ESTABLISHMENT OF OFFICES OF INSPECTOR AND AUDITOR GENERAL IN CERTAIN EXECUTIVE DEPARTMENTS AND AGENCIES

REPORT
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
TO ACCOMPANY
H.R. 8588

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AUGUST 8 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 8588]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 8588) to reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor and Transportation, and within the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration and the Veterans' Administration, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and an amendment to the title, and recommends that the bill, as amended, do pass.

I. PURPOSE OF THE LEGISLATION

The purpose of this legislation is to create Offices of Inspector and Auditor General in seven executive departments and six executive agencies, to consolidate existing auditing and investigative resources to more effectively combat fraud, abuse, waste and mismanagement in the programs and operations of those departments and agencies.

II. SUMMARY OF THE LEGISLATION

H.R. 8588, as amended by the committee, requires the appointment of an Inspector and Auditor General in each of the 13 affected execu-
five departments and agencies. Each Inspector and Auditor General will be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation, solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

The duties and responsibilities of the Inspector and Auditor General include: (1) providing policy direction for the auditing and investigating activities of the establishment; (2) reviewing existing and proposed legislation and regulations relating to programs and operations of the establishment and making recommendations to the head of the agency and to Congress concerning the enforceability of such legislation and regulations; (3) supervising other activities for the purpose of promoting economy, efficiency and effectiveness in the administration of such programs, or preventing or detecting fraud and abuse in such programs; (4) coordinating relationships between the agency and other Federal agencies, state and local governmental agencies and non-governmental entities; and (5) keeping the head of the agency and Congress fully and currently informed concerning fraud and other serious problems in the operation of programs.

The Inspector and Auditor General reports to, and is under the general supervision of, the head of the agency. However, the head of the agency may not prohibit, prevent or limit the Inspector and Auditor General from undertaking and completing any audits and investigations which the Inspector and Auditor General deems necessary, or from issuing any subpoenas deemed necessary in the course of such audits and investigations. The Inspector and Auditor General may be removed by the President, but the President must also communicate his reasons for doing so to the Congress.

The Inspector and Auditor General is required to prepare semi-annual reports for the Congress, including:

1. A description of significant problems, abuses and inefficiencies in the administration of programs and operations;
2. Recommendations made by the Inspector and Auditor General for corrective action;
3. Identification of all previous significant recommendations in which corrective action has not been completed;
4. A summary of matters referred to prosecutive authorities and prosecutions and convictions which have resulted; and
5. A listing of each audit report completed by the Office during a reporting period.

The semiannual reports shall be transmitted to the head of the agency and then to the appropriate committees or subcommittees of Congress within 30 days. The head of the agency may submit his own comments along with the Inspector and Auditor General's report, but may not generally prevent the report from going to Congress or alter or delete the report. Within 60 days after the report goes to Congress, the agency head must make copies of the report available to the public at a reasonable cost.

Throughout this report, "agency" will be used to describe both the executive departments and agencies involved.
If the Inspector and Auditor General discovers a particularly serious flagrant abuse, the legislation requires that he immediately notify the head of the agency and that the head of the agency transmit such notification to the Congress within 7 calendar days.

The Inspector and Auditor General is given the authority to have access to all records, reports, documents or materials available to the agency relating to programs over which the Inspector and Auditor General has responsibility; to make all investigations and reports relating to programs that he judges necessary; and to require by subpoena the production of information, documents and reports necessary in the performance of the functions of this act.

The legislation also provides that the Inspector and Auditor General may receive and investigate employee complaints. The Inspector and Auditor General is required to keep the identity of such complaining employees confidential unless he determines that disclosure of the identity is unavoidable during the course of an investigation. Such employees would be protected from reprisals by their supervisors in all cases unless the complaint was knowingly false or made with complete disregard for its truth or falsity.

As passed by the House, H.R. 8588 covered 12 executive departments and agencies. The committee has decided that the legislation should also cover the Department of Defense. The legislation contains several provisions necessary to meet the unique needs of the Defense Department.

In 1976, Congress established the Office of Inspector General in the Department of Health, Education, and Welfare (Public Law 94-905, 42 U.S.C. § 3525). In 1977, the Department of Energy Organization Act included a provision for an Office of Inspector General in the new department (sec. 208, Public Law 95-91, 42 U.S.C. § 7138). H.R. 8588, as reported by the committee, extends the concept to 13 additional departments, drawing heavily on the earlier legislation, but making several important changes.

### III. Hearings

H.R. 8588 passed the House by a vote of 388-6 on April 18, 1978. Senator Eagleton’s Subcommittee on Governmental Efficiency and the District of Columbia held hearings on the bill on June 14 and 15, and July 25, 1978. The following witnesses presented testimony:

- Representative L. H. Fountain (Democrat of North Carolina)
- John Keeney, Mark Richard and Jim Graham, Criminal Division, Department of Justice
- Tom Morris, Inspector General, HEW
- Elmer B. Staats, Comptroller General of the United States
- Donald Scantlebury, Director, Financial and General Management Studies Division, General Accounting Office
- Larry Hammond, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice
- Jay Solomon, Administrator, General Services Administration
- Andrew Feinstein, Public Citizen Congress Watch
- Deanne Siemer, General Counsel, Department of Defense
- Theodore Eliot, Inspector General, Foreign Service, Department of State
Herbert Beckington, Auditor General, Agency for International Development

Representative Fountain's testimony deserves particular note, because he has long been the leading advocate in Congress of the Inspector General concept, and was the moving force behind the establishment of the Office of Inspector General at HEW. In 9 days of hearings before his Subcommittee on Intergovernmental Relations and Human Resources, in 1977, he compiled a painstaking and detailed picture of how the agencies covered by H.R. 8588 approached their auditing and investigative responsibilities. His testimony before Senator Eagleton's subcommittee summarized those findings, and the committee has drawn valuable insight and information from the House hearings.

IV. NEED FOR LEGISLATION

1. SCOPE OF THE PROBLEM

Recent evidence makes it clear that fraud, abuse and waste in the operations of Federal departments and agencies and in federally-funded programs are reaching epidemic proportions. Undoubtedly, the problem is not new. However, increased attention by the press and by government officials has brought to light increasingly disturbing testimony of the magnitude of these problems.

The following examples are illustrative:

A study done for the Agriculture Department estimated that 8 percent of the $5.5 billion spent in the food stamp program in fiscal year 1977 was erroneously spent—about $440 million. A 33 percent error rate was revealed in one 3-month study of the program in one State.

FBI and GAO investigators have found that the General Services Administration awarded over $2 million in repair and alteration contracts which have never been performed. Managers of GSA supply shops have been receiving color televisions, stereo equipment, and clothing from wholesale firms as kickbacks for the awarding of contracts. GSA employees then allowed the firms to bill GSA for supplies and services which were never delivered.

As of last July, 344,000 borrowers had defaulted on their federally insured loans. The default rate was 12 percent, involving over half-a-billion dollars in unpaid principal and interest. While some of the failure to pay was undoubtedly due to financial hardship, many cases simply involved people who never intended to pay.

In his first annual report, the Inspector General at HEW estimated that between $6.3 and $7.4 billion of HEW funds were mis-spent annually as a result of fraud, abuse and waste. This total represents about 5 percent of the $136 billion which HEW expends on federally funded programs each year. The report repeatedly emphasized that this figure was "at a minimum" and "a conservative estimate." In the medicaid program, the Inspector General estimated that 25 percent of the funds were misused.

Finally, an official at GAO knowledgeable in this area recently estimated that fraud alone ranged from $12 to $15 billion annually and perhaps as high as $25 billion.
Most of these examples involve fraud. Waste and mismanagement of Federal funds and expenditures are less attractive topics and more difficult to pin down. Nevertheless, for years there has been ample evidence that waste and mismanagement in Federal spending is of extraordinary magnitude. Senator Proxmire recently reported that the transportation bills alone for Government officials now total $2.7 billion. The House Government Operations Committee has estimated that at least $375 million may be wasted on trips of little or no value.

2. DEFICIENCIES IN CURRENT FEDERAL EFFORTS TO COMBAT FRAUD, ABUSE AND WASTE

The committee believes that the Federal Government has clearly failed to make sufficient and effective efforts to prevent and detect fraud, abuse, waste and mismanagement in Federal programs and expenditures. Moreover, the committee finds that this failure is due, in large part, to certain basic organizational deficiencies in the way executive establishments have approached their audit and investigative responsibilities. For this reason, statutory Offices of Inspector and Auditor General in the establishments covered in this bill can provide significant improvements in the economy, efficiency and effectiveness of Federal operations and programs and contribute to substantial savings of taxpayer dollars.

a. Lack of resources

Representative Fountain testified that the Federal effort to prevent and detect fraud, abuse and waste in Federal expenditures has suffered from a crippling lack of resources in most establishments. For example, the Department of Transportation had only four inspectors to detect fraud and abuse in a $6 billion highway program. The Veterans' Administration had one auditor for every $238 million provided by Congress. The Interior Department admitted that its audit manpower was sufficient for only half the agency's priority workload, with no resources available for affirmative programs to detect fraud. Representatives of the Labor Department and the Small Business Administration testified they have only one-half the audit manpower they need; the Community Services Administration suggested its audit resources were even less.

As a result of this lack of resources, the internal audit cycles (the length of time for all activities of the department to be audited) are extremely long. GSA testified it would take as long as 20 years to audit all activities given that agency's present resources; Commerce, 13; Interior, 9 or 10; DOT, 10. Certain agencies indicated that while their audit cycle was theoretically five years, it really took closer to 15 to complete it.

b. Deficiencies in organizational structure

The Federal audit and investigative effort in most cases flies in the face of basic organizational principles. The General Accounting Office has repeatedly argued that for audit and investigative capacity to be effective, authority must be vested in an individual reporting to, and under the supervision of, only the head of the establishment. As stated in one recent GAO report:

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Government agencies, if they are to receive the full benefits of internal auditing, must locate their audit functions at a sufficiently high organizational level to insure that auditors are insulated against internal agency pressures so that they can conduct their auditing objectively and report their conclusions completely without fear of censure or reprisal.2

The alternative is an exercise in futility where auditors and investigators report to, and are under the supervision of, the very officials whose programs they are supposedly auditing and investigating.

In most of the agencies covered by this legislation, this cardinal principle is being violated. In many cases, the audit and investigative units report to the Assistant Secretary for Administration, the person whose broad policy responsibilities are often likely to be questioned and investigated. In general, the lack of independence of many audit and investigative operations in the executive branch is striking. In some agencies where complaints have been received, investigators have not been permitted to initiate investigations without clearance from the officials responsible for the programs involved. The chief of the Community Services Administration's inspection division, for example, testified that he had been denied permission to investigate allegations of wrongdoing in several cases. In one such case, a later investigation resulted in 22 indictments.

The committee feels strongly that this bleak picture is not the fault of those involved in audit and investigative work for the Federal Government. Hamstrung by a lack of resources and independence, their failures have been preordained. Both the executive branch and Congress have disregarded the need to insure that Federal funds are spent carefully and in accordance with law. The executive agencies have emphasized program operation over program oversight and review. According to the New York Times, OMB has repeatedly reduced the size of audit and investigative units in the executive agencies. Congress has enacted legislation with very little regard for how well it could be enforced or administered.

3. THE INSPECTOR GENERAL CONCEPT: HOW IT RESPONDS TO PERCEIVED PROBLEMS

The inspector general concept, which can best be described as the consolidation of auditing and investigative responsibilities under a single high-level official reporting directly to the head of the establishment, responds directly to the major problems which have been identified in current Federal efforts to prevent and detect fraud and waste.

First, it provides a single focal point in each major agency for the effort to deal with fraud, abuse and waste in Federal expenditures and programs. Without that focal point, the linkage between auditing and investigating is likely to be ineffective. Frequently, several decentralized audit units may each have jurisdiction over some elements of a wide-ranging programmatic fraud and not be able to pursue them to their conclusion. Additionally, this type of coordination and leader-
ship strengthens cooperation between the agency and the Department of Justice in investigating and prosecuting fraud cases. The Department testified emphatically that those agencies which have been the most effective co-partners with the Department have been those with viable offices of Inspector General. As Deputy Assistant Attorney General Keeney testified:

The combining of audit and investigation functions under an Inspector General in the respective departments and agencies virtually ensures that the performance of the agencies will improve.

Passage of this legislation will upgrade the auditing and investigative functions in the executive agencies by making it clear that Congress takes the problem and responsibilities seriously. The Inspector and Auditor General would be a presidential appointee, confirmed by the Senate. Additionally, the legislation gives the Inspector and Auditor General no conflicting policy responsibilities which could divert his attention or divide his time; his sole responsibility is to coordinate auditing and investigating efforts and other policy initiatives designed to promote the economy; efficiency and effectiveness of the programs of the establishment. The Inspector and Auditor General will also be a strong advocate for additional resources if needed.

