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OCA 87-5562
2 November 1987

NOTE FOR: The Director
FROM: Dave Gries
SUBJECT: Statutory Inspector General

STAT

Attached at Tab A are talking points that explain our reasons for opposing legislation to create a statutory Inspector General. Senator Specter has introduced such legislation, and the Iran/Contra Committee may endorse the concept.

Attached at Tab B is a copy of the portion of the Specter bill dealing with a statutory Inspector General. I have also attached at Tab C a copy of the Inspector General Act of 1978 that creates a statutory Inspector General for a variety of other agencies and departments. You will note that the Act of 1978 gives the Inspector General broader powers and responsibilities than are contained in the Specter bill. There is no legislation at this point which would add CIA to the list of agencies subject to the Act of 1978.

Attachments
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STAT OCA/Leg [] pap (2 November 1987)

A

TALKING POINTS ON STATUTORY INSPECTOR GENERAL

1. Changes in the Office of Inspector General will be announced shortly that will strengthen that Office, and these changes should be given a chance to work before Congress enacts new legislation.

2. Congress at one time considered establishing a statutory Inspector General at the FBI, but you persuaded Members to wait to determine whether the Office could be strengthened without resorting to statutory provisions. The members were satisfied with the result, and Congress is no longer calling for a statutory Inspector General at the FBI.

3. A statutory inspector would be appointed by the President with the advice and consent of the Senate. He could only be removed by the President. He would be under the general supervision of the Director. Such an independent entity in the Agency could be viewed by the rest of the Agency as adversarial. If an adversarial relationship developed, employees would be unlikely to volunteer information to the Inspector General. Thus, enactment of a statutory Inspector General could lead to the perverse result of the Inspector General receiving less information than is currently the case.

4. Under the Specter bill, semi-annual reports would have to be made on the activities of the Inspector General. The reports would be transmitted to the oversight committees. The Inspector General would also have to report to the committees serious problems, violations of law or regulation, or serious deficiencies relating to the administration of programs and operations of the Agency. It is likely that these reports would trigger requests for Inspector General investigations. The proliferation of such reports and investigations could make Agency employees reluctant to share information with the Inspector General for fear that it would not be held in confidence.

5. The Inspector General has traditionally been a career Agency official. As a career official, the Inspector General has the understanding of the Agency necessary to conduct competent investigations. It is not likely that a career Agency official would be appointed as a statutory Inspector General. It would take time for a non-CIA official appointed Inspector General to gain sufficient experience to lead an investigation, and during this interim period the effectiveness of the Office of Inspector General would suffer.

6. Under the Specter bill, a statutory Inspector General would have subpoena power. This would allow the Inspector General to conduct inquiries outside the Agency. Allowing CIA to conduct domestic, quasi-law enforcement investigations would be inconsistent with the charter of the CIA.

7. A statutory Inspector General will not by itself solve the problem, as perceived by Congress, of a weak Office of the Inspector General. This problem can only be remedied administratively by getting highly qualified people to serve in the Office of the Inspector General; by making clear to Agency employees that you expect all employees to cooperate fully with the Inspector General; and by establishing that Agency employees who lie to the Inspector General will be punished severely.

8. An independent Inspector General could create the perception among potential sources and foreign liaison services that the Director was unable to protect sensitive intelligence sources, including information provided by the liaison service. This could lead to a reduction in cooperation with CIA by sources and liaison services.

9. The Specter bill attempts to address this problem by providing that the DCI may prohibit the Inspector General from initiating or completing an investigation into an ongoing operation if the DCI determines that such a prohibition is necessary to protect the vital national security interests of the United States. The DCI would have to report to the oversight committees within 7 days the exercise of his power to stop an investigation. The reporting requirement would make it unlikely that any DCI would exercise the powers granted under the Specter bill to stop an investigation on grounds of national security. Further, the report to Congress would likely trigger a Congressional investigation.

B

(5) days.

SECTION 4. INSPECTOR GENERAL FOR THE CIA

(1) Purpose; Establishment. In order to create an independent, objective and Congressionally accountable unit to conduct and supervise investigations and audits relating to programs and operations of the Central Intelligence Agency, there is hereby established in the CIA an office of Inspector General.

