 (0%)	2 (12%)	0 (0%)	0 (0%)	2 (12%)	15 (88%)	
GSFC	19	0 (0%)	1 (5%)	8 (42%)	2 (11%)	11 (58%)	6 (32%)	
JSC	205	18 (9%)	6 (3%)	144 (70%)	9 (4%)	177 (86%)	24 (12%)	
KSC	116	3 (3%)	6 (5%)	42 (36%)	15 (13%)	66 (57%)	25 (22%)	
LaRC	45	0 (0%)	1 (2%)	6 (13%)	4 (9%)	11 (24%)	29 (64%)	
MSFC	54	0 (0%)	5 (9%)	17 (31%)	0 (0%)	22 (41%)	26 (48%)	
SSC	7	1 (14%)	1 (14%)	2 (29%)	0 (0%)	4 (57%)	2 (29%)	
HQ	9	0 (0%)	1 (11%)	4 (44%)	0 (0%)	5 (56%)	1 (11%)	
Totals	539	22 (4%)	26 (5%)	249 (46%)	37 (7%)	334 (62%)	151 (28%)	

^a Center abbreviations above include: Ames Research Center (ARC), Dryden Flight Research Center (DFRC), Glenn Research Center (GRC), Goddard Space Flight Center (GSFC), Johnson Space Center (JSC), Kennedy Space Center (KSC), Langley Research Center (LaRC), Marshall Space Flight Center (MSFC), Stennis Space Center (SSC), and Headquarters (HQ).

Table 3: Conversion of Fiscal Year 2007 NASA Term Appointees by Center

Center ^a	Total hired in fiscal year 2007	Converted to career/career-conditional by year			Converted to date	Remaining in original appointment
		2007	2008	Year to date 2009		
ARC	77	1 (1%)	2 (3%)	0 (0%)	3 (4%)	71 (92%)
DFRC	65	0 (0%)	4 (6%)	2 (3%)	6 (9%)	52 (80%)
GRC	32	2 (6%)	1 (3%)	2 (6%)	5 (16%)	23 (72%)
GSFC	23	1 (4%)	1 (4%)	1 (4%)	3 (13%)	19 (83%)
JSC	113	5 (4%)	2 (2%)	10 (9%)	17 (15%)	88 (78%)
KSC	149	2 (1%)	9 (6%)	12 (8%)	23 (15%)	111 (74%)
LaRC	50	1 (2%)	1 (2%)	1 (2%)	3 (6%)	47 (94%)
MSFC	90	3 (3%)	20 (22%)	1 (1%)	24 (27%)	61 (68%)
SSC	3	0 (0%)	0 (0%)	0 (0%)	0 (0%)	3 (100%)
HQ	5	1 (20%)	2 (40%)	0 (0%)	3 (60%)	1 (20%)
Totals	607	16 (3%)	42 (7%)	29 (5%)	87 (14%)	476 (78%)

^a Center abbreviations above include: Ames Research Center (ARC), Dryden Flight Research Center (DFRC), Glenn Research Center (GRC), Goddard Space Flight Center (GSFC), Johnson Space Center (JSC), Kennedy Space Center (KSC), Langley Research Center (LaRC), Marshall Space Flight Center (MSFC), Stennis Space Center (SSC), and Headquarters (HQ).

Table 4: Conversion of FY 2008 NASA Term Appointees by Center

Center ^a	Total hired in fiscal year 2008	Converted to career/career-conditional by year			Converted to date	Remaining in original appointment
		2008	Year to date 2009			
ARC	52	0 (0%)	0 (0%)	0 (0%)	50 (96%)	
DFRC	26	0 (0%)	0 (0%)	0 (0%)	26 (100%)	
GRC	13	0 (0%)	0 (0%)	0 (0%)	13 (100%)	
GSFC	46	0 (0%)	1 (2%)	1 (2%)	44 (96%)	
JSC	169	1 (1%)	0 (0%)	1 (1%)	166 (98%)	
KSC	133	3 (2%)	1 (1%)	4 (3%)	126 (95%)	
LaRC	48	0 (0%)	0 (0%)	0 (0%)	48 (100%)	
MSFC	105	4 (4%)	2 (2%)	6 (6%)	95 (90%)	
SSC	4	0 (0%)	0 (0%)	0 (0%)	4 (100%)	
HQ	2	0 (0%)	0 (0%)	0 (0%)	2 (100%)	
Totals	598	8 (1%)	4 (1%)	12 (2%)	574 (96%)	

^a Center abbreviations above include: Ames Research Center (ARC), Dryden Flight Research Center (DFRC), Glenn Research Center (GRC), Goddard Space Flight Center (GSFC), Johnson Space Center (JSC), Kennedy Space Center (KSC), Langley Research Center (LaRC), Marshall Space Flight Center (MSFC), Stennis Space Center (SSC), and Headquarters (HQ).

