

IG SUBPOENA AUTHORITY ACT

JUNE 29, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 4917]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4917) to amend the Inspector General Act of 1978 to provide testimonial subpoena authority, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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SUMMARY AND PURPOSE OF LEGISLATION

H.R. 4917, the Inspector General Subpoena Authority Act, enhances the ability of inspectors general to identify waste, fraud,

abuse, and mismanagement in the Executive Branch. The bill authorizes inspectors general to issue testimonial subpoenas for contractors, grant recipients, and former federal employees, as necessary to perform the functions required by the Inspector General Act of 1978.<sup>1</sup>

#### BACKGROUND AND NEED FOR LEGISLATION

The *Inspector General Act of 1978* (the *Inspector General Act*) established inspectors general to promote economy, efficiency, and effectiveness within Executive Branch departments and agencies.<sup>2</sup> The role of an inspector general is to make recommendations based on independent and objective audits, evaluations, and investigations of the agency. Inspectors general promote good stewardship of taxpayer dollars and improve the effectiveness of government. Their recommendations often involve practical methods to reduce agency waste and mismanagement, while improving operations. During fiscal year (FY) 2016, the 73 Offices of Inspector General (OIGs) made recommendations with potential cost savings totaling \$45.1 billion.<sup>3</sup> Compared to the total OIG community's FY 2016 budget of \$2.7 billion, the potential savings represent a return of approximately \$17 on every dollar invested in the OIGs.<sup>4</sup>

During a hearing before the Committee in November 2017, multiple inspectors general testified on issues and challenges the broader inspector general community faces while fulfilling their role under the *Inspector General Act*. Peace Corps Inspector General Kathy Buller, who serves as Chair of the Legislative Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), testified about CIGIE's top legislative priorities.<sup>5</sup> Among those was legislation to authorize testimonial subpoenas for inspectors general.

Federal employees are obligated to provide testimony and fully cooperate with inspector general audits, investigations, and other reviews. During the November 2017 hearing, all three inspectors general described situations in which the inability to compel testimony from certain witnesses severely hampered their work.<sup>6</sup> In some cases, federal employees simply resigned rather than cooperate with the IG.<sup>7</sup> For example, Department of Justice Inspector General Michael Horowitz explained his office was unable to obtain important information from former Department of Justice employees in investigations involving allegations of whistleblower retaliation and sexual assault.<sup>8</sup>

H.R. 4917 would enable inspectors general to compel testimony in cases where witnesses refuse to cooperate by authorizing them to issue testimonial subpoenas to contractors, grant recipients, and former federal employees, as necessary, to perform the functions re-

<sup>1</sup> Inspector General Act of 1978, P.L. 95-452, 92 Stat. 1101, *codified as amended at* 5 U.S.C. app §§ 1-13.

<sup>2</sup> *Id.*

<sup>3</sup> Council of the Inspectors Gen. on Integrity & Efficiency, Progress Report to the President, Fiscal Year 2016, *available at* [https://www.ignet.gov/sites/default/files/files/FY16\\_Annual\\_Report\\_to\\_the\\_President\\_and\\_Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY16_Annual_Report_to_the_President_and_Congress.pdf). (last accessed Mar. 1, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Recommendations and Reforms from the Inspectors Generals: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (2017) (written testimony of Kathy Buller).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (written testimony of Michael Horowitz).

quired by the Inspector General Act of 1978. To ensure the new authority is not abused, an inspector general contemplating a testimonial subpoena must undergo a panel review process by three other inspectors general prior to the subpoena's issuance. After the review panel, the requesting inspector general must notify the Attorney General to ensure the subpoena will not interfere with any ongoing Department of Justice investigations.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the previous section.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to provide testimonial subpoena authority to inspectors general.

#### LEGISLATIVE HISTORY

On November 15, 2017, the Committee held a hearing entitled, *Recommendations and Reforms from the Inspectors General*, to examine the implementation of the *Inspector General Empowerment Act of 2016* and ongoing management challenges identified by inspectors general in their respective agencies. During the hearing, Kathy Buller, Inspector General of the Peace Corps and Executive Chair of the CIGIE Legislation Committee, testified on CIGIE's legislative priorities. Specifically, Ms. Buller testified regarding the need for testimonial subpoena authority for inspectors general.

On February 2, 2018, Representative Steve Russell (R-OK) introduced H.R. 4917, the Inspector General Subpoena Authority Act. H.R. 4917 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 4917 at a business meeting on February 6, 2018, and ordered the bill favorably reported by voice vote.

In the 114th Congress, on May 18, 2015, then-Chairman Jason Chaffetz (R-UT) introduced H.R. 2395, the Inspector General Empowerment Act of 2016, with Representative Mark Meadows (R-NC) and Ranking Minority Member Elijah Cummings (D-MD). H.R. 2395 contained a similar provision to H.R. 4917. On May 19, 2015, the Committee ordered H.R. 2395 favorably reported by voice vote and on June 21, 2016, the House passed the bill, as amended, by voice vote.