(2) Appointment and Removal. There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate. The Inspector General shall report to and be under the general supervision of the Director of Central Intelligence or the officer next below in rank but not any other officer of the CIA.

(3) The Director may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, only concerning ongoing operations, and only if he determines that such prohibition is necessary to protect vital national security interests of the United States.

(4) If the Director exercises any power under subsection (3) of this section, he shall submit a classified statement of the reasons for the exercise of the power within seven (7) days to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives.

(5) The Inspector General may be removed from office only

by the President. The President shall immediately communicate in writing to both House of Congress the reasons for any such removal.

(6) Duties and Powers. It shall be the duty and responsibility of the Inspector General appointed under this Act--

(A) to provide policy direction for and to conduct, supervise, and coordinate investigations and audits relating to the programs and operations of the CIA to assure they are conducted efficiently and in accordance with applicable law and regulations;

(B) to keep the Director and the Congress fully and currently informed, by means of reports required by subsection (8) and otherwise, concerning violations of laws and regulations, fraud and other serious problems, abuses and deficiencies and to report the progress made in implementing corrective action.

(7) The Inspector General shall have the power to issue subpoenas to carry out his work.

(8) Reports. The Inspector General shall not later than April 30 and October 30 of each year, prepare a classified semiannual report summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30.

(9) Classified semiannual reports of the Inspector General shall be furnished to the Director not later than April 30 and October 30 of each year and shall be transmitted

by him to the Select Committee on Intelligence of the House of Representatives within 30 days after receipt, together with any comments he deems appropriate.

(10) The Inspector General shall report immediately, serious problems, violations of law or regulations or serious deficiencies relating to the administration of programs and operations of the Agency. The Director shall transmit any such report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives within seven (7) calendar days, together with any comments he deems appropriate.

C

APPENDIX 3

INSPECTOR GENERAL ACT OF 1978

Pub.L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended Pub.L. 96-88, Title V, § 508(n), Oct. 17, 1979, 93 Stat. 694; Pub.L. 97-113, Title VII, § 705, Dec. 29, 1981, 95 Stat. 1544; Pub.L. 97-252, Title XI, § 1117(a)-(c), Sept. 8, 1982, 96 Stat. 75-752; Pub.L. 99-93, Title I, § 150(a), Aug. 16, 1985, 99 Stat. 427; Pub.L. 99-399, Title IV, § 412(a), Aug. 27, 1986, 100 Stat. 867.

Sec.	Sec.
1. Short title.	6. Authority of Inspectors General; information and assistance from Federal agencies; unreasonable refusal, office space and equipment.
2. Purpose and establishment of Offices of Inspector General, departments and agencies involved.	7. Complaints by employees; disclosure of identity; reprisals.
3. Appointment of Inspectors General; supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations.	8. Additional provisions with respect to the Inspector General of the Department of Defense.
4. Duties and responsibilities; report of criminal violations to Attorney General.	8A. Special provisions relating to the Agency for International Development.
5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems.	9. Transfer of functions.
	10. Conforming and technical amendments.
	11. Definitions.
	12. Effective date.

§ 1. Short title

That this Act be cited as the "Inspector General Act of 1978".

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, the United States Information Agency, the Veterans' Administration, and the Department of State;

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

thereby¹ is hereby established in each of such establishments an office of Inspector General.

(As amended Pub.L. 96-88, Title V, § 508(n)(1), Oct. 17, 1979, 93 Stat. 694; Pub.L. 97-113, Title VII, § 705(a)(1), Dec. 29, 1981, 95 Stat. 1544; Pub.L. 97-252, Title XI, § 1117(a)(1), Sept. 6, 1982, 96 Stat. 750; Pub.L. 99-93, Title 1, § 150(a)(1), Aug. 16, 1985, 99 Stat. 427; Pub.L. 99-399, Title IV, § 412(a)(1), Aug. 27, 1986, 100 Stat. 867.)

¹ So in original. Probably should be "there".

1986 Amendment. Par. (1) Pub.L. 99-399 inserted "the United States Information Agency," before "the Veterans' Administration".