Above all, the Inspector and Auditors General created in this legislation would have the requisite independence to do an effective job. There is a natural tendency for an agency administrator to be protective of the programs that he administers. In some cases, frank recognition of waste, mismanagement or wrongdoing reflects on him personally. Even if he is not personally implicated, revelations of wrongdoing or waste may reflect adversely on his programs and undercut public and congressional support for them. Under these circumstances, it is a fact of life that agency managers and supervisors in the executive branch do not always identify or come forward with evidence of failings in the programs they administer. For that reason, the audit and investigative functions should be assigned to an individual whose independence is clear and whose responsibility runs directly to the agency head and ultimately to the Congress.

This legislation accomplishes that, removing the inherent conflict of interest which exists when audit and investigative operations are under the authority of an individual whose programs are being audited. The Inspector and Auditor General would be under the general supervision of the head of the agency or his deputy, but not under the supervision of any other official in the agency. Even the agency head would have no authority to prevent the Inspector and Auditor General from initiating and completing audits and investigations he believes necessary.

The committee believes that the potential for improvement is not simply theoretical. Representative Fountain testified that from 1962 to 1974, the Office of Inspector General at the Department of Agriculture, created administratively, "resulted in very substantial improvements in the auditing and investigating functions of that department." In response to scandals in Federal housing programs in the late 1960's, the Department of Housing and Urban Development also established
an Office of Inspector General and committed substantial resources to the task of auditing and investigating. Since that time, the Department is generally credited with impressive progress in bringing fraud under control. Since 1972, HUD officials have helped to prosecute some 1,000 individuals for defrauding the housing programs.

The case of HEW, where Congress created the first statutory Inspector General in 1976, is also instructive. At the time that Senator Eagleton’s subcommittee held hearings on this legislation, the HEW Inspector General had been in office more than a year and had filed his first annual report with the Congress. While the hearings were in no way intended to be a comprehensive inquiry into the workings of the Inspector General’s operation, the committee is encouraged about the scope of Mr. Morris’ efforts, the progress that has been made, and the candor and independence which his report reflects.

The HEW Inspector General has begun to spearhead a nationwide effort to deal systematically with medicaid fraud, entitled “Project Integrity.” Using computer screening to identify doctors and pharmacists performing services which appeared unusual when compared with certain norms, the Inspector General had, as of March 1978, chosen 535 cases for a full investigation, meaning that grounds for criminal prosecution were found likely to exist; 554 others have been selected as meriting administrative action—recovery, reprimands, suspension or termination—and suitable investigations were going forward. Unusually close coordination between the Federal Government and the States and localities have apparently characterized this effort (and others initiated by Mr. Morris’ office).

The Inspector General’s report also indicates that Mr. Morris and his deputy, Charles Ruff, are actively involved in the reviewing of existing legislation and proposed regulations in order to offer guidance concerning their likely impact on fraud and abuse control as well as economy and efficiency. The committee believes that this is a particularly vital role for the Inspector and Auditor General to play. The Inspector and Auditor General should not simply investigate fraud and waste after they have occurred. Rather, his preventive and deterrent function—including the development of front-end controls when designing benefit programs—should be crucial.

In addition to specific initiatives taken, Mr. Morris has generally reviewed the scope of the department’s programs, established audit and investigative priorities, and made a detailed case as to why additional audit resources may be necessary. Overall, there is good reason to agree with Representative Fountain’s assessment that the Inspector General “has been responsible for substantial and badly needed progress in improving HEW’s administrative operations” from the disarray found in 1976.

Finally, the committee cannot overlook the importance of having an Inspector General willing to set forth publicly “best estimates” of current fraud, abuse and waste in agency programs and operations. The report that between $6.3 and $7.4 billion in HEW funds have been misspent has created a substantial furor and intensified the criticism of the agency’s programs. Undoubtedly, it would have been easier for the department if those estimates had never been made public. However, Congress and the public derive extraordinary benefits when an agency identifies its problems and management begins to confront them.
In general, the agencies covered by H.R. 8588 opposed this legislation during its development in the House. Part of this opposition stemmed quite naturally from an unwillingness to admit that internal efforts had failed to deal adequately with fraud, waste and mismanagement. But the concerns went somewhat further, and continues to linger even though the administration has endorsed the concept of H.R. 8588. They reflect an apparent feeling that the Inspector and Auditor General may become an adversary of the agency head and undermine his ability to run the agency. Focusing on the special responsibilities to report to Congress, some critics have argued that the Inspector and Auditor General will be serving two masters, making the position untenable.

The committee (and its House counterpart) have carefully considered this problem and tried to strike a workable balance. On the one hand, the committee recommends this legislation because “business as usual” has not worked. With rare exceptions, the agencies have not adequately policed their own operations and programs. The committee wants Inspector and Auditors General of high ability, stature and an unusual degree of independence—outsiders, at least to the extent that they will have no vested interest in the programs and policies whose economy, efficiency and effectiveness they are evaluating.

However, the committee believes that an Inspector and Auditor General’s efforts will be significantly impaired if he does not have a smooth working relationship with the department head. As HEW Inspector General Morris testified:

To be truly effective, the Inspector General must have a close relationship with the Secretary, enjoy his confidence and respect, and be responsive to his concerns, both as to his specific assignments and as to the Inspector General’s overall function in the agency.

If the agency head is committed to running and managing the agency effectively and to rooting out fraud, abuse and waste at all levels, the Inspector and Auditor General can be his strong right arm in doing so, while maintaining the independence needed to honor his reporting obligations to Congress. The committee does not doubt that some tension can result from this relationship, but the committee believes that the potential advantages far outweigh the potential risks.

The committee believes that H.R. 8588 insures the independence of the Inspector and Auditor General by making him a presidential appointee, subject to Senate confirmation, and by taking the unusual step of requiring the President to report to Congress explaining his reasons for removing an incumbent of the office. Additionally, the Inspector and Auditor General derives independence from the fact that the agency head can add his comments to the semi-annual report of the Inspector and Auditor General but cannot generally prevent it from going to Congress or change its contents.

At the same time, however, the committee has deleted certain features of the earlier Inspector General legislation which carried the greatest potential for tension between the Inspector General and the agency head, and the executive and legislative branches. The legislation establishing the HEW and Energy Inspectors General provided that
each Inspector General... shall provide such additional information or documents as may be requested by either House of Congress, or with respect to the matters within their jurisdiction, by any committee or subcommittee thereof." Coupled with the Inspector and Auditor General's statutory access to all the papers of the department relevant to his function, this provision prompted concern in the executive branch that the Inspector General could be used as a conduit of sensitive executive branch materials to Congress. Deletion of that provision allays these fears.

V. COMMITTEE CHANGES IN H.R. 8588

H.R. 8588, as it passed the House, was a carefully-crafted piece of legislation deserving prompt consideration in the Senate in order to maximize the chances of enactment into law during this Congress. The committee has made several significant changes in H.R. 8588, which the committee believes are important strengthening additions, fully compatible with the purpose of the legislation. The most significant change—the inclusion of the Department of Defense—is discussed in detail below.

1. AUDITING PROVISIONS

The committee added statutory provisions dealing with the auditing responsibilities of Inspectors General to H.R. 8588 as passed by the House. The purpose of these provisions is to clarify the intent of Congress regarding such responsibilities, and to assure that proper auditing will be a required function of each Office established by the bill.

The committee's experience has shown that proper auditing and accounting are often relegated to secondary importance by Federal officials who are primarily concerned with fulfilling statutory requirements and objectives of the programs they administer. An overemphasis on program objectives at the expense of program accountability has hindered in many cases the development of strong internal audit organizations supported by adequate staff and resources. Adoption of the additional auditing provisions should correct deficiencies in this area by making sound audits a statutory requirement and focusing attention on the sufficiency of audit resources.

In testimony supporting H.R. 8588 and an appropriate balance between audit and investigative responsibilities, the General Accounting Office endorsed each of the auditing provisions proposed by the committee, and recommended that the title of Inspector General be amplified to reflect the importance of the audit function. The Comptroller General testified that "the name of the organizations established by the bill will set the tone for how they operate," and suggested a title such as Inspector and Auditor General. The GAO also stated its finding that "internal auditors nearly always pay their own way many times over by performing audit work that leads to: recovery of overpayments from grantees and contractors, adoption of more efficient and economical ways of conducting agency operations, and tightening of controls over cash and other assets to make fraud and abuse more difficult." The irony of inadequate attention to proper auditing by many program officials is underscored by GAO's estimate
that audit-related savings run into many billions even though agencies do not always take full advantage of internal auditors’ work.

The GAO’s support for explicitly requiring comprehensive audits and compliance with appropriate standards in the bill is based on its extensive experience in evaluating internal audit activities of Federal agencies. Since December, 1975, the GAO has issued 31 reports detailing inadequate audit procedures at the 13 departments and agencies included in the bill reported by the committee. Eleven of those reports concern deficiencies within agencies of the Department of Defense. Most of the deficiencies noted by GAO in those reports could have been avoided if proper audits had been conducted in accordance with appropriate standards.

Weaknesses in financial auditing of Federal agencies were disclosed in a recent report prepared by GAO at the request of this committee. A survey of 418 units—in Cabinet-level Departments and independent executive agencies, international organizations, government corporations, and other committees, commissions and boards—found that one-third of them did not receive a financial audit of their accounts and records during fiscal years 1974 through 1976. The units which had not undergone a financial audit during those years received funds in excess of $20 billion in fiscal year 1977. Six of the departments included in the bill—the Departments of Agriculture, Commerce, Defense, Housing and Urban Development, the Interior and Labor—had unaudited units with aggregate authorized budgets approximating $3.5 billion.

The committee expects that Federal agencies will be able to estimate and budget for sufficient audit resources once Congress has clearly stated the scope of required audits and the standards to be followed. The Office of Inspector and Auditor General will provide a focal point for requesting additional resources where needed.

The office of Management and Budget generally supported the additional provisions, but expressed two objections. The first is that the Inspector and Auditor General should not be given statutory authority to review “program results” because that might limit the ability of agency heads to assign that function somewhere else. The OMB acknowledged that the Inspector and Auditor General has a legitimate role in assessing “program results” as part of his overall audit responsibilities, but noted that OMB Circular No. A-73, which addresses Audit of Federal Operations and Programs, states that “the audit scope should be tailored to each specific program according to the circumstances relating to the program, the management needs to be met, and the capacity of the audit facilities.”

The committee believes that looking at program effectiveness will often be incidental to a financial audit or an audit aimed at reviewing economy and efficiency. The committee also believes that the independence of the Inspector and Auditor General can make his evaluations of program effectiveness particularly valuable to the agency head, as well as the public and Congress. However, the committee recognizes that too much emphasis by the Inspector and Auditor General on program effectiveness may detract from his principal mission: concern

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for preventing, deterring and identifying fraud, abuse and waste in agency operations and programs. For this reason, the Inspector and Auditor General should be particularly aware of the efforts and mandate of existing program effectiveness or review units in the agency to avoid duplication of effort.

The second objection expressed by OMB deals with requiring each Inspector and Auditor General to comply with standards established by the Comptroller General of the United States for audits of governmental establishments, organizations, programs, activities and functions. The OMB believes that it should be left with the authority to require implementation of audit standards through such means as Circular No. A-73.

GAO is the only Federal organization which has established appropriate auditing standards, and has been doing so for over 20 years. The committee believes that this bill is an appropriate medium for Congress to require that such standards be followed by major Departments and agencies. Since Congress has the unquestioned authority to prescribe the audit standards to be followed by executive departments and agencies, the delegation by the Congress to GAO, a legislative agency, is not open to question.

2. PRIVACY ACT CONSIDERATIONS

As passed by the House, H.R. 8588 contains the following provision concerning the authority of the Inspector General to obtain information pursuant to the Privacy Act of 1974 (5 U.S.C. 552a):

In the event any record or other information requested by the Inspector General under subsection (a) (1) or (a) (2) is not considered to be available under the provisions of section 552a (b) (1), (3), or (7) of title 5, United States Code, such record or information shall be available to the Inspector General in the same manner and to the same extent it would be available to the Comptroller General.

This provision is the same as that which appears in the statute establishing an Office of Inspector General in the Department of Health, Education and Welfare. No similar provision appears in the legislation which established an Office of Inspector General within the Department of Energy.

The Privacy Act prohibits a Federal agency from disclosing information maintained by the agency in a system of records about an individual without the prior written consent of the individual concerned. The section contains 11 exemptions permitting disclosure without consent of the individual concerned under particular circumstances, including the following:

(1) Intra-agency disclosure to personnel who have a need for the information in the performance of their duties;

(3) Disclosure for a "routine use", which is defined as the use of such information for a purpose which is compatible with the purpose for which it was collected;

(7) Disclosure to governmental agencies for a legally-authorized civil or criminal law enforcement activity in accordance with procedures specified in the Act;
(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof;
(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

The committee interprets the House language as seeking to create an exemption for the new Inspector and Auditors General comparable to the existing exemption granted to the Comptroller General. The committee believes such a step is unnecessary and did not include this section in the bill as reported.