Also in the 114th Congress, on February 26, 2015, Senator Chuck Grassley (R-IA) introduced S. 579, the Inspector General Empowerment Act of 2015, with Senator Ron Johnson (R-WI), and Senator Claire McCaskill (D-MO). S. 579 contained a similar provision to H.R. 4917. On March 4, 2015, the Senate Committee on Homeland Security and Governmental Affairs ordered S. 579 favorably reported, as amended, by voice vote.

In the 113th Congress, on September 16, 2014, Representative Darrell Issa (R-CA) introduced H.R. 5492, the Inspector General

Empowerment Act of 2014, with Ranking Minority Member Elijah Cummings (D–MD) and Representative Mark Meadows (R–NC). H.R. 5492 contained a provision similar to H.R. 4917. On September 17, 2014, the House Committee on Oversight and Government Reform ordered H.R. 5492 favorably reported, as amended, by voice vote.

#### COMMITTEE CONSIDERATION

On February 6, 2018, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by voice vote.

#### ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 4917.

#### EXPLANATION OF AMENDMENTS

There were no amendments to H.R. 4917 offered or adopted during Committee consideration of the bill.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides testimonial subpoena authority to inspectors general. As such, this bill does not relate to employment or access to public services and accommodations.

#### DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

This bill directs the Chairperson of the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Attorney General, to promulgate regulations to carry out revisions to Sec. 6A of the Inspector General Act of 1978 (5 U.S.C. App.).

#### FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

## UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget and Impoundment Control Act (Pub. L. 113–67) the Committee has included a letter received from the Congressional Budget Office below.

## EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

## COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 1, 2018.*

Hon. TREY GOWDY,  
*Chairman, Committee on Oversight and Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4917, the IG Subpoena Authority Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 4917—IG Subpoena Authority Act*

H.R. 4917 would amend the Inspector General Act of 1978 to expand the subpoena authority of inspectors general at some agencies. The bill also would create a process for a panel of inspectors general to approve specific uses of the subpoena authority and also for the Attorney General to disapprove such uses.

Using information from several agencies, CBO estimates that any budgetary effects from implementing H.R. 4917 would not be significant because the new subpoena authority probably would be used infrequently. Enacting H.R. 4917 could affect direct spending by some agencies because they are authorized to use receipts from the sale of goods, fees, and other collections to cover operating

costs. Therefore, pay-as-you-go procedures apply. Because most agencies can make adjustments to the amounts collected as operating costs change, CBO estimates that any net changes in direct spending by those agencies would be insignificant. Enacting H.R. 4917 would not affect revenues.

CBO estimates that enacting H.R. 4917 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4917 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 establishes the short title of the bill.

##### *Section 2. Additional authority provisions for Inspectors General*

Section 2 amends the *Inspector General Act of 1978* by adding a new section 6A to authorize Inspectors General to subpoena the attendance and testimony of certain witnesses as necessary in carrying out the provisions of the *Inspector General Act*.

The section also creates a panel of three inspectors general selected by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to review and approve any proposed subpoena within a specified timeframe. Following approval from the panel, the issuing inspector general must notify the Attorney General of the subpoena. The Attorney General may object to a subpoena because the subpoena will interfere with an ongoing investigation.

Lastly, the section defines “inspector general,” determines applicability of the provision, and directs the Chairperson of CIGIE to prescribe regulations to carry out the purpose of the section in consultation with the Attorney General.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law 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, and existing law in which no change is proposed is shown in roman):

#### **INSPECTOR GENERAL ACT OF 1978**

\* \* \* \* \*

#### REPORTS

SEC. 5. (a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

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

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

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

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

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

(6) a listing, subdivided according to subject matter, of each audit report, inspection reports, and evaluation reports issued by the Office during the reporting period and for each report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs), for reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the dollar value of recommendations that funds be put to better use by management, for reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report, inspection reports, and evaluation reports issued before the commencement of the reporting period—

- (A) for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;
  - (B) for which no establishment comment was returned within 60 days of providing the report to the establishment; and
  - (C) for which there are any outstanding unimplemented recommendations, including the aggregate potential cost savings of those recommendations.
- (11) a description and explanation of the reasons for any significant revised management decision made during the reporting period;
- (12) information concerning any significant management decision with which the Inspector General is in disagreement;
- (13) the information described under section 804(b) of the Federal Financial Management Improvement Act of 1996;
- (14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or
- (B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;
- (15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete;
- (16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented;
- (17) statistical tables showing—
- (A) the total number of investigative reports issued during the reporting period;
  - (B) the total number of persons referred to the Department of Justice for criminal prosecution during the reporting period;
  - (C) the total number of persons referred to State and local prosecuting authorities for criminal prosecution during the reporting period; and
  - (D) the total number of indictments and criminal informations during the reporting period that resulted from any prior referral to prosecuting authorities;
- (18) a description of the metrics used for developing the data for the statistical tables under paragraph (17);
- (19) a report on each investigation conducted by the Office involving a senior Government employee where allegations of misconduct were substantiated, including a detailed description of—
- (A) the facts and circumstances of the investigation; and