1985 Amendment. Par. (1) Pub.L. 99-93 added reference to the Department of State.

1982 Amendment. Par. (1) Pub.L. 97-252, § 1117(a)(1), inserted "the Department of Defense," following "Commerce."

1981 Amendment. Par. (1) Pub.L. 97-113 inserted "the Agency for International Development," after "Transportation."

1979 Amendment. Par. (1) Pub.L. 96-44 inserted "the Department of Education," following "Commerce."

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-88, effective May 4, 1980, with specified exceptions, see section 601 of Pub.L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

Community Services Administration. The Community Services Administration, which was

established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C.A. § 2941), was terminated when the Economic Opportunity Act of 1964, Pub.L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for Titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub.L. 97-35, Title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C.A. § 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub.L. 97-35, which is classified to 42 U.S.C.A. § 9905.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676. See, also, Pub.L. 96-88, 1979 U.S. Code Cong. and Adm. News, p. 1514; Pub.L. 97-113, 1981 U.S. Code Cong. and Adm. News, p. 2404; Pub.L. 99-93, 1985 U.S. Code Cong. and Adm. News, p. 329; Pub.L. 99-399, 1986 U.S. Code Cong. and Adm. News, p. 1865.

§ 3. Appointment of Inspector General: supervision: removal: political activities: appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment; and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

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Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 4. Duties and responsibilities; report of criminal violations to Attorney General

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(1) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(2) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(3) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

Notes of Decisions

1. General Services Administration programs

The Inspector General has the responsibility and the power to conduct, supervise and coordinate audits and investigations relating to programs of the General Services Administration in order to promote efficiency and to prevent fraud and abuse, but unlike the Internal Revenue Ser-

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vice, which by section 7122 of Title 26 loses its power to continue civilly once the Justice Department begins to move criminally, the powers of the

Inspector General are not so limited. *U.S. v. Arn Metal U.S.A., Inc.*, D.C.N.J. 1980. 484 F.Supp 884

§ 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period; and

(6) a listing of each audit report completed by the Office during the reporting period.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing any comments such head deems appropriate.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense of national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(As amended Pub.L. 97-252, Title XI, § 1117(c), Sept. 8, 1982, 96 Stat. 752.)

1982 Amendment. Subsec. (e) Pub.L. 97-252 added subsec. (e)

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676

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§ 6. Authority of Inspector General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided*, That procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(7) to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of Title 5, United States Code; and

(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

Notes of Decisions

1. Subpoena powers

Inspector General of Department of Defense had statutory authority to issue subpoena, which

sought evidence pertaining to defense contractor's audits, at request of Defense Contract Audit Agency so long as he did so in furtherance of purpose within his statutory authority and exercised independent judgment in deciding to issue subpoena. *U.S. v. Westinghouse Elec. Corp.*, C.A.3 (Pa.) 1986, 788 F.2d 164.

Inspector General could inspect government contractor's business records that had been sub-

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poenaed for grand jury investigation, notwithstanding that he had recommended that investigation, where Inspector General had subpoenaed those records prior to referring matter to Justice Department, criminal investigation had been completed and prosecution had been declined, and inspection was critical to Inspector General's investigation. In re Grand Jury Matter, E.D.Pa 1986, 640 F.Supp 63.

Likelihood or imminence of criminal proceedings did not render enforcement of a related administrative subpoena impermissible and did not, therefore, preclude enforcement of a subpoena duces tecum sought by the Inspector General of the General Services Administration for certain tax and related business records of taxpayers in connection with an investigation of payoffs and

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other fraudulent practices where the agency in question had not itself made a formal recommendation to the Justice Department to prosecute, and the summons or subpoena had a civil purpose. U.S. v. Art Metal-U.S.A., Inc. D.C.N.J.1980, 484 F.Supp 884.

Acquisition of the tax returns and related documents of a government contractor pursuant to an investigation of fraud is within the scope of the subpoena powers of the Inspector General. Id.

Tax and related business records of taxpayers were not beyond the scope of the subpoena power of the Inspector General of the General Services Administration when he sought to discover same in connection with an investigation of payoffs and other fraudulent practices. Id.

