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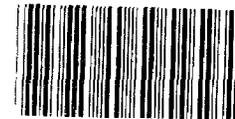
Testimony

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Federal Government's Use of Consulting Services

Statement of
Bernard L. Ungar
Associate Director
General Government Division

Before the
Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate



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ISSUES RELATED TO THE FEDERAL GOVERNMENT'S
USE OF CONSULTANTS

SUMMARY OF STATEMENT BY
BERNARD L. UNGAR
ASSOCIATE DIRECTOR

GAO has done considerable work in the past on the use of consultants. Consultants can play a valuable role and the government can benefit from the services and advice they provide. However, we have also found that the government's use of consultants has been vulnerable to abuse and improprieties due largely to incomplete reporting on the use of consultants and limited monitoring by Inspectors General of agency compliance with rules and requirements concerning the use of consultants.

The Office of Management and Budget (OMB) provides guidance to federal agencies on the use and reporting of consulting services contracts, and the Office of Personnel Management (OPM) provides guidance on consultant appointments. Information on consulting services contracts is maintained by the General Services Administration (GSA). OPM maintains information on consultant appointments.

Our current and past work has shown that governmentwide information on the use and cost of consulting services is understated because of (1) varying agency interpretations of what constitutes consulting services and (2) reporting system limitations. OMB has recently revised its guidance, and this should help clarify some of the ambiguity regarding the consulting service definition. Also, the use and reporting of consulting work is not being evaluated as required by law by all statutory Inspectors General.

Information is not available to determine the total cost of consulting services to the government. Although GSA reported consulting service contract obligations of \$245 million for fiscal year 1987, we estimate such obligations to be at least \$4 billion on the basis of criteria established by the President's Cabinet Council on Management and Administration. Applying broader Cabinet Council criteria would increase this estimate by some undetermined amount -- up to \$16 billion -- depending upon how many contract actions in this broader category were for consulting services. Preliminary consultant costs for consultant appointments reported by OPM for fiscal year 1987 were \$31 million.

We found that 10 of the 19 statutory Inspectors General were not making statutorily required evaluations of agency progress in establishing effective management controls and for improving the accuracy and completeness of reported information. Although 6 of the 10 told us they thought the law requiring the evaluations had been repealed, it is still in effect.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss a review we are doing at your request on the federal government's use of consultants. Since 1961 we have issued over 40 reports and testified before Congress on numerous occasions on consulting services in the government. Consultants can play a valuable role and the government can benefit from the services and advice they provide. However, we have also found that the government's use of consultants has been vulnerable to abuse and improprieties largely due to incomplete reporting on the use of consultants and limited monitoring of agency compliance with rules and requirements concerning the use of consultants.

You asked us to evaluate the issues and problems relating to the government's use of consultants. Our current work has focused on the nature and extent of monitoring and reporting on agencies' use of consultants. Although our current work has not addressed the propriety of the government's use of consulting services, our past work has addressed this issue (see app. I).

We have reviewed applicable laws and regulations and obtained information from officials of the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), the General Services Administration (GSA), and the 19 statutory Inspectors General on their roles and responsibilities involving consulting

services. We reviewed GSA and OPM reports on consulting services for fiscal years 1984 through 1987. At the request of the Subcommittee, we also met with officials of the Small Business Administration (SBA) and reviewed files to determine what information an individual agency maintains and reports on its use of consulting services. We reviewed GAO reports on consulting services issued since 1961 and also reviewed a report on consulting services prepared by the President's Cabinet Council on Management and Administration in 1984.

Although some actions have been taken to address problems we have previously identified, our current work has shown that governmentwide information on the use and cost of consulting services is still being significantly understated because of varying agency interpretations of what constitutes consulting services and reporting system limitations. Also, there appears to be limited monitoring of (1) the accuracy of agencies' reports on consultant use and (2) the adequacy of management controls over the use of consultants. For example, monitoring of the use and reporting on consulting services is not always being done by the statutory Inspectors General.

It is important for agencies to have a clear understanding of what consulting services are, not only for reporting purposes, but also for exercising management control and oversight over their use. Also, Congress needs reliable information on proposed

and actual agency use of consulting services and their cost to assist in its budget deliberations and oversight.

BACKGROUND

Agencies acquire consulting services by contracting with nongovernmental sources and through temporary appointments of consultants, experts, and advisory committee members as federal employees. In this statement, we will refer to all three types of appointees as consultants. Consulting services obtained through contracts are authorized by the agencies' general statutory authority to contract. The statutory authority to appoint consultants is found in 5 U.S.C. § 3109, which permits the head of an agency to hire consultants when authorized by an appropriation or other statute.