The House language would grant to an Inspector and Auditor General a power that no other official of the executive branch has—the authority to require the transfer of personal information from any agency to the Inspector and Auditor General without regard for the protections of the Privacy Act. Currently, the President, department Secretaries and heads of agencies, and all individual members of Congress and committees must comply with the Privacy Act. The committee can see no reason for granting special status to the Inspector and Auditors General. Given the fact that H.R. 8588 establishes Inspector and Auditors General in 13 major departments and agencies, such an exemption would totally negate the effect of the Privacy Act by permitting private information about individuals to flow freely between nearly every major department and agency, unencumbered by the protections of the Privacy Act.

Complying with the Privacy Act does not mean that an Inspector and Auditor General will be unable to obtain needed information to perform his responsibilities. It simply means that the information must be obtained in conformity with the exemptions and procedures of the act. Under the Privacy Act, for instance, all information within the agency would be available to the Inspector and Auditor General, based on the “intra-agency” exemption. Information sought from other agencies could generally be obtained under the “routine use” or “law enforcement” exemptions of the act.

The committee recognizes that there have been past instances of reluctance on the part of agencies to provide information requested by another agency in order to carry out a computer matching program to reduce fraud or unauthorized payments in Federal programs. The committee believes, however, that generally the exemptions of the Privacy Act have more often been used by agencies to frustrate the intended protections of the act. Any delay experienced in giving access to sensitive materials may help bring together views on the wisdom of proposed transfers of information and the protections to be accorded to them. The committee believes that some matching programs can be useful devices to identify possible cases of fraud. However, such programs carry with them the potential for serious violation of individual privacy unless they are carried out openly and with scrupulous care along clearly defined guidelines.

Under section 6 of the Privacy Act, OMB has authority to develop guidelines and regulations for the use of agencies in implementing the Privacy Act. OMB has published regulations in the Federal Register dealing with matching programs which are currently available for comment. (Federal Register, vol. 43, No. 151, Aug. 4, 1978, pp. 34724-34727). These regulations would permit matching programs to occur.
if, among other things, the agency determines that disclosure of particular records is in accordance with the "routine use" provision; gives detailed notice of the match in the Federal Register; reports to Congress and OMB on all new systems of records; and destroys within 180 days all records not specifically needed to continue a pending investigation or required to be preserved under another statute. Both the agency requesting information and the agency responding, in consultation, would have to conclude that the disclosure involved is necessary to conduct the match; that other means of accomplishing the purpose are significantly less effective and efficient; and that the overall financial benefit to the government is demonstrable and outweighs the potential for harm.

The committee generally supports this approach as a useful balancing of the competing values. Matching programs will occur, but only in conformity with the protections contemplated by the Privacy Act. Public notice is essential; such a requirement effectively deters any transfers of records which cannot withstand close examination.

Even if the committee believed that the Privacy Act hampered the carrying out of matching programs, the House language would still be troublesome. Matching programs constitute a very small part of the Inspector and Auditor General's work, but the exemption sought for these few cases would be a substantial loophole. If problems do arise, the committee believes that the preferable course would be to hold oversight hearings on the Privacy Act and carefully consider any amendments in that context.

3. DEPARTMENTS AND AGENCIES COVERED

H.R. 8588 as passed by the House established Offices of Inspector General in 12 executive departments and agencies. The departments and agencies employ over 600,000 people and spend over $100 billion annually. They are also the departments and agencies with particular responsibility for administering most of the federally funded programs which have been major targets of fraud, abuse and waste.

Reviewing the list of departments and agencies included by the House, the committee found four conspicuous omissions: the Departments of Justice, Treasury, State, and Defense.

a. Exclusion of Justice and Treasury Departments

The committee readily agreed with the House decision not to establish Inspectors General in Justice and Treasury. Although the Justice Department does have responsibility for the Law Enforcement Assistance Administration (LEAA) and the Treasury Department supervises distribution of revenue sharing funds, the two departments do not have major programmatic responsibilities. Law enforcement is the principal mission of both departments. The committee recognizes that both departments could probably benefit from more rigorous internal auditing. For example, a GAO report dated June 6, 1978 lists LEAA among the Federal agencies where internal auditing has been deficient. However, the committee believes it would be undesirable to superimpose an Inspector General, who is basically a law enforcement official, on law enforcement agencies.
b. Consideration of the Department of State

Whether to include the Department of State posed a somewhat closer question. The Department has jurisdiction over the broad range of foreign assistance programs, including programs administered by the Agency for International Development (AID); the Military Assistance Programs (MAP) including foreign military arm sales; Peace Corps activities in ACTION; the activities of the Overseas Private Investment Corporation (OPIC) and the Inter-American Foundation; and the administration of the Agricultural Trade Development and Assistance Act of 1954, commonly known as Public Law 480. Because these programs have not always been trouble-free, Senator Eagleton's Subcommittee did explore State's approach to audit and investigative work and the resources committed to these tasks.

The current arrangements at State present reasons for concern. The Inspector General, Foreign Service, does not perform the kind of auditing and investigation that H.R. 8588 envisions. Rather, this Inspector General performs a traditional function, which is heavily oriented toward an evaluation and grading Foreign Service Officers, with little emphasis on the financial management aspects of these operations. Additionally, the post of Inspector General, Foreign Service tends to rotate every 2 years. This procedure may discourage a tendency to look critically at embassy or consular operations. At any given time, the current Inspector General knows that he may be evaluated in the future by a person whom he criticizes. Then, too, the reports of the Inspector General have traditionally been intended solely for the internal use of the State Department and the agencies which the Inspector General determines to have a need for them. Consequently, they do not represent the kind of useful information for Congress and the public that H.R. 8588 requires.

It is also possible that certain programs and operations of the State Department may not receive adequate audit and investigative coverage because Congress recently abolished the Inspector General for Foreign Assistance (IGA). Established by Congress in 1961, IGA was responsible to the Secretary of State for reviewing, inspecting and auditing the whole spectrum of foreign assistance programs. Congress' decision to abolish IGA reflected the fact that its operations were seriously and consistently flawed. However, the question remains whether an office with broad responsibility for auditing and investigating all foreign assistance programs would not provide a useful function, the potential for which is lost in the current structure. For example, it is not clear who in the State Department will take responsibility for auditing and investigating the Department's jurisdiction over military assistance programs, including foreign military arms sales.

Despite these concerns, the committee believes that it would be unwise to recommend the creation of an Inspector and Auditor General for the State Department at this time. Congress abolished IGA only last year, effective July 1, 1978. Additionally the committee notes that in S. 3074, the International Development Assistance Act of 1978, the Senate upgraded the operations of the AID Auditor General by giving that office a statutory basis. If the House agrees with S. 3074, the-
Auditor General will be submitting an annual report to the Adminis-
trator of AID which shall be provided to Congress without alteration
as part of the AID Administrator's Annual Report. S. 3074 would
provide the AID Auditor General with some of the stability and inde-
pendence envisioned in H.R. 8588. Given these recent developments,
the committee believes it advisable to see whether the present structure
for audit and investigation in the State Department can work success-
fully.

VI. INCLUSION OF THE DEPARTMENT OF DEFENSE

Senator Eagleton's subcommittee reviewed carefully the question of
whether to include the Defense Department in H.R. 8588. The subcom-
itee received testimony from Comptroller General Staats and other
representatives of GAO, DOD General Counsel Deanne Siemer, and
Deputy Assistant Attorney General John Keeney of the Justice De-
partment's Criminal Division. The subcommittee also reviewed numer-
ous past reports prepared by GAO and work done by Representative
Brooks' subcommittee of the House Committee on Government Opera-
tions. On the basis of this investigation, Senator Eagleton recom-
mented, and the committee concluded, that the Defense Department
and the Congress would benefit from the creation of a statutory Inspec-
tor and Auditor General.

The committee recognizes that DOD and the armed services com-
m it substantial resources to audit and investigative units. In the Office
of the Secretary of Defense (OSD) there exist two major auditing
units. The first is the Defense Audit Service (DAS). DAS was cre-
ated by DOD directive in 1976 to operate under the direction, authority
and control of the Secretary of Defense, reporting to him. The Direc-
tor of DAS is a civilian appointed by the Secretary. DAS bears re-
sponsibility for handling (1) all internal audits of OSD; the Joint
Chiefs of Staff; the unified, specified commands and the other agencies
within the DOD (as opposed to the services); (2) the planning and
performance of inter-service audits of all DOD components; (3)
quick response audits on matters of special interest to the Secretary;
(4) audits of security assistance programs at all levels of management
and (5) planning and performance of such other audits as the Secre-
tary may request. The Director of DAS serves as the Secretary's ad-
visor on matters concerning audit activities of the Department. The
present authorizing staffing level of DAS is 367.

Also within OSD is the Defense Contract Audit Agency (DCAA),
established by Departmental directive in 1965. DCAA performs all
necessary contract audit functions for the Defense Department and
provides financial advisory service to all defense components respon-
sible for procurement and contract administration. These services are
provided in connection with negotiations, administration and settle-
ment of contracts and subcontracts. They include evaluating the ac-
ceptability of costs proposed by the contractors and reviewing the
efficiency and economy of contractor operations. When established,
DCAA was placed under the authority and control of the Assistant
Secretary of Defense (Comptroller). DCAA presently includes 3,400
employees, of whom 80 percent are auditors including 430 certified
public accountants. This is the largest single auditing force in the
Government with the exception of GAO.
The investigative unit of the Office of Secretary of Defense is the Defense Investigative Service (DIS), established by the Secretary effective January 1, 1972, to consolidate certain pre-existing investigative activities in the department. DIS provides DOD components with a single, centrally directed personnel security investigative service. DIS also provides criminal investigative and crime prevention support to the Defense Logistics Agency, the Department's supply arm. DIS conducts all personnel security investigations for DOD components, including investigating allegations of subversive affiliations, and such other investigations as the Secretary of Defense may direct. While DIS investigators sometimes work on procurement or other criminal fraud matters, DIS's main mission is plainly the conduct of personal security investigations. DIS currently includes approximately 850 investigators.

In addition to the audit and investigative resources at the OSD level, each of the uniformed services has a substantial audit and investigative unit, as well as the traditional military inspection operation. For example, in the Department of the Army, there is an Army Audit Service, an Army Criminal Investigation Command, and an Inspector General. Both the Navy and the Air Force have their own similar structure. The resources of the services are substantial. Together, for example, the three services total 2,500 auditors and investigators.

Despite these resources, the committee has concluded that the same organizational flaws which justify the creation of Offices of Inspector and Auditor General elsewhere necessitate the establishment of such an office in the Department of Defense. Indeed, the very size and structure of the Defense Department, and the management problems involved in its administration, magnify this need.

Accordingly, the committee recommends the creation of an Inspector and Auditor General at the OSD level, consolidating the resources of the Defense Audit Service, portions of Defense Investigative Service, and the existing office of Inspector General in the Defense Logistics Agency.

The committee's recommendation would leave the audit, investigation and inspection functions of the services essentially intact. The services have been traditionally accorded substantial autonomy, and the service secretaries need to have audit and investigative resources at their disposal.

The committee believes, first, that the public record contains countless examples of serious waste and mismanagement in the Department of Defense. For example:

In 1965, a commission on Government procurement said that "inadequate training of procurement personnel has frequently been the basic cause of procurement deficiencies." In response to that report, DOD set up a training program for its procurement officers. Ten years later GAO reported that only 20 percent of the Pentagon's 14,000 employees who run the huge procurement system have gone through the program. These men and women award contracts worth $40 billion every year.

A recent analysis done for the Navy by International Maritime Associates traced the cost history of the AOR-7, a Navy replenishment oiler, and concluded that the Navy had systematically
shaved $14 million off the cost estimate before submitting it to Congress.

A 1976 GAO report indicated that the services were paying enlisted men to live off-base at Government expense even when there was substantial unused housing space on-base. GAO studied 11 bases and estimated that the waste at those installations came to $3.4 million a year. Worldwide, it was not unreasonable to assume that the cost could exceed $50 million.

A GAO report released by Representative Les Aspin indicated the Navy planned to spend $2 billion on an "improved engine" that would have made its F-14 fighter less, rather than more, useful. Fortunately this project was killed by the Deputy Secretary of Defense.

In November 1977, Senator Proxmire awarded the "Golden Fleece of the Month" to the Pentagon civilian and military brass who cost the taxpayers $52.3 million by systematically misusing planes for low-priority missions, such as personal flights, when available commercial transportation was many times cheaper.

Most recently, in its July 24 issue, Business Week magazine reported that Defense Department bookkeeping with respect to foreign military arms sales totaling $30 billion was hopelessly "fouled up." Clifford Miller, the Defense Department's Deputy Comptroller for Plans and Systems, the man charged with straightening out the situation, admitted that it would probably take 5 years before it could be sorted out.

A number of these examples were uncovered by DOD auditors. But several specific organizational failings in DOD's audit and investigative operations prompt the committee to conclude that covering the Department in H.R. 8588 would be beneficial. To a large extent, these deficiencies closely parallel those found in the other agencies covered by H.R. 8588.