§ 7. Complaints by employees; disclosure of identity; reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 8. Additional provisions with respect to the Inspector General of the Department of Defense

(a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within

thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified in such section, to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives.

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

(As amended Pub.L. 97-252, Title XI, § 1117(b), Sept. 8, 1982, 96 Stat. 751.)

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1982 Amendment. Pub.L. 97-252 amended section generally, substituting additional provisions relating to the Inspector General of the Department of Defense for provisions relating to semiannual reports of Secretary of Defense on audit, investigative, and inspection units of Defense Department, availability of such reports to the public, exclusion of national security material, delegation of the Secretary's duties, submittal of proposed legislation, the establishment of a task force to study operation of audit, investigative and inspection units, membership in the task force, and the submission of a comprehensive report by the task force to the Secretary of Defense and Director of Office of Management and Budget, who were to submit a final report to Congress not later than April 1, 1980.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

Notes of Decisions

1. Subpoenas

Inspector General of the Department of Defense was entitled to enforcement of an administrative subpoena seeking evidence pertaining to a defense contractor's internal audits, despite defense contractor's contentions that subpoena was improperly issued on behalf of the Defense Contract Audit Agency to coerce settlement of a related administrative dispute, that scope and subject of subpoena were too broad, and that compliance would be unduly burdensome. *U.S. v. Westinghouse Elec. Corp.*, D.C. Pa. 1985, 615 F.Supp. 1162.

§ 8A. Special provisions relating to the Agency for International Development

(a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development—

(1) shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency; and

(2) to the extent requested by the Director of the United States International Development Cooperation Agency (after consultation with the Administrator of the Agency for International Development), shall supervise, direct, and control all audit, investigative, and security activities relating to programs and operations within the United States International Development Cooperation Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) The semiannual reports required to be submitted to the Administrator of the Agency for International Development pursuant to section 5(b) of this Act shall also be submitted to the Director of the United States International Development Cooperation Agency.

(d) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(e) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the Monitoring Overseas Direct Employment policy.

(f) The reference in section 7(a) of this Act to an employee of the establishment shall, with respect to the Inspector General of the Agency for International Development, be construed to include an employee of or under the United States International Development Cooperation Agency.

(g) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2384(a)].

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(h) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2151 et seq.].

(Added Pub.L. 97-113, Title VII, § 705(a)(3), Dec. 29, 1981, 95 Stat. 1544.)

References in Text. The Foreign Assistance Act of 1961, referred to in subsec. (h), is Pub.L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Part I of the Foreign Assistance Act of 1961 is classified generally to subchapter I (§ 2151 et seq.) of chapter 32 of Title 22, Foreign Relations

and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 97-113, see 1981 U.S. Code Cong. and Adm. News, p. 2404.

§ 9. Transfer of functions

(a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General, Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act [20 U.S.C.A. § 3441];

(E) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(F) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(G) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

(H) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(I) of the Community Services Administration, the offices of that agency referred to as the "Inspections Division", the "External Audit Division", and the "Internal Audit Division";

(J) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(K) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(L) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(M) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

(N) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

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(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act.

except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act [Oct. 1, 1978], held a position, compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

(As amended Pub.L. 96-88, Title V, § 508(n)(2) Oct. 17, 1979, 93 Stat. 694. Pub.L. 97-252, Title XI, § 1117(a)(2), (3), Sept. 8, 1982, 96 Stat. 750.)

1982 Amendment. Subsec. (a)(1) Pub.L. 97-252 added subpar. (C). Former subpars. (C) to (M) redesignated (D) to (N), respectively.

1979 Amendment. Subsec. (a)(1) Pub.L. 96-88 redesignated subpars. (C) to (L) as (D) to (M) and added a new subpar. (C).

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-88, effective May 4, 1980, with specified exceptions, see section 601 of Pub.L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

Community Services Administration. The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C.A. § 2941), was terminated when the Economic Opportunity Act of 1964, Pub.L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for Titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub.L. 97-35, Title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C.A. § 9912(a). An Office of Community

Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub.L. 97-35, which is classified to 42 U.S.C.A. § 9905.