- (B) the status and disposition of the matter, including—
    - (i) if the matter was referred to the Department of Justice, the date of the referral; and
    - (ii) if the Department of Justice declined the referral, the date of the declination;
  - (20) a detailed description of any instance of whistleblower retaliation, including information about the official found to have engaged in retaliation and what, if any, consequences the establishment imposed to hold that official accountable;
  - (21) a detailed description of any attempt by the establishment to interfere with the independence of the Office, including—
    - (A) with budget constraints designed to limit the capabilities of the Office; and
    - (B) incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information, including the justification of the establishment for such action【; and】;
  - (22) detailed descriptions of the particular circumstances of each—
    - (A) inspection, evaluation, and audit conducted by the Office that is closed and was not disclosed to the public; and
    - (B) investigation conducted by the Office involving a senior Government employee that is closed and was not disclosed to the public【.】; and
  - (23) *a description of the use of subpoenas for the attendance and testimony of certain witnesses authorized under section 6A.*
- (b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing—
- (1) any comments such head determines appropriate;
  - (2) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the dollar value of disallowed costs, for reports—
    - (A) for which final action had not been taken by the commencement of the reporting period;
    - (B) on which management decisions were made during the reporting period;
    - (C) for which final action was taken during the reporting period, including—
      - (i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and
      - (ii) the dollar value of disallowed costs that were written off by management; and
    - (D) for which no final action has been taken by the end of the reporting period;
  - (3) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for reports—

- (A) for which final action had not been taken by the commencement of the reporting period;
  - (B) on which management decisions were made during the reporting period;
  - (C) for which final action was taken during the reporting period, including—
    - (i) the dollar value of recommendations that were actually completed; and
    - (ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and
  - (D) for which no final action has been taken by the end of the reporting period; and
- (4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing—
- (A) a list of such audit reports and the date each such report was issued;
  - (B) the dollar value of disallowed costs for each report;
  - (C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and
  - (D) an explanation of the reasons final action has not been taken with respect to each such audit report, except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.
- (c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.
- (d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.
- (e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—
- (A) specifically prohibited from disclosure by any other provision of law;
  - (B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or
  - (C) a part of an ongoing criminal investigation.

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

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986, nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(4) Subject to any other provision of law that would otherwise prohibit disclosure of such information, the information described in paragraph (1) may be provided to any Member of Congress upon request.

(5) An Office may not provide to Congress or the public any information that reveals the personally identifiable information of a whistleblower under this section unless the Office first obtains the consent of the whistleblower.

(f) As used in this section—

(1) the term “questioned cost” means a cost that is questioned by the Office because of—

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term “unsupported cost” means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term “disallowed cost” means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term “recommendation that funds be put to better use” means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term “management decision” means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such

findings and recommendations, including actions concluded to be necessary;

(6) the term “final action” means—

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made; and

(7) the term “senior Government employee” means—

(A) an officer or employee in the executive branch (including a special Government employee as defined in section 202 of title 18, United States Code) who occupies a position classified at or above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and

(B) any commissioned officer in the Armed Forces in pay grades O-6 and above.

\* \* \* \* \*

**SEC. 6A. ADDITIONAL AUTHORITY.**

(a) *TESTIMONIAL SUBPOENA AUTHORITY.*—*In addition to the authority otherwise provided by this Act and in accordance with the requirements of this section, each Inspector General, in carrying out the provisions of this Act (or in the case of an Inspector General or Special Inspector General not established under this Act, the provisions of the authorizing statute), is authorized to require by subpoena the attendance and testimony of witnesses as necessary in the performance of the functions assigned to the Inspector General by this Act (or in the case of an Inspector General or Special Inspector General not established under this Act, the functions assigned by the authorizing statute), which in the case of contumacy or refusal to obey, such subpoena shall be enforceable by order of any appropriate United States district court. An Inspector General may not require by subpoena the attendance and testimony of any current Federal employees, but may use other authorized procedures.*

(b) *NONDELEGATION.*—*The authority to issue a subpoena under subsection (a) may not be delegated.*