1. PLACEMENT OF AUDIT IN DOD

The directive establishing DAS required that the new agency report to the Secretary of Defense. However, in a recent revision of that directive, Secretary Brown has ordered DAS to report to the Assistant Secretary of Defense (Comptroller).

Because of this change, the committee finds the current situation of DAS unacceptable. The Assistant Secretary of Defense (Comptroller) has operational responsibilities for programs and preparation of the budget, crucial areas which DAS should be auditing and investigating. The conflict of interest and the lack of independence is evident.

This is a serious flaw; it is also puzzling. On May 26, 1978, pursuant to the reorganization authority granted him by 10 USC section 125, Secretary Brown submitted a reorganization of the Naval and Air Force audit authorities. In that reorganization, responsibility for auditing in the Navy and the Air Force was shifted from the Comptroller of such service to the Service Secretary. Secretary Brown noted the reorganization was "designed to improve the organization independence and increase the operational efficiency of the Navy and Air Force audit functions." This same principle should control the audit functions in OSD.
2. INSUFFICIENT COOPERATION BETWEEN DAS AND DCAA

The committee believes that DCAA performs certain functions which make it inappropriate at present to consolidate it with DAS and DIS. For instance, substantial resources of DCAA are committed to pre-audit work undertaken for the contracting officer. In this function, a DCAA auditor will evaluate a contractor's proposal for accuracy and reasonableness and furnish this information to the contracting officer who can incorporate it into his efforts. This is really an operational responsibility, rather than an audit.

Nevertheless, DCAA does have significant auditing responsibilities, and in the past there has been no systematic cooperation between DCAA and DAS. For example, if DCAA discovers that a contractor is pursuing a course of action which amounts to fraud against DOD, DCAA will share that information with the contracting officer but ordinarily no contact is made with DAS which has the primary responsibility for internal audit of the Department of Defense.

3. LACK OF ACCESS TO CRUCIAL INFORMATION

In the services' view, the Inspector General of each service is the "confidential agent of the Commander assigned to the immediate staff and responsible directly to him. The Inspector serves as the Commander's own mechanism for self-analysis and self-criticism." Inspector General reports are derived, the military argues, from inquiries conducted under the concept of confidentiality. Without such confidentiality, candor would be tempered. For these reasons the military has made Inspection reports available only with the explicit permission of the Secretary of the service involved.

Traditionally, Inspectors General focused their attention on matters of military discipline and morale and the general readiness of personnel, bases, and weapons. In recent years, however, the Inspectors General have expanded their actions and come into frequent conflict with the auditors of the services and GAO. The Comptroller General has described the problem this way:

This denial of access prevents information contained in Inspector General reports from being used beneficially by top management in the Defense Department and by the Congress. It also hampers our ability to carry out our responsibilities to the Congress and may even force us to waste time and resources by making similar reviews when the information we seek is already available in the inspection reports. . . . For the most part, inspection reports, at least in the Air Force, deal with functional management, system acquisition management and inspections that are geared to determine economy, efficiency and effectiveness of programs and activities—the same thing that auditors look for in their reviews. But because of the confidential treatment given Inspector General reports, any significant problems discovered by these inspections are not reported to our office, or the Congress, and may not even be reported to the Defense Department." [Emphasis added.]
Deanne Siemer, General Counsel of the Defense Department, testified that the dispute between GAO and the services over inspection reports was a longstanding bureaucratic feud. Ms. Siemer argued that the GAO received everything necessary for them to do an effective job, and was denied access only to the opinions and conclusions of the Inspector General. The committee has not attempted to resolve the dispute by seeking to review individual reports at issue. Nevertheless, it should be emphasized that the GAO is not alone in its concern. The directive which established the DAS grants to the Director of DAiS authority “to obtain such information from any DOD components as may be necessary in the performance of DAS functions. The sensitivity of any activity should not act as a bar to the prompt and effective conclusion of any audit evaluation.” Despite this directive, both the Navy and Air Force have denied the DAS access to Inspector General reports, offering in lieu thereof statements of fact designed to summarize certain aspects of these reports. Like the GAO, the DAS has found these summaries unsatisfactory.

4. DEFICIENCIES OF THE SERVICE AUDIT AGENCIES

The conflict between auditors and Inspector General impacts on DOD in other ways. According to GAO, the caliber of the personnel in the service audit agencies is extremely high. Too often, however, the service audit agencies have been subordinated to the Inspectors General of the services.

For instance, a GAO report of July 26, 1977, notes that in 1975 the Army Inspector General announced a decision to channel the Army audit agency out of tactical activities and to have it concentrate its work on supply, maintenance, administrative, and financial functions. The stated reason for this decision was that tactical activities are more appropriately assessed by inspectors, military personnel, then by auditors, who are usually civilians. GAO argues, in contrast, that “the greater objectivity resulting from an auditor’s lack of military background should be viewed as an asset in making independent, unbiased evaluation of tactical activities, particularly when it is considered that they have evaluated these activities for many years and have demonstrated that they are well qualified by virtue of professional audit training and experience to make such evaluations.” The GAO report notes several cases in which proposed audits were cancelled or stopped in progress because the Inspector General determined that they were better handled by inspection.

The committee shares the concern expressed by GAO: 5

A serious impediment of audit independence has resulted from the Inspector General’s policy of restricting internal audits to non-tactical activities. The Army’s basic mission, simply stated, is to prepare and maintain land forces in a state of combat readiness. Thus, excluding the Army Audit Agency from examining tactical activities means that the Audit Agency is prevented from auditing any of the activities

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5 Id. at 14.
directly related to the Army’s basic mission to which the Army devotes most of its resources.

The assumption that inspections can be substituted is, in our view, not supportable because inspections lack the depth of audits and therefore do not satisfy our standards for full-scope audit coverage.

The problem, of course, is intensified by the fact that inspection reports are, in significant measure, kept confidential.

Moreover, both the Army and the Air Force have, in the recent past, used priority committees designed to screen audits proposed by the service audit agencies. In the Army, the priority committee consisted of general officers from Army staff agencies having management responsibility for major functional areas of the Army operations, such as logistics, personnel, financial management and research and development: in other words, the key officers whose programs would be audited. The priority committee has limited audits in two ways: one, by rejecting the proposed audits outright, and two, by giving high priority audits a low priority which has resulted in their nonperformance. The lack of auditing independence resulting from this type of arrangement is unmistakable.

Despite these problems, the committee has not recommended that any organizational changes be made in the services’ audit and inspection functions. But the deficiencies which exist intensify the committee’s belief that the Secretary of Defense, and Congress, need a strong and independent auditing and investigative capability at the OSD level.

It should be noted, in response to this series of critical 1977 GAO reports, the services have pledged to upgrade the placement of auditing in the service and to remove all restrictions on the functioning of the service audit agencies. It is too early to tell whether these laudable objectives will be obtained, although GAO testimony indicated that the Army had made important progress. However, Representative Brooks’ repeated efforts to “civilianize” the top levels of the service audit agencies have been staunchly resisted, particularly by the Air Force.

5. LACK OF COOPERATION WITH THE JUSTICE DEPARTMENT

Testimony indicates that DOD has not worked very effectively with the Department of Justice to investigate and prosecute criminal fraud in its programs.

Areas of fraud encountered with regularity in the Defense Department include procurement programs, PX and commissary operations, military payrolls, procurement of military weapons systems, and procurement by the services and DOD executive agencies. Both in terms of numbers and quality, the Department has extraordinary investigative resources at its disposal.

However, the Justice Department notes several problems which have impaired the crime fighting effort. DOD, like all other Federal agencies, is required to refer to the Department of Justice all suspected violations of criminal law. However, unlike many other agencies, DOD has extensive review procedures to determine if allegations

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have any substance. Matters are often reviewed by the services and their lawyers and by DOD officials. Only after this time-consuming process are substantial allegations referred to the FBI. Until quite recently, the FBI would then assume responsibility for the investigation without substantial assistance from DOD investigators and auditors. Additionally, the Justice Department notes:

DOD auditors often uncover substantial fraud allegations but are thereafter underutilized by the investigative agencies. This results in a morale problem on the part of the auditors on whom they rely to be the Government’s eyes and ears to detect fraud.

Finally, although there are substantial similarities between the types of criminal fraud committed against each service, there has been inadequate coordination between the investigative agencies to deal with these cases.

The concerns expressed in the Justice Department letter paralleled those spelled out by Deputy Attorney General Benjamin Civiletti in a speech to the Air Force Office of Special Investigations on November 28, 1977. Additionally, in that speech, Mr. Civiletti called for the “elimination of unwarranted influence... exercised by the program commander(s) over investigations.”

6. DEFENSE DEPARTMENT ARGUMENTS AGAINST INCLUSION

Arguing against inclusion, the Defense Department contends that the military organizations are fundamentally different from the civilian agencies, H.R. 8588 was designed to assist and that the Inspector and Auditor General concept and structure in the bill is inappropriate to DOD’s situation.

The committee recognizes that military organizations are unique and that the Armed Services have been traditionally granted somewhat autonomous status. For these reasons, the committee has not included the audit, investigation and inspection operations of the Armed Services in this bill, except to require they provide assistance to the Inspector and Auditor General upon request.

However, there is presently operating at the OSD level a Defense Audit Service and a Defense Investigative Service, both of which have Department-wide responsibilities which cut across the lines of the individual Services. The Director of DAS is a civilian; yet he presumably performs an important function in DOD and has the understanding needed to deal with the concerns of the uniformed services. In a sense, H.R. 8588 changes nothing in existing Defense Department structure. The Inspector and Auditor General of the Defense Department would be focusing on the same areas that DAS does, but that person would have a structure and independence within the Department that the director of DAS lacks.

There are many differences between DOD and the civilian agencies covered by H.R. 8588, but there are also important similarities. The Defense Logistics Agency, for instance, is the supply arm of DOD, performing a function analogous to what GSA does for the rest of the Government. Since the potential for fraud and waste is obvious, the committee has recommended consolidation of the 90-person
Office of Inspector General at Defense Logistics into the proposed new Office of Inspector and Auditor General. The committee believes that where DOD faces problems similar to those found in civilian agencies, the organizational structure recommended in H.R. 8588 will be similarly useful.

The Defense Department also argues that the internal reorganization of audit and investigative functions undertaken in the past year meets the problems that motivate H.R. 8588. The committee wishes to emphasize that including the Defense Department in this bill does not imply any criticism of the current management of the Pentagon by Secretary Brown. However, this bill is premised on the belief that the internal audit and investigative operations of major executive agencies and departments have proven inadequate, and that agencies and departments will not, as a matter of course, police themselves in a satisfactory fashion. In this regard, the fact that DOD has conducted an internal reorganization carries no more weight than the fact that the Labor Department has also done so recently.

The committee is concerned, of course, that even the best internal reorganization of auditing and investigation may be nullified as quickly as it is established. This is the basic reason for putting reorganizations in statutory form. As Representative Fountain testified, the Department of Agriculture had a very effective administratively-created Inspector General for more than a decade, but the office was abolished in 1974 by former Agriculture Secretary Earl Butz. The committee cannot assume that effective administrative procedures, adopted internally, will remain in operation over the years.

Finally, while some of the features of the Defense Department's internal reorganizations have been impressive, other aspects are less reassuring. As of December 12, 1977, the Defense Investigative Service was placed under the direction, authority and control of the General Counsel. Ms. Siemer testified that the purpose of that move was to insure that DIS reported to a policy official who had no conflicting responsibilities in areas which DIS might have to investigate. This is a positive step. However, as noted above, DAS and DCAA are now reporting to the Assistant Secretary of Defense (Comptroller). These agencies should be reporting directly to the Secretary of Defense so they can be independent of the Comptroller and critical of his functions and operations where necessary. The same principle which prompted the shift of DIS under the General Counsel should apply in the auditing area as well. Additionally, GAO reports that throughout 1977, the staffing level of DAS was repeatedly reduced.

Ms. Siemer's testimony also placed great weight on the function of the Inspector General for Defense Intelligence, a position created in 1976 in the wake of disclosures by the Church Committee of abuses by the intelligence agencies. This individual plays a critical role in assuming responsibility for insuring that military intelligence operations are carried out in conformity with constitutional requirements. However, the role of the Inspector General for Defense Intelligence in policing fraud, waste and mismanagement is very limited, if it exists at all. The Defense Department is currently considering whether to give him some responsibility in the area of procurement of intelligence equipment. Additionally, because the Inspector General for
Defense Intelligence has a staff of only four or five professionals, his impact in Department-wide financial operations cannot be substantial.

Defense Department testimony also underscored the role played by the Defense Investigative Review Council. On this Council, the Under Secretaries of each of the military departments, the General Counsel of DOD, and the Inspector General for Defense Intelligence serve with responsibility for monitoring all Defense investigative programs and providing policy guidance, management review and inspection of investigative activities. The Council reports to the Secretary of Defense. The Department's testimony notes:

The Defense Investigative Review Council is a unique organization designed to insure that each of the parts of the investigative structure lives up to high standards and to provide leadership with respect to the protection of Americans.