Transfer of Audit Personnel to Inspector General, Department of Defense. Section 1117(e) of Pub.L. 97-252 provided that "In addition to the positions transferred to the Office of the Inspector General of the Department of Defense, pursuant to the amendments made by subsection (a) of this section [to sections 2(1), 9(a)(1), and 11(1) of this Act], the Secretary of Defense shall transfer to the Office of Inspector General of the Department of Defense not less than one hundred additional audit positions. The Inspector General of the Department of Defense shall fill such positions with persons trained to perform contract audits."

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676. See also, Pub.L. 96-88, 1979 U.S. Code Cong. and Adm. News, p. 1514.

§ 10. Conforming and technical amendments

[Section amended sections 5315 and 5317 of Title 5, Government Organization and Employees, and section 3522 of Title 42 The Public Health and Welfare, which amendments have been executed to text.]

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

§ 11. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Housing and Urban Development, the Interior,

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Labor, State, or Transportation or the Administrator of the Agency for International Development, Community Services, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs, or the Director of the United States Information Agency¹ as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Housing and Urban Development, the Interior, Labor, State, or Transportation or the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, the United States Information Agency or the Veterans' Administration, as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of Title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

(As amended Pub.L. 96-88, Title V, § 509(n)(3), (4), Oct. 17, 1979, 93 Stat. 695, Pub.L. 97-113, Title VII, § 705(a)(2), Dec. 29, 1981, 95 Stat. 1544, Pub.L. 97-252, Title XI, § 1117(a)(4), (5), Sept. 8, 1982, 96 Stat. 750; Pub.L. 99-93, Title I, § 150(a)(2), Aug. 16, 1985, 99 Stat. 427, Pub.L. 99-399, Title IV, § 412(a)(2), Aug. 27, 1986, 100 Stat. 867.)

¹ So in original. Probably should be followed by a comma.

1986 Amendment. Par. (1), Pub.L. 99-399, § 412(a)(2)(A), inserted "or the Director of the United States Information Agency" before "as the case may be".

Par. (2), Pub.L. 99-399, § 412(a)(2)(B), inserted "the United States Information Agency" before "or the Veterans' Administration".

1985 Amendment. Pars. (1), (2), Pub.L. 99-93 inserted "State," after "Labor."

1982 Amendment. Par. (1), Pub.L. 97-252, § 1117(a)(4), inserted "Defense," following "Commerce."

Par. (2), Pub.L. 97-252, § 1117(a)(5), inserted "Defense," following "Commerce."

1981 Amendment. Par. (1), Pub.L. 97-113, § 705(a)(2)(A), inserted "the Agency for International Development," after "Administrator of"

Par. (2), Pub.L. 97-113, § 705(a)(2)(B), inserted "the Agency for International Development," after "Transportation or"

1979 Amendment. Par. (1), Pub.L. 96-88, § 508(n)(3), inserted "Education," following "Commerce"

Par. (2), Pub.L. 96-88, § 508(n)(4), inserted "Education," following "Commerce."

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-88, effective May 4, 1980, with

specified exceptions, see section 601 of Pub.L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education

Community Services Administration. The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C.A. § 2941), was terminated when the Economic Opportunity Act of 1964, Pub.L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for Titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub.L. 97-35, Title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C.A. § 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub.L. 97-35, which is classified to 42 U.S.C.A. § 9905.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676. See also, Pub.L. 96-88, 1979 U.S. Code Cong. and Adm. News, p. 1514, Pub.L. 97-113, 1981 U.S. Code Cong. and Adm. News, p. 2404, Pub.L. 99-93, 1985 U.S. Code Cong. and Adm. News, p. 329, Pub.L. 99-399, 1986 U.S. Code Cong. and Adm. News, p. 1865.

§ 12. Effective date

The provisions of this Act and the amendments made by this Act [see section 10 of this Act] shall take effect October 1, 1978.

Legislative History. For legislative history and purpose of Pub.L. 95-452, see 1978 U.S. Code Cong. and Adm. News, p. 2676.

Page Denied