(c) *PANEL REVIEW BEFORE ISSUANCE.*—

(1) *APPROVAL REQUIRED.*—

(A) *REQUEST FOR APPROVAL BY SUBPOENA PANEL.*—*Before the issuance of a subpoena described in subsection (a), an Inspector General shall submit a request for approval to issue a subpoena to a panel (in this section, referred to as the “Subpoena Panel”), which shall be comprised of three Inspectors General of the Council of the Inspectors General on Integrity and Efficiency, who shall be designated by the Inspector General serving as Chairperson of the Council.*

(B) *PROTECTION FROM DISCLOSURE.*—*The information contained in the request submitted by an Inspector General under subparagraph (A) and the identification of a witness shall be protected from disclosure to the extent permitted by*

*law. Any request for disclosure of such information shall be submitted to the Inspector General requesting the subpoena.*

**(2) TIME TO RESPOND.—**

*(A) IN GENERAL.—Except as provided in subparagraph (B), the Subpoena Panel shall approve or deny a request for approval to issue a subpoena not later than 10 days after the submission of such request.*

*(B) ADDITIONAL INFORMATION FOR PANEL.—If the Subpoena Panel determines that additional information is necessary to approve or deny such request, the Subpoena Panel shall request such information and shall approve or deny such request not later than 20 days after the submission of such request.*

*(3) DENIAL BY PANEL.—If a majority of the Subpoena Panel denies the approval of a subpoena, that subpoena may not be issued.*

**(d) NOTICE TO ATTORNEY GENERAL.—**

*(1) IN GENERAL.—If the Subpoena Panel approves a subpoena under subsection (c), the Inspector General shall notify the Attorney General that the Inspector General intends to issue the subpoena.*

*(2) DENIAL FOR INTERFERENCE WITH AN ONGOING INVESTIGATION.—Not later than 10 days after the date on which the Attorney General is notified pursuant to paragraph (1), the Attorney General may object to the issuance of the subpoena because the subpoena will interfere with an ongoing investigation and the subpoena may not be issued.*

*(3) ISSUANCE OF SUBPOENA APPROVED.—If the Attorney General does not object to the issuance of the subpoena during the 10-day period described in paragraph (2), the Inspector General may issue the subpoena.*

*(e) REGULATIONS.—The Chairperson of the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Attorney General, shall prescribe regulations to carry out the purposes of this section.*

*(f) INSPECTOR GENERAL DEFINED.—For purposes of this section, the term “Inspector General” includes each Inspector General established under this Act and each Inspector General or Special Inspector General not established under this Act.*

*(g) APPLICABILITY.—The provisions of this section shall not affect the exercise of authority by an Inspector General of testimonial subpoena authority established under another provision of law.*

\* \* \* \* \*

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 12 of this Act, as used in this section—

(1) the term “Federal entity” means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 12(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection, the Board for International Broadcasting, the Committee for Purchase From People Who Are Blind or Severely Disabled, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Defense Intelligence Agency, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Geospatial-Intelligence Agency, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

(3) the term “head of the Federal entity” means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term “head of the designated Federal entity” means the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission, any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board;

(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);

(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

(D) with respect to the Committee for Purchase From People Who Are Blind or Severely Disabled, such term means the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled;

(E) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

(F) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

(G) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

(H) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

(I) with respect to the Peace Corps, such term means the Director of the Peace Corps;

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall 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 investigations. For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.

(d)(1) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. Except as provided in paragraph (2), the head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation, or from accessing information available to an element of the intelligence community specified in subparagraph (D),, or from accessing information available to an element of the intelligence community specified in subparagraph (D), if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

(D) The elements of the intelligence community specified in this subparagraph are as follows:

- (i) The Defense Intelligence Agency.
- (ii) The National Geospatial-Intelligence Agency.
- (iii) The National Reconnaissance Office.
- (iv) The National Security Agency.

(E) The committees of Congress specified in this subparagraph are—

- (i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and
- (ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e)(1) In the case of a designated Federal entity for which a board, chairman of a committee, or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a  $\frac{2}{3}$  majority of the board, committee, or commission.”

(2) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both



Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied.

(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the “Inspector General”) shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

(3)(A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

- (I) ongoing civil or criminal investigations or proceedings;
- (II) undercover operations;
- (III) the identity of confidential sources, including protected witnesses;
- (IV) intelligence or counterintelligence matters; or
- (V) other matters the disclosure of which would constitute a serious threat to national security.

(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General—

- (i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and
- (ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Govern-

mental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(4) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

(5) As used in this subsection, the term "Governors" has the meaning given such term by section 102(3) of title 39, United States Code.

(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), 6A, and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(4) Each Inspector General shall—

(A) in accordance with applicable laws and regulations governing appointments within the designated Federal entity, appoint a Counsel to the Inspector General who shall report to the Inspector General;

(B) obtain the services of a counsel appointed by and directly reporting to another Inspector General on a reimbursable basis; or

(C) obtain the services of appropriate staff of the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consulta-

tion with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and if the designated Federal entity is not a board or commission, include the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

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