Like the Inspector General for Defense Intelligence, the Defense Investigative Review Council has a completely different focus than the Inspector and Auditor General which this legislation would establish. Additionally, there is evidently serious dispute within DOD about the value of the Defense Investigative Review Council. A memorandum supplied to the subcommittee by the General Counsel on another issue notes that high-ranking officials in DOD "believe that the Defense Investigative Review Council is no longer necessary" and that "the DIRC may be abolished."

Finally, of course, the Defense Department has an important and unique national security mission. It is certainly possible that an Inspector and Auditor General pursuing an audit or investigation looking into the economy, efficiency and effectiveness of a DOD program would come across information critical to the national security, whether it pertained to troop readiness or the operational effectiveness of a missile system. However, the committee has recognized the special nature of the Department's mission by providing in section 8(c) for special authority for the Secretary of Defense to review an Inspector and Auditor General's report to Congress and make deletions which he believes necessary in the interest of national security. Obviously, within the Department, the Inspector and Auditor General will have access to all matters and information available to the Department. In this regard, however, this individual would not be unusual, having no more or less access to information, in theory, than the current head of the Defense Audit Service.

In sum, the committee believes that the creation of a statutory Inspector and Auditor General in the Department of Defense is a modest but important step. Such an individual would contribute to a badly needed upgrading and consolidation of the audit and investigative functions in the Department. The Inspector and Auditor General would compensate in some measure for the lack of independent and reliable auditing which now occurs in the Armed Services. He or she could become a vital source of important information to the Secretary of Defense which might otherwise be lost. Congress, too, would benefit from the audit and investigative work by receiving a far more detailed picture of the extent and pattern of waste, fraud and mismanagement in Defense Department expenditures and operations.
VII. Section by Section Analysis

Section 1. Short Title

Section 1 provides a short title—the “Inspector and Auditor General Act of 1978.”

Section 2. Purpose: Establishment

Section 2 establishes Offices of Inspector and Auditor General in 13 Federal departments and agencies and states the basic purpose of the legislation as the creation of independent and objective units to—

1. Conduct and supervise audits and investigations relative to the programs and operations of these departments and agencies;
2. Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations; and
3. provide a means for keeping the department and agency heads and the Congress fully informed about problems and deficiencies relative to the administration of such programs and operations and the necessity for, and progress of, corrective action.

The Federal departments and agencies covered are the Departments of Agriculture; Commerce; Defense; Housing and Urban Development; Interior; Labor and Transportation; the Community Services Administration; the Environmental Protection Agency; the General Services Administration; the National Aeronautics and Space Administration; the Small Business Administration and the Veterans’ Administration.

H.R. 8588, as passed by the House of Representatives, provided for an Inspector General for 12 departments and agencies. This committee, responding to concerns expressed by the Comptroller General of the United States that investigative functions would overshadow the audit functions, amended the title of the new offices to “Inspector and Auditor General.” In addition, the committee added the Department of Defense as a thirteenth agency.

Section 3. Appointment and Removal of Officers

Subsection (a) provides (1) for the appointment of each Inspector and Auditor General by the President, subject to Senate confirmation and (2) that each such person be appointed 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 investigation.

In requiring demonstrated ability in one of the specified fields, the committee intends to safeguard against the appointment of an Inspector and Auditor General that is motivated by any considerations other than merit. The fields in which an Inspector and Auditor General can be expert are sufficiently diverse that many qualified people could be appointed; however, expertise in some area relevant to the tasks would be necessary.
In the remainder of this subsection, the committee sets forth the basic principles governing the relationship of the Inspector and Auditor General to the head of the agency. While the Inspector and Auditor General must report to and be under general supervision of the head of the establishment, the agency head cannot prevent or prohibit the Inspector and Auditor General from initiating, carrying out or completing any audit or investigation or from issuing subpoenas which the Inspector and Auditor General deems necessary during the course of an audit or investigation.

Generally, the committee envisions that if the agency head asked the Inspector and Auditor General to perform an audit or an investigation or to look at certain areas of agency operations during a certain year, the Inspector and Auditor General should do so, assuming staff resources were adequate. However, the Inspector and Auditor General's authority to initiate whatever audits and investigations he deems necessary or appropriate cannot be compromised. If the head of the establishment asked the Inspector and Auditor General not to undertake a certain audit or investigation or to discontinue a certain audit or investigation, the Inspector and Auditor General would have the authority to refuse the request and to carry out his work. Obviously, if an Inspector and Auditor General believed that an agency head was inundating him with requests in certain agencies in order to divert him from looking at others, this would be the type of concern which should be shared with Congress.

Subsection (b) authorizes removal of an Inspector and Auditor General by the President, and requires the President to communicate the reasons for such removal to both Houses of Congress.

The committee is aware of the Justice Department's objections to this requirement. Based on Myers v. United States, 272 U.S. 52 (1926) the Justice Department argues that generally Congress may not place limitations on the Executive's unfettered discretion to remove an executive official. However, the committee believes that unlike a provision which permitted the President to remove an official only for cause, requiring communication by the President to Congress, after the fact of removal, does not impair the President's right to remove an executive official.

But even if the requirement does place some constraint on the President's removal power, the committee believes the requirement is justified and permissible.

Cases subsequent to Myers have made it clear that limitations on the removal power are permissible with respect to those offices whose duties require a degree of independence from the Executive. Humphrey's Executor v. United States, 295 U.S. 602 (1935); Wiener v. United States, 357 U.S. 349 (1958). The committee intends for the Inspector and Auditor General to have that measure of independence. While the committee has not required the President to have "cause" before removing an Inspector and Auditor General, the committee expects that there would be some justification—other than the desire to remove an Inspector and Auditor General who is performing his duties in a way which embarrasses the executive—to warrant the removal action. The Justice Department has recognized in earlier legislation that "extraordinary circumstances" relating to the unique func-
tion of a particular official within the executive branch would "justify restrictions placed on the executive's power of removal." (See testimony of John Harmon, Assistant Attorney General, Office of Legal Counsel, on S. 555; Hearings before the Committee on Governmental Affairs, U.S. Senate, 95th Cong., 1st sess., at 16 and 17.)

Subsection (c) makes clear that each Inspector and Auditor General is subject to the Hatch Act and may not engage in partisan politics.

SECTION 4. DUTIES AND RESPONSIBILITIES

Section 4 sets forth the duties and responsibilities of the Inspector and Auditor General.

Subsection (a) (1) sets forth the basic requirement that each Inspector and Auditor General shall provide policy direction and conduct, supervise or coordinate audits and investigations relating to the programs and operations of his establishment.

Subsection (a) (2) requires each Inspector and Auditor General to review existing and proposed legislation and regulations relating to his agency's programs and operations, and to make recommendations to his agency head and the Congress concerning the impact of such legislation and regulations on the economy and efficiency in the administration of programs and operations administered or financed by such agency, or the prevention and detection of fraud and abuse therein.

The committee has added this requirement to the House-passed legislation. Such a function is implicit in the broad mandate of the Inspector and Auditor General envisioned by the House. However, the committee believes that this function is so important that it should be recognized explicitly in the statute.

Subsection (a) (3) requires the Inspector and Auditor General to recommend policies for and to conduct, supervise or coordinate, activities carried out or financed by such agency for the purpose of promoting economy and efficiency and detecting fraud and abuse in its programs and operations.

Without such a provision, the legislation could be read to suggest the Inspector and Auditor General was simply responsible for coordinating and supervising audits and investigations. However, the committee intends that the Inspector and Auditor General will assume a leadership role in any and all activities which he deems useful in order to promote economy and efficiency in the administration of programs and operations or prevent and detect fraud, abuse and waste in such programs and operations.

The Inspector and Auditor General's focus is the way in which Federal tax dollars are spent by the agency, both in its internal operations and its federally-funded programs. Such a responsibility obviously encompasses countless issues. The Inspector and Auditor General should obviously be involved in identifying patterns and perpetrators of programmatic fraud, but allegations that an Assistant Secretary is making decisions which are influenced by a financial conflict of interest would also be a proper concern. The Inspector and Auditor General would also be properly concerned if an audit or investigation turned up indications that agency supervisors or employees were incompetent. The integrity and quality of agency decisionmaking are
inextricably intertwined with the economy, efficiency and effectiveness of agency programs and operations.

Broad as it is, the Inspector and Auditor General’s mandate is not unlimited. Issues requiring substantive or technical expertise will often fall outside his proper sphere. For instance, if the Inspector and Auditor General at the Environmental Protection Agency received a report that a new type of sewage treatment system in Milwaukee was not functioning according to specifications, resulting in dangerous levels of pollution, the Inspector and Auditor General could quite properly decide that responsibility for handling the issue rested elsewhere and make the proper referral. However, if the Inspector and Auditor General received allegations that EPA had approved plans for a faulty sewage treatment system because an agency official was improperly influenced in his decision, the Inspector and Auditor General’s basis for involvement would be clear.

Subsection (a)(4) requires each Inspector and Auditor General to recommend policies for, and to conduct, supervise, or coordinate relationships between such agency and other Federal, State, or local governmental agencies and nongovernmental entities, relative to the promotion of economy and efficiency, or the prevention and detection of fraud and abuse in his agency’s programs and operations or the identification and prosecution of participants in such fraud or abuse.

Many of the federally-funded programs are administered primarily by the States and localities. Often in the past, the States and localities have not been as concerned about economy and efficiency in federally funded programs as they would be in their own programs. A concerted effort to promote economy and efficiency will inevitably involve important participation by state and local officials. The Justice Department has testified that Federal investigative and prosecutorial resources are simply insufficient to investigate and prosecute fraud in Federal-state programs, and state participation is obviously essential in this area. The committee envisions that the Inspector and Auditor General will provide a focal point for coordination of these collaborative efforts.

Subsection (a)(5) requires each Inspector and Auditor General to keep his agency head and the Congress fully and currently informed by means of required reports and otherwise relative to fraud and other serious problems, abuses and deficiencies with respect to the administration of his agency’s programs and operations, and to recommend corrective action and report progress in implementing such corrective action.

By using the words “and otherwise” the committee makes clear its intention that Congress is not limited to the information conveyed in the semiannual reports of the Inspector and Auditor General. The relevant committees and subcommittees of Congress will undoubtedly be calling the Inspector and Auditor General to testify about the issues within his domain.

Subsection (b) describes the scope of audits to be performed by each Inspector and Auditor General in exercising the audit responsibilities set forth in subsection 4(a). Audits are to include three basic areas of inquiry: (1) examinations of financial transactions, accounts, and reports and reviews of compliance with applicable laws and regul-
lations, (2) reviews of efficiency and economy to determine whether the audited entity is giving due consideration to economical and efficient management, utilization, and conservation of its resources and to minimum expenditure of effort, and (3) reviews of program results to determine whether programs or activities meet the objectives established by Congress or the establishment. The subsection then details the factors to be considered by the Inspector and Auditor General in each of the three cases.

The scope of audit required by subsection (b) is based on the findings and extensive audit experience of GAO as expressed in its publication, “Standards for Audit of Governmental Organizations, Programs, Activities and Functions.” The language in this subsection follows very closely the language in the GAO publication because it is well accepted and understood by the audit community. Paragraph (2) (G) was added at the suggestion of the Office of Management and Budget so that auditors will focus attention on achieving the most advantageous use of cash resources.

In referring to the “audit function,” the committee recognizes that efficient scheduling and use of resources may result in specific, individual audits which do not encompass all of the items described in subsection (b). Audits limited to one or more of the listed items would not violate the requirements of subsection (b) as long as they were conducted as part of a full-scope audit process that would be completed at the end of a reasonable audit cycle.

Subsection (c) requires each Inspector and Auditor General to follow appropriate standards and assure that non-Federal auditors adhere to such standards when carrying out the responsibilities specified in subsection (a) (1).

Subsection (c) (1) requires compliance with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions. Although the language in this paragraph closely parallels the title of the present GAO publication on audit standards, the committee did not expressly refer to any particular publication. The committee intends that paragraph (1) will encompass all existing standards established by the Comptroller General, as well as any subsequent revisions or additions to those standards.

Subsection (c) (2) requires each Inspector and Auditor General to establish guidelines for determining when it shall be appropriate to use non-Federal auditors for auditing programs, activities, or functions administered by his establishment. The committee uses the term “non-Federal auditors” to refer to auditors employed by State or local governments, public accounting firms, or any other qualified auditors who are not Federal employees.

Subsection (c) (3) requires each Inspector and Auditor General to take appropriate steps to assure that any work performed by non-Federal auditors under the guidelines described in paragraph (2) shall comply with appropriate standards established by the Comptroller General. The committee intends that affirmative steps be taken to check the work of non-Federal auditors in order to assure that it meets appropriate standards. The term “non-Federal auditors” is used in the same manner as in paragraph (2).
Subsection (d) requires each Inspector and Auditor General to give particular attention to activities of the Comptroller General so as to avoid duplication and insure effective coordination and cooperation.

Subsection (e) requires each Inspector and Auditor General to report expeditiously to the Attorney General whenever he has reasonable grounds to believe there has been a violation of Federal law.