3. What policies and procedures are in place for term appointees to challenge NASA decisions regarding non conversion of their appointments?

No grievance policies or procedures exist for term appointees to challenge NASA decisions regarding non conversion of their term appointment to a career or career-conditional appointment. Although many term appointments are eventually converted to career or career-conditional appointments, there is no stated or implied promise of such a conversion. An employee should be aware that a conversion to a permanent appointment is not guaranteed. According to a NASA official, each vacancy announcement discloses that conversion is not guaranteed.

Under the NASA Flexibility Act of 2004, individuals appointed under this announcement may be converted to permanent appointment, either non-competitively or through internal agency competitive placement procedures. Conversion is not guaranteed, and term conversion eligibility is contingent on the employee meeting all legal requirements.

- Standardized text found in NASA vacancy announcements
(provided by NASA Office of Human Capital Management.)

Therefore, if NASA does not convert such an appointment, the agency is not violating the terms and conditions of employment. An employee whose appointment is not converted has no grounds for a grievance. Term appointees are free to apply for a new position upon the expiration of their term. NASA's grievance policies are documented in the Human Resources and Personnel series of NASA's Procedural Requirement (NPR). The expiration of a temporary or term appointment falls under the section "Matters Not Covered" in NASA's grievance policy NPR, indicating that non conversion is not an action subject to grievance.¹⁰

Additionally, chapter four of NPR 3335.1G pertains to grievance options related to the internal placement of NASA employees. Section 4.2.3 explains that nonselection from among a group of properly ranked and certified candidates is not a sufficient basis for a grievance.¹¹ Because no distinction is made between NASA term appointees and career/career-conditional appointees under this policy, there is no grievance procedure for term

¹⁰ NASA Procedural Requirements 3771.1, Grievance System includes under Matters Not Covered, 2.3.2.11, "The expiration of temporary or term appointment . . . on the date specified as a condition of employment at the time the appointment . . . was made . . . provided the employee was informed in advance of the temporary nature of the promotion . . ."

¹¹ NASA Procedural Requirement 3335.1G, Chapter 4, Internal Placement of NASA Employees. See also 5 C.F.R. § 335.103(d).

appointees who apply for a vacancy within the agency and who are not selected.

4. What is the declination rate to employment offers at the NASA centers?

We are not providing the declination data furnished by NASA, because the data is not sufficiently reliable. NASA did provide data on declinations from their Staffing and Recruiting System (StaRS), which is the only readily available NASA-wide source for this type of data. However, according to NASA, this data does not portray a complete picture because users are not required to document declinations in the system.

Agency Comments

We provided a statement of facts supporting this report to NASA officials in the Office of Human Capital Management for their review and comment. They generally agreed with the information presented.

Scope and Methodology

To assess how the independence of scientists and engineers hired under term appointment authority is protected, we reviewed and analyzed applicable laws, regulations, and policies. The data on the conversion rates by center were obtained from NASA. The data was generated by running a series of queries to extract the data from the Federal Personnel and Payroll System Datamart.¹² The information obtained from these queries was analyzed to determine what happened to each person who was hired (or converted) to term status from the beginning of fiscal year 2005 to the present. We assessed the reliability of the NASA workforce data provided by (1) reviewing existing information about the data and the system that produced them, (2) interviewing agency officials knowledgeable about the data, and (3) reviewing past data reliability assessments. We determined that the data were sufficiently reliable for the purposes of this engagement. To assess how NASA term appointment employees can challenge NASA decisions regarding the non-conversion of their appointments, we reviewed and analyzed applicable laws, regulations, and policies. The data on declination rate to employment offers at the NASA centers was obtained from StaRS. To assess the data we reviewed past declination rate data and compared them to the data provided by NASA. Also, we obtained information on the system used to generate the data. We determined that the declination data were not sufficiently reliable for the purposes of this engagement.

We conducted this performance audit from October 2008 to February 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

¹² The Department of the Interior National Business Center's Federal Personnel and Payroll System Datamart is a Web-based data warehouse environment supporting reporting capabilities, system interfaces, and automation of related business processes through auxiliary systems.

objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

— — —

We are sending copies of this report to the NASA Administrator and other interested congressional committees. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions regarding this letter, please contact me at (202) 512-4859 or chaplainc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were James Morrison (Assistant Director), David Barish, Jose Ramos, Robert Swierczek, and Alyssa Weir.



Cristina T. Chaplain
Director
Acquisition and Sourcing Management

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548