By including this requirement, the committee intends that the Inspector and Auditor General will make prompt and direct referrals to the Justice Department when he has reasonable grounds to believe there has been a violation of Federal criminal law. The Justice Department has testified that the referral process from the agencies to the Department in the past has been slower and more cumbersome than necessary. Under this legislation, the Inspector and Auditor General would be required to contact the Justice Department directly, without clearing the referrals with the agency head, the General Counsel of the agency or any other individual in the agency.

SECTION 5. REPORTS

Section 5 provides for semiannual and other reports to be made by Inspectors and Auditors General to agency heads and to the Congress.

Subsection (a) requires each Inspector and Auditor General to make semiannual reports summarizing the activities of the Office which (1) describe significant problems, abuses and deficiencies in agency operations and programs disclosed by the activities of the Office, (2) recommend corrective action with respect thereto, (3) identify significant recommendations described in previous semiannual reports on which corrective action has not been completed, (4) summarize matters referred to prosecutive authorities and convictions resulting therefrom, (5) summarize each report made to his agency head dealing with significant problems, abuses or deficiencies, and (6) list each audit report completed by the Office during the reporting period.

By using the word "summary" in subsection (a) (4), the committee intends that Congress would be given an overview of those matters which have been referred to prosecutive authorities. It would be sufficient, for instance, for an Inspector and Auditor General at HUD to include in his report the fact that he had referred 230 cases of fraud in FHA programs to the Justice Department for further investigation and prosecution. It would be highly improper and often a violation of due process for an Inspector and Auditor General's report to list the names of those under investigation or to describe them with sufficient precision to enable the identities of the targets to be easily ascertained. However, once prosecutions and convictions have resulted, the Inspector and Auditor General could certainly list those cases, if he deems such a listing appropriate.

Subsection (b) provides for the semiannual report of the Inspector and Auditor General to be transmitted by the agency head to the appropriate committee or subcommittees of Congress within 30 days after his receipt of the report. The agency head may, along with the semiannual report, submit a report containing any comments he deems appropriate.

The purpose of this section is to ensure that the Congress is promptly apprised of the Inspector and Auditor General's findings with respect
to economy and efficiency in the administration of agency programs and with respect to fraud and abuse in those programs. The Inspector and Auditor General is intended to perform a unique function. In conducting his audits and investigations and in making his reports and recommendations to the head of the agency, he acts in part as an executive official in aid of the agency head’s duty to execute the laws enacted by the Congress.

However, in carrying out his mandate, the Inspector and Auditor General may also discover information which reflects adversely on high agency officials, including the agency head. For this reason, this provision contemplates that the Inspector and Auditor General’s reports will ordinarily be transmitted to Congress by the agency head without alteration or deletion. This requirement is fundamental to the legislation; it provides the foundation of the Inspector and Auditor General’s independence.

The committee intends to confer upon the Inspector and Auditor General a unique status within the executive branch. In the absence of specific legislation on the issue, the committee recognizes that the head of a department or agency has the right to screen all communications before transmittal from the agency to Congress or elsewhere, 5 U.S.C. § 301; *Touhy v. Ragen*, 340 U.S. 462 (1950). This is a corollary to the President’s responsibilities for running the Executive Branch of the government.

However, it is clear that Congress can assign certain responsibilities to subordinate officials of government and require their performance. In *Kendall v. U.S. ex rel Stokes*, 37 U.S. 524 (1838), the Supreme Court wrote:

> The executive power is vested in the President, and as far as his powers are derived from the Constitution, he is beyond the reach of any other department... but it by no means follows that every officer in every branch of that department is under the exclusive direction of the President.

> [There are] certain political duties imposed upon many officers in the Executive Department the discharge of which is under the direction of the President, but it would be an alarming doctrine that Congress cannot impose upon any executive officer any duty they may think proper which is not repugnant to any right secured and protected by the Constitution; and in such cases, the duty and responsibility grow out of and are subject to control of the law and not to the direction of the President.⁴

Of course, nothing in this section authorizes or permits an Inspector and Auditor General to disregard the obligations of law which fall upon all citizens and with special force upon Government officials. The Justice Department has expressed concern that since an Inspector and Auditor General is to report on matters involving possible violations of criminal law, his report might contain information relating to the identity of informants, the privacy interest of people under investigations, or other matters which would impede law enforcement.

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investigations. As noted above, the committee does not envision that a report by the Inspector and Auditor General would contain this degree of specificity. In any event, however, the intent of the legislation is that the Inspector and Auditor General in preparing his reports, must observe the requirements of law which exist today under common law, statutes, and the Constitution, with respect to law enforcement investigations. Similarly the Inspector and Auditor General must adhere to statutes such as 26 U.S.C. § 6013, dealing with tax returns, or Federal Rule of Criminal Procedure 6(e), dealing with grand jury information, which prohibit disclosure even to Congress. The inclusion of such information in an Inspector and Auditor General report could subject the Inspector and Auditor General to legal sanction.

The committee recognizes, however, that in rare circumstances the Inspector and Auditor General, through inadvertence or design, may include in his report materials of this sort which should not be disclosed even to the Congress. The inclusion of such materials in an Inspector and Auditor General's report may put a conscientious agency head in a serious bind. The obligation of an agency head is to help the President: "faithfully execute the laws." Faithful execution of this legislation entails the timely transmittal, without alteration or deletion, of an Inspector General's report to Congress. However, a conflict of responsibilities may arise when the agency head concludes that the Inspector and Auditor General's report contains material, disclosure of which is improper under the law. In this kind of rare case, section 5(b) is not intended to prohibit the agency head from deleting the materials in question.

In addition, the committee is aware that the Supreme Court has, in certain contexts, recognized the President’s constitutional privilege for confidential communications or for information related to the national security, diplomatic affairs, and military secrets. (Nixon v. General Services Administration, 433 U.S. 425, (1977); United States v. Nixon, 418 U.S. 683 (1974)). Insofar as this privilege is constitutionally based, the committee recognizes that subsection 5(b) cannot override it. In view of the uncertain nature of the law in this area, the committee intends that subsection 5(b) will neither accept nor reject any particular view of Presidential privilege but only preserve for the President the opportunity to assert privilege where he deems it necessary. The committee intends that these questions should be left for resolution on a case-by-case basis as they arise in the course of implementing this legislation.

In the rare cases in which alterations or deletions have been made, the committee envisions that an agency head’s comments on an Inspector and Auditor General’s report would indicate to the Congress that alterations or deletions had been made, give a description of the materials altered or deleted, and the reasons therefore. In this manner, the appropriate subcommittees and committees could pursue the matter in whichever way would best serve the responsibilities of the Congress.

Subsection (c) requires each agency head to make copies of each Inspector and Auditor General’s semiannual report available to the
public, at a reasonable cost, within 60 days of the transmission of such report.

Subsection (d) requires each Inspector and Auditor General to report immediately to the agency head whenever he becomes aware of particularly flagrant problems and abuses or deficiencies in agency programs and operations.

The agency head is required to transmit the report, within seven calendar days, to the appropriate committees or subcommittees of Congress, along with whatever comments the agency head wishes to append.

In this provision, the committee follows the approach taken in the earlier HEW and Energy Inspector General legislation. The provision obligates the Inspector and Auditor General to take steps which will result in the prompt notification of Congress if the Inspector and Auditor General becomes aware of particularly serious or flagrant problems, abuses or deficiencies relating to the administration of programs or operation of the department. The judgment of what constitutes a serious or flagrant problem is to be made by the Inspector and Auditor General, and not by the agency head.

In the earlier HEW and Energy legislation, the Inspector General was to give notice to the head of the establishment and then, within a certain period of time, notify the Congress. This legislation takes a different approach to the transmittal of reports generally and therefore, even when a serious or flagrant problem is involved, the committee requires that notification or a report would go first to the agency head and agency head would transmit the report to Congress within seven calendar days. Again, as in subsection (b), the agency head has no general authority or right to delete or alter certain provisions of the report.

SECTION 6. AUTHORITY; ADMINISTRATIVE PROVISIONS

Subsection (a) authorizes each Inspector and Auditor General (1) to have access to all records, reports, audits, documents, recommendations and other relevant materials available to his agency, relating to programs and operations for which his Office has responsibilities, (2) to make such investigations and reports relative to his agency's programs and operations as he deems necessary or desirable, (3) to request necessary information or assistance from Federal, State or local governmental agencies or units, (4) to subpoena such materials as he deems necessary to carry out his duties and responsibilities and enforce such subpoenas in the United States District Courts (subpoenas may not be used to obtain information from other Federal agencies), (5) to have direct and prompt access to his agency head when necessary to carry out his responsibilities, (6) to select, appoint and employ necessary personnel, subject to civil service laws and regulations, (7) to employ experts and consultants and (8) to contract for audits, studies and other services necessary to carry out the provisions of the Act.

Access to all relevant documents available to the applicable establishment relating to programs and operations for which the Inspector and Auditor General has responsibilities is obviously crucial. The committee intends this subsection to be a broad mandate permitting
the Inspector and Auditor General the access he needs to do an effective job, subject, of course, to the provisions of other statutes, such as the Privacy Act. For example, in the case of the Defense Department, the Inspector and Auditor General would have access to the inspection reports of the various arms services, access which has been denied in the past to the Defense Audit Service.

The Inspector and Auditor General would also have access to confidential interagency memoranda. The fact that such memoranda might be exempt from disclosure to the public under the Freedom of Information Act is irrelevant.

Subpoena power is absolutely essential to the discharge of the Inspector and Auditor General’s functions. There are literally thousands of institutions in the country which are somehow involved in the receipt of funds from Federal programs. Without the power necessary to conduct a comprehensive audit of these entities, the Inspector and Auditor General could have no serious impact on the way federal funds are expended. As noted in section 3, the agency head has no authority to interfere with the Inspector and Auditor General’s decisions concerning subpoenas.

The committee does not believe that the Inspector and Auditor General will have to resort very often to the use of subpoenas. There are substantial incentives for institutions that are involved with the Federal Government to comply with requests by an Inspector and Auditor General. In any case, however, knowing that the Inspector and Auditor General has recourse to subpoena power should encourage prompt and thorough cooperation with his audits and investigations.

The committee intends, of course, that the Inspector and Auditor General will use this subpoena power in the performance of his statutory functions. The use of subpoena power to obtain information for another agency component which does not have such power would clearly be improper.7

Paragraph (6) gives the Inspector and Auditor General the authority to employ those officers and employees necessary to carry out his functions. The committee believes that the Inspector and Auditor General should have broad authority to structure the operation of his office as he deems fit. The House-passed legislation required a presidentially appointed Deputy Inspector General in the five largest departments and mandated the appointment of an Assistant Inspector General for Auditing and an Assistant Inspector General for Investigations. The committee agrees with OMB on this point that it is unnecessary to have two Presidential appointments in the Office of Inspector and Auditor General and that an Inspector and Auditor General should be left free to determine whether he wants to separate the audit and investigation divisions of his office and place each under a separate assistant. In all likelihood, most Inspector and Auditors General will find such.

7 The committee recognizes that there is a substantial ongoing dispute about the propriety of so-called third party subpoenas; i.e., subpoenaing records of an individual which are in the hands of an institution, such as a bank. Since U.S. v. Miller, 425 U.S. 435 (1976), individuals have been regarded as having no protectable right of property with respect to their bank records. A law enforcement agency can obtain such records from a bank without any showing of cause to a neutral magistrate or any notice to the individual involved.

7 The committee notes that progress has been made on legislation concerning financial privacy which would require notice to be given to an individual whose bank records are being obtained by a law enforcement agency. Hopefully, this progress will lead to legislation of general applicability to all law enforcement authorities, including Inspector and Auditor Generals.
Paragraphs (6), (7) and (8), taken together, give the Inspector and Auditor General substantial autonomy in carrying out his operations, subject, of course, to the limits imposed by appropriations. The committee is aware that in most cases the authority to select and appoint officers and employees, obtain services from consultants and enter into outside contracts rests with the agency head and is delegated as appropriate to subordinate officials. However, because of the unique function of the Inspector and Auditor General and the possibility that such authority might be denied to him, in order to hamper his operations, the committee has given him explicit authority to carry out these functions.

Subsection (b) requires (1) Federal agencies to furnish information and assistance requested by Inspectors and Auditors General, insofar as is practicable and not in contravention of existing statutory restrictions, or regulations of such agencies, and (2) each Inspector and Auditor General to report the circumstances to his agency head without delay, whenever requested information or assistance is, in the judgment of such Inspector and Auditor General, unreasonably refused or not provided. The committee believes that such denials are extremely serious. A listing of any that occur must be included in the semiannual report.

Subsection (c) requires each agency head to furnish the Office of Inspector and Auditor General suitable office space and supporting services and equipment.

SECTION 7. EMPLOYEE COMPLAINTS

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

The committee has refrained from specifically requiring that an Inspector and Auditor General must investigate each and every employee complaint on these issues. The Inspector and Auditor General has an extremely broad mandate to carry out and must administer an office with literally hundreds of auditors and investigators. The Inspector and Auditor General should design systems intended to prevent fraud, waste and mismanagement rather than simply detect them after the fact. It is also difficult to anticipate the number of employee complaints which an Inspector and Auditor General will actually receive. For all of these reasons, the committee believes it unwise to tie the Inspector and Auditor General’s hands with specific requirements to investigate employee complaints within a time certain.

Nonetheless, the committee believes that the Inspector and Auditor General should handle employee complaints seriously and systematically. Because of the employee’s position within the agency, employee complaints carry with them a high likelihood of reliability. Because it is never easy to “blow the whistle” on one’s supervisors or colleagues,
the situation may often be serious. Additionally, the committee believes that most employees would much prefer an effective channel inside the agency to pursue complaints rather than seeking recourse or publicity outside the agency. This preference should be encouraged.

For all these reasons, the employees of an establishment can be valuable sources of information about fraud, waste, and mismanagement within the agency. The agency and the taxpayers benefit if the Inspector and Auditor General creates a climate whereby agency employees know that their complaints will be taken seriously. Subsections (b) and (c), which mandate that the complaining employee's identity be kept confidential and that employees be protected from reprisal, can help create a positive atmosphere, but ultimately only the Inspector and Auditor General (and the agency head) can insure that significant employee complaints are acted upon.

The committee believes that the Inspector and Auditor General can take several steps to create this positive climate: establish procedures for the prompt review of employee complaints to weed out frivolous complaints; identify and refer properly to the agency head those complaints which are serious but fall outside the scope of the Inspector and Auditor General's mandate; and, perhaps most importantly, provide some form of continuing notification to the employee concerning the progress and disposition of the complaint.

In S. 2640, the Civil Service Reform Act of 1978, the committee demonstrated its concern for an effective internal channel for receiving and investigating employee complaints. In S. 2640, the committee provided that if an employee complaint is brought to the Special Counsel, the Special Counsel should, in addition to safeguarding the employee from prohibited personnel practices, refer the complaint to the agency head for investigation of the merits. Consequently, the Inspector and Auditor General may be receiving not only complaints coming directly from the employees but also those which come indirectly from the Special Counsel via the agency head. S. 2640 also requires the agency head (or his delegate, the Inspector and Auditor General) to provide to the Special Counsel a summary of his activities concerning complaints referred by the Special Counsel. The summary should be in as much detail as possible so that the Special Counsel can inform an employee about the disposition of his complaint.

Subsection (b) protects the complaining employee by providing that the Inspector and Auditor General may not disclose the complainant's identity unless the Inspector and Auditor General determines that such disclosure is unavoidable. This protection parallels the protection which the committee gave to employees who bring complaints to the Special Counsel (See S. 2640, section 1206(c) (1)). To paraphrase the committee's observations there:

Protection of the complainant's identity is essential not only to prevent retaliation against the employee, but to assure a free flow of information to the (Inspector and Auditor General) . . . It is expected the disclosure of a complainant's identity will be necessary only in the rarest of circumstances. (S. Rept. 95-969, at 33)

Subsection (c) protects the career employee from reprisals by his supervisors for bringing a complaint to the Inspector and Auditor
General unless the complaint was made with knowledge that it was false or with willful disregard for its truth or falsity. The committee believes that the protections from reprisal for complaining employees who go to the Inspector and Auditor General must be close to absolute. The protections offered in this subsection are broader than those granted in S. 2640 which protects employees not only from bringing complaints internally but also from going public with them. For instance, while an employee under S. 2640 would be protected from reprisal if he went public with a charge of a "substantial and specific danger to the public health and safety" employees who came to the Inspector and Auditor General with a more generalized concern about the public health and safety would also be protected from reprisal.

SECTION 8. SPECIAL PROVISIONS FOR THE DEPARTMENT OF DEFENSE

Subsection (a) requires the head of any Department of Defense office, agency or organization which conducts audits and investigations and is not otherwise transferred to the Office of Inspector and Auditor General by this act, to provide, upon the request of such Inspector and Auditor General, any audit or investigative assistance which he determines to be necessary in carrying out his responsibilities.

This subsection enables the Inspector and Auditor General to request and get the assistance of the audit and investigative resources of the armed services, which are formidable. Because the traditionally autonomy of the audit and investigative branches of the services from the Office of Secretary of Defense, the committee does not believe there will be many requests for this assistance. The Inspector and Auditor General of the Defense Department will be working primarily with his own in-house resources. However, if the need for assistance from the armed services should become apparent to the Inspector and Auditor General, subsection (a) requires the cooperation of the services.

Subsection (b) exempts the audits and investigations conducted by or under the direction of the Inspector and Auditor General of the Department of Defense from the Posse Comitatus Act (18 U.S.C. 1385).

The Posse Comitatus Act, which became law after the Civil War, makes criminal the use of any part of the Army or Air Force as a posse comitatus to execute the laws. The statute also applies, by regulation, to the Navy and Marines. It was intended to prevent the use of soldiers or the military to enforce civil law. While it seems unlikely that this statute could have any impact on the use of military personnel to audit or investigate procurement fraud, the case law is ambiguous, and for that reason the committee has made it clear that the statute would not prohibit the use of military personnel to assist the Inspector and Auditor General in his auditing or investigating work. The committee envisions that once a matter has been referred to the Justice Department for investigation and prosecution, investigators employed by the Defense Investigative Service or by the armed services could cooperate with the Justice Department in preparing a case for prosecution. The expertise of these investigators in the complex areas of military procurement could well be vital.

Subsection (c) authorizes the Secretary of Defense to delete specific information from the semiannual reports of the Department of De-
fense Inspector and Auditor General, prior to transmittal to the Con-
gress, if the Secretary determines that any such report contains spe-
cific information critical to the national security, and a disclosure of
such information would jeopardize the national security. If the Sec-
retary deletes any information from such reports, he must, within
seven calendar days of submission to the Congress, provide the chair-
man and ranking minority members of the Senate and House Armed
Services Committees with a general description of the nature of the
information deleted.

Subsection (c) carves out an exception for the Defense Department
from the general rule that semi-annual reports of the Inspector and
Auditor General go to Congress without deletion or alteration by the
agency head, and that the contents of these reports are public. While
the committee anticipates that the bulk of a report by the Inspector
and Auditor General of DOD would not concern national security or
classified matters, the committee recognizes that some of the issues
which an Inspector and Auditor General might discuss would be sensi-
tive security matters.

The authority to delete information the disclosure of which could
be critical to the national security does not give the Secretary of De-
fense a broad mandate to make any and all deletions which he deems
appropriate or desirable. A report concerning extensive cost overruns,
or fraud in procurement of Defense Department materials, or high-
level conflicts of interest in the Department might be embarrassing to
DOD but would certainly not be the kind of material which could be
deleted from a semi-annual report. At the same time, the committee be-
lieves that information concerning the combat readiness of troops or
the effectiveness of a missile system would be vital to the national
security. Such information may well come to light in the press or
through subsequent congressional hearings. However, this process
would take whatever course it presently does, with the information
being brought out by enterprising reporters, concerned Members of
Congress or executive branch officials. It would not be made public in
the semiannual report of the Inspector and Auditor General.

Obviously, information of this sort must be brought to the attention
of the relevant committees of Congress. The Secretary of Defense may
delete information he deems critical to the national security from the
semi-annual report, but the committee can conceive of no situation
where the nature of the deleted material should not be communicated
to the appropriate committee of Congress.

SECTION 9. TRANSFER OF FUNCTIONS

Subsection (a) transfers to each Office of Inspector and Auditor
General in each of the 13 agencies covered, the existing audit and in-
vestigative units within that agency, and authorizes each agency head
to transfer such additional units, functions, powers and duties to the
new Office, which he determines are properly related to the functions
of that Office, and which would further the purposes of the Act. In
order to prevent compromising the independence and objectivity of
the Offices of Inspector and Auditor General, transfer of program
operating responsibilities is prohibited.
With respect to the Department of Defense, the committee recognizes there are no discrete units in the Defense Investigative Service (DIS) which handle procurement matters or other fraud investigations. Rather, DIS personnel simply handle whatever matters arise in the regional offices where they are stationed. The committee believes, however, that DOD can make an assessment of what percentage of DIS time is spent on the kind of investigations covered by the legislation and transfer the requisite personnel.

The Department of Transportation has expressed its opposition to the decision to consolidate the auditing and investigating units now found in the various modal administrations of DOT into the office of Inspector and Auditor General.

The committee recognizes that the various modes in DOT have unique independence growing directly from the Department of Transportation Act and the statutes creating the Federal Aviation Administration, Federal Highway Administration, and Urban Mass Transit Administration. However, the committee does not believe that the current arrangements—a proliferation of 116 audit and investigative units with audit units working for the program administrators whose programs they purport to audit—is a satisfactory arrangement. The committee believes that the effort to consolidate responsibility for auditing and investigation in an independent individual would be undermined if there was not one Inspector and Auditor General in the Transportation Department with overall accountability for all auditing and investigative work.

At the same time, the committee believes that the legislation permits the new Inspector and Auditor General substantial latitude in deploying his audit and investigative resources. If an Inspector and Auditor General believes that he should have separate units of audit for the different modes, he could do so, as long as the reporting obligations ran, not to the line officials, but to the Secretary of Transportation. While program administrators could not prohibit or prevent an Inspector and Auditor General from doing those audits and investigations which he deemed necessary, nothing would foreclose arrangements to expedite audits and investigations in areas where the program managers have particular concerns. Similarly, there is no requirement that all the audit or investigative resources must be stationed in Washington.

Subsection (b) transfers the personnel, assets, liabilities, contracts, records and unexpended balances of appropriations to the applicable Office of Inspector and Auditor General from the units transferred.

Subsections (c) and (d) provide protection for the personnel transferred to the new Offices from the units transferred against adverse effect, including reductions in grade. In addition, they provide for the lapsing of any unit within an agency all of the functions, powers and duties which have been transferred to the new Offices.

SECTION 10. CONFORMING AND TECHNICAL AMENDMENTS

Subsection (a) amends the Executive Schedule (5 U.S.C. 5315) by providing for the appointments at level IV ($50,000 per annum) of the Inspectors and Auditors General in the Departments of Agricul-
ture, Defense, Housing and Urban Development, Labor, Transportation and the Veterans Administration. The Inspector General of the Department of Health, Education, and Welfare, established by Public Law 94-505 at level IV, has been added as a conforming amendment.

Subsection (b) amends the Executive Schedule (5 U.S.C. 5316) by providing for the appointments at level V ($47,500 per annum) of the Inspectors and Auditors General of the Departments of Commerce and Interior, and the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration and the Small Business Administration. The Deputy Inspector General of the Department of Health, Education and Welfare, established by Public Law 94-505 at level V, has been added as a conforming amendment.

Subsection (c) is a technical amendment correcting a misnumbering of sections in Public Law 94–505 which established the offices of Inspector and Deputy Inspector General in the Department of Health, Education and Welfare.

SECTION 11. DEFINITIONS

Section 11 defines the terms used in H.R. 8588. The terms defined are: (1) "audit"; (2) "investigation"; (3) "head of the establishment"; (4) "establishment"; (5) "Inspector and Auditor General"; (6) "Office" and (7) "Federal agency."

SECTION 12. EFFECTIVE DATE

Section 12 provides an effective date of October 1, 1978.

VIII. ESTIMATED COSTS

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,

Hon. Abraham Ribicoff,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 8588, the Inspector and Auditor General Act of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE


3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, July 27, 1978.
4. Bill purpose: The purpose of this legislation is to establish an Office of Inspector and Auditor General within 13 agencies of the Government to more efficiently and economically conduct audits and investigations to prevent and detect fraud and abuse. Each office is to report to the head of the particular agency and the Congress identifying any significant problems, abuses and deficiencies detected, including recommendations for corrective action made by the Office and a description of progress made in the implementation of such actions.

5. Cost estimate:
Estimated costs:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>$2.0</td>
</tr>
<tr>
<td>1980</td>
<td>2.1</td>
</tr>
<tr>
<td>1981</td>
<td>2.2</td>
</tr>
<tr>
<td>1982</td>
<td>2.4</td>
</tr>
<tr>
<td>1983</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Several of the agencies included in the bill have estimated that in order to carry out the provisions of this act, additional auditors and inspectors will be required. The cost of such additional staff is not included in this estimate. In addition, there may be savings and/or efficiencies as a result of the improved auditing and investigations capability stemming from this bill. These are also not included in this estimate.

6. Basis of estimate: The effective date of this legislation, as specified in section 12, is October 1, 1978. The estimated additional costs associated with this legislation are based on the assumption that each position being added to the executive schedule will be at the full salary—$50,000 each for the Level IV Inspector General and Inspector and Auditor General positions and $47,500 each for the Level V Inspector General, and Inspector and Auditor General, and Deputy Inspector General positions. In those agencies where there is only one office being transferred to the Inspector and Auditor General’s office, the cost of an additional Assistant Inspector and Auditor General has been included, based on an annual salary of $47,500. Additionally, the salary of a secretary for each new position has been included in the estimate, along with 25 percent of the base salaries for benefits and overhead. To comply with the annual reporting requirements of this act, it has been estimated that, on average, an additional $20,000 will be spent each year by each agency. All costs have been inflated over the projection period.

7. Estimate comparison: None.

8. Previous CBO estimate: A previous cost estimate for H.R. 8588 was submitted to the House Committee on Government Operations on August 3, 1977, assuming an effective date of October 1, 1977. Another cost estimate was submitted to the same committee on March 9, 1978, for the bill ordered reported, which assumed an effective date of July 1, 1978. This estimate reflects an effective date of October 1, 1978, as specified in the bill.


10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.
IX. ROLLCALL VOTES IN COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, the rollcall votes taken during committee consideration of this legislation was as follows:

Final Passage: 9 Ordered Reported 9 yeas—0 nays

YEAS
Muskie
Eagleton
Chiles
Glenn
Sasser
Ribicoff
Percy
Danforth
Heinz
(Proxy)
Humphrey

X. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART III—EMPLOYEES

Subpart D—Pay and Allowances

CHAPTER 53—PAY RATES AND SYSTEMS

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

9 Committee rules provide that on "Final Passage" proxies may be allowed solely for the purpose of recording a member's position on the pending question.
(1) Administrator, Bureau of Security and Consular Affairs, Department of State.

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

(1) Administrator, Agricultural Marketing Services, Department of Agriculture.

(144) Deputy Inspector General, Department of Health, Education, and Welfare.

(145) Inspector and Auditor General, Department of Commerce.

(146) Inspector and Auditor General, Department of the Interior.

(147) Inspector and Auditor General, Community Services Administration.

(148) Inspector and Auditor General, Environmental Protection Agency.

(149) Inspector and Auditor General, General Services Administration.

(150) Inspector and Auditor General, National Aeronautics and Space Administration.

(151) Inspector and Auditor General, Small Business Administration.

AN ACT To authorize conveyance of the interests of the United States in certain lands in Salt Lake County, Utah, to Shriners' Hospitals for Crippled Children, a Colorado corporation

OFFICERS

SEC. 202. (a) * * *
(e) The 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 the functions, powers, and duties transferred by section 206(a)(1), and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 206(a)(2).

XI. EVALUATION OF REGULATORY, PAPERWORK, AND PRIVACY IMPACT

In general, enactment of H.R. 8588 will have no regulatory impact on the general public.

This legislation establishes mechanisms and procedures designed to promote economy, efficiency and effectiveness, and to prevent and detect fraud and abuse in programs and operations of 13 Federal departments and agencies. Accordingly, it may be expected to have some impact upon business organizations in the private sector which perform services and furnish supplies to the Federal departments and agencies involved.

The committee has taken special care to insure that enactment of H.R. 8588 will not impact on the personal privacy of individuals affected.

H.R. 8588 is expected to generate some additional paperwork, since it establishes Offices of Inspector and Auditor General in each of 13 departments and agencies, and requires each Inspector and Auditor General to make semiannual and other reports to respective agency heads and to the Congress. However, the costs and paperwork burdens generated by these requirements are expected to be more than offset by improved efficiency and effectiveness and the reduction of fraud and other abuses in programs and operations of the departments and agencies affected.

XII. TEXT OF H.R. 8588 AS REPORTED

AN ACT To reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation, and within the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Inspector and Auditor General Act of 1978".

PURPOSE; ESTABLISHMENT

SEC. 2. 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 Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration;

(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;

thereby is hereby established in each of such establishments an Office of Inspector and Auditor General.

**APPOINTMENT AND REMOVAL OF OFFICERS**

SEC. 3. (a) There shall be at the head of each Office an Inspector and Auditor 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 and Auditor 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 and Auditor 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 and Auditor 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 and Auditor 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.

**DUTIES AND RESPONSIBILITIES**

SEC. 4. (a) It shall be the duty and responsibility of each Inspector and Auditor 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 to the head of the establishment and to the Congress 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 nongovernmental 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 and Auditor General's audit function shall include, but is not limited to—

(1) examinations of financial transactions, accounts, and reports and reviews of compliance with applicable laws and regulations, including sufficient audit work to determine whether—
   (A) the audited entity is maintaining effective control over revenues, expenditures, assets, and liabilities;
   (B) the audited entity is properly accounting for resources, liabilities, and operations;
   (C) the financial reports contain accurate, reliable, and useful financial data and are fairly presented; and
   (D) the entity is complying with the requirements of applicable laws and regulations;

(2) a review of efficiency and economy to determine whether, in carrying out its responsibilities, the audited entity is giving due consideration to economical and efficient management, utilization, and conservation of its resources and to minimum expenditure of effort, including the specification of uneconomical practices or inefficiencies such as—
   (A) procedures, whether officially prescribed or informally established, which are ineffective or more costly than justified;
(B) duplication of effort by employees or between organizational units;
(C) the performance of work which serves little or no useful purposes;
(D) inefficient or uneconomical use of equipment;
(E) overstaffing in relation to the amount of work to be done;
(F) faulty buying practices and accumulation of unneeded or excess quantities of property, materials, or supplies;
(G) inadequate cash management practices; and
(H) wasteful use of resources;
(3) a review of program results, including a consideration of—
(A) whether the program or activity is meeting the objectives established by the Congress or the establishment;
(B) whether the establishment has considered alternatives to achieve desired results at a lower cost;
(C) the relevance and validity of the criteria used by the audited entity to judge effectiveness in achieving program results;
(D) the appropriateness of the methods followed by the entity to evaluate effectiveness in achieving program results;
(E) the accuracy of the data accumulated; and
(F) the reliability of the results obtained.
(c) In carrying out the responsibilities specified in subsection (a)
(1), each Inspector and Auditor General shall—
(1) comply with standards established by the Comptroller General of the United States for audits of Federal establish-
ments, organizations, programs, activities, and functions;
(2) establish guidelines for determining when it shall be ap-
propriate 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).
(d) In carrying out the duties and responsibilities established under this Act, each Inspector and Auditor 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 co-
ordination and cooperation.
(e) In carrying out the duties and responsibilities established under this Act, each Inspector and Auditor General shall report expedi-
tiously to the Attorney General whenever the Inspector and Auditor General has reasonable grounds to believe there has been a violation of Federal criminal law.

REPORTS

Sec. 5. (a) Each Inspector and Auditor 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 pre-
ceding 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 deficien-
cies relating to the administration of programs and operations of
such establishment disclosed by such activities during the report-
ing 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 de-
scribed 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 estab-
ishment under section 5(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 and Auditor 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 and Auditor 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 and Auditor General shall report immediately
to the head of the establishment involved whenever the Inspector and
Auditor General becomes aware of particularly serious or flagrant
problems, abuses, or deficiencies relating to the administration of pro-
gram s and operations of such establishment. The head of the estab-
ishment shall transmit any such report to the appropriate commit-
tees or subcommittees of Congress within seven calendar days, to-
gether with a report by the head of the establishment containing any
comments such head deems appropriate.

AUTHORITY; ADMINISTRATION PROVISIONS

Sec. 6. (a) In addition to the authority otherwise provided by this
Act, each Inspector and Auditor General, in carrying out the provi-
sions of this Act, is authorized—
(1) to have access to all records, reports, audits, reviews, docu-
ments, papers, recommendations, or other material available to
the applicable establishment which relate to programs and opera-
tions with respect to which that Inspector and Auditor General
has responsibilities under this Act;
(2) to make such investigations and reports relating to the ad-
ministration of the programs and operations of the applicable
establishment as are, in the judgment of the Inspector and Auditor
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 and Auditor 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 and Auditor 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 and Auditor 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 and Auditor General, unreasonably refused or not provided, the Inspector and Auditor 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.
EMPLOYEE COMPLAINTS

SEC. 7. (a) The Inspector and Auditor 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 and Auditor 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 and Auditor 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 and Auditor 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.

SPECIAL PROVISIONS FOR THE DEPARTMENT OF DEFENSE

SEC. 8. (a) The head of any office, agency, or organization within the Department of Defense which conducts audits and investigations and are not otherwise transferred to the Office of Inspector and Auditor General of the Department of Defense by this Act shall, upon the request of the Inspector and Auditor General of the Department of Defense, provide any audit or investigative assistance which such Inspector and Auditor General determines to be necessary in order to carry out his responsibilities and to fulfill the purposes of this Act.

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

(c) (1) If after review of the semiannual reports of the Inspector and Auditor General of the Department of Defense, the Secretary of Defense determines that—

(A) any such report contains specific information critical to the national security; and

(B) disclosure of such information would jeopardize the national security;

the Secretary of Defense may delete the specific information from the report prior to transmittal of such report to the Congress.

(2) If the Secretary of Defense deletes any information from a report of the Inspector and Auditor General of the Department of Defense under paragraph (1), the Secretary of Defense shall, within seven calendar days of the submission of such report to the Congress, provide the chairman and ranking minority members of the House and Senate Armed Services Committees with a general description of the nature of the information deleted.
Sec. 9. (a) There shall be transferred—
(1) to the Office of Inspector and Auditor 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 al-
leged criminal violations and program abuse;
   (C) of the Department of Defense, the offices of that de-
partment referred to as the "Defense Audit Service", the
and that portion of the office referred to as the "Defense
Investigative Service" which has responsibility for investiga-
tion of alleged criminal violations and program abuse;
   (D) of the Department of Housing and Urban Devel-
oment, the office of that department referred to as the "Office
of Inspector General";
   (E) of the Department of the Interior, the office of that
department referred to as the "Office of Audit and
Investigation";
   (F) of the Department of Labor, the office of that depart-
ment referred to as the "Office of Special Investigations";
   (G) 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 "Office of Program Review
and Investigation, Federal Highway Administration", and
the "Office of Program Audit, Urban Mass Transportation
Administration";
   (H) 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";
   (I) of the Environmental Protection Agency, the offices
of that agency referred to as the "Office of Audit" and the
"Security and Inspection Division";
   (J) of the General Services Administration, the offices of
that agency referred to as the "Office of Audits" and the
"Office of Investigations";
   (K) of the National Aeronautics and Space Administra-
tion, the offices of that agency referred to as the "Management
Audit Office" and the "Office of Inspections and
Security";
(L) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

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

(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 and Auditor 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 and Auditor 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, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector and Auditor 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.

CONFORMING AND TECHNICAL AMENDMENTS

Sec. 10. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:


"(123) Inspector and Auditor General, Department of Agriculture.

"(124) Inspector and Auditor General, Department of Housing and Urban Development.

"(125) Inspector and Auditor General, Department of Labor.

"(126) Inspector and Auditor General, Department of Transportation.

"(127) Inspector and Auditor General, Veterans' Administration.

"(128) Inspector and Auditor General, Department of Defense."
Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:


"(145) Inspector and Auditor General, Department of Commerce.

"(146) Inspector and Auditor General, Department of the Interior.

"(147) Inspector and Auditor General, Community Services Administration.

"(148) Inspector and Auditor General, Environmental Protection Agency.

"(149) Inspector and Auditor General, General Services Administration.

"(150) Inspector and Auditor General, National Aeronautics and Space Administration.

"(151) Inspector and Auditor General, Small Business Administration.

Section 202(e) of the Act of October 15, 1976 (Public Law 94-505, 42 U.S.C. 3522), is amended by striking out "section 6(a) (1)" and "section 6(a) (2)" and inserting in lieu thereof "section 206(a) (1)" and "section 206(a) (2)", respectively.

DEFINITIONS

Sec. 11. As used in this Act—

(1) the term "audit" means work done (A) to examine financial reports and to review compliance with applicable laws and regulations; (B) to review efficiency and economy of operations; and (C) to review effectiveness in the achievement of program results; and

(2) the term "investigation" means inquiries and examinations made to detect, or in response to allegations of, irregularities or violations of law, including misconduct, malfeasance, misfeasance, nonfeasance, fraud, or criminal activity on the part of any employee, person, or firm directly or indirectly connected with the establishment, or operations financed by the establishment;

(3) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Housing and Urban Development, the Interior, Labor, or Transportation or the Administrator of Community Services, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs, as the case may be;

(4) the term "establishment" means the Department of Agriculture, Commerce, Defense, Housing and Urban Development, the Interior, Labor, or Transportation or the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, or the Veterans' Administration, as the case may be;
(5) the term "Inspector General" means the Inspector General of an establishment;
(6) the term "Office" means the Office of Inspector and Auditor General of an establishment; and
(7) 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.

EFFECTIVE DATE

SEC. 12. The provisions of this Act and the amendments made by this Act shall take effect October 1, 1978.

Amend the title so as to read:

An Act to reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within the Department of Agriculture, Commerce, Defense, Housing and Urban Development, the Interior, Labor, and Transportation, and within the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration, and for other purposes.

Passed the House of Representatives, April 18, 1978.

Attest:

EDMUND L. HENSHAW, JR.,
Clerk.