Consulting services are used by federal agencies for a variety of reasons. Consultants can provide expertise that agencies may not be able to afford, cannot get, or may not need on a permanent basis. In addition, they can enable agencies to keep up-to-date in various fields and to obtain a variety of viewpoints from knowledgeable people having differing perspectives.

OMB provides guidance to federal agencies on the use and reporting of consulting service contracts in its Circular No. A-120. OPM provides guidance on consultant appointments in the

Federal Personnel Manual. OMB and GSA require federal agencies to report obligations for consulting services contracts to the Federal Procurement Data Center in GSA. This information is maintained in GSA's Federal Procurement Data System (FPDS). Also, OMB and OPM require federal agencies to report information on consultant appointments to OPM, which maintains this information in its Central Personnel Data File (CPDF). OPM also obtains and aggregates consultant basic pay, or cost, information from agencies' payroll systems.

CONSULTANT INFORMATION

IS UNDERSTATED

Data on the use and cost of consultants hired under contract are significantly understated. For example, FPDS reported consulting services contract obligations of \$245 million for fiscal year 1987. However, on the basis of criteria established by the President's Cabinet Council on Management and Administration, we estimate these costs to be at least \$4 billion. According to OPM, preliminary cost for consultant appointments were \$31 million for fiscal year 1987. We cannot comment on whether this amount is understated. Additionally, OPM reported about 5,200 appointments in effect as of September 30, 1987. However, they do not account for the total number of individuals holding consultant appointments throughout the fiscal year.

The understatement of obligations for consulting contracts occurs largely because of varying agency interpretations of the definition of consulting services contained in OMB Circular No. A-120 and limitations with the FPDS. These problems are not new. In 1977 and 1980, we reported that it was not possible to determine the full extent of the use and cost of consulting services in the government because of difficulties in defining consulting services. In 1980, we noted that although executive branch agencies reported obligations of \$278 million in consulting services contracts for fiscal year 1979, the obligations actually could have approximated \$2 billion.

History of definitional problem and
evolution of OMB's policy guidance

Guidance provided by OMB in 1978 defined consulting services as "...[T]hose services of a purely advisory nature relating to the governmental functions of agency administration and management and program management."

In 1980 we reported that the fundamental problem with this definition was that it was vague and subject to too much interpretation and judgment. We believed the definition needed to be better understood by federal agencies. We recommended that OMB work with Congress to achieve a better and more uniform understanding of the definition in terms of coverage, clarity,

and congressional needs. In 1980, OMB issued Circular No. A-120, which provided new guidance and examples of what constituted consulting services. The definition, however, remained the same.

In 1984, the President's Cabinet Council on Management and Administration reported that estimates of the cost of consulting services could not be relied upon because of the vague definition. The Council recommended that OMB revise and broaden the definition of consulting services to include a wide range of advisory and assistance activities as identified by specific procurement categories in the FPDS, such as management and professional services, special studies and analyses, and technical assistance.

In January 1988, OMB revised Circular No. A-120 in response to the Cabinet Council's recommendations. The revised circular expanded the definition of consulting services as follows:

"Advisory and Assistance Services are those services acquired from non-governmental sources by contract or by personnel appointment to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems. Such services may take the form of information, advice, opinions, alternatives,

conclusions, recommendations, training, and direct assistance."

The revised circular also provided specific criteria for the types of services covered by the new definition, such as studies, analyses, and evaluations; management and professional support services; and engineering and technical services. In addition, the revised circular provided new policy guidance on the appropriate use of advisory and assistance services and mandated additional controls for the management and reporting of those services. OMB said that each agency head is accountable for effectively monitoring and controlling advisory and assistance services.

Consultant contract costs understated

The Cabinet Council identified four procurement categories in the FPDS that it believed were exclusively for consulting services contracts and seven others that could include consulting services. Using the Cabinet Council's criteria, we estimated that for fiscal year 1987 reported obligations under the first four categories would have totaled \$4 billion. The other seven categories included total reported obligations of \$16 billion, an undetermined amount of which could be for consulting services. These estimates do not take into consideration certain reporting system limitations that I will discuss shortly.

Our review at SBA showed how definitional problems can affect the reporting of consulting services. Contracting officials at SBA said that they applied a very narrow interpretation of the 1980 OMB Circular No. A-120 when determining what constitutes a consulting service for FPDS reporting purposes. They said SBA had no obligations for consulting services contracts in fiscal year 1987.¹ They also said that the contracting officers' determinations of what constituted consulting services were not subjected to supervisory review.

On the basis of our review of seven SBA contracts totaling \$815,000 awarded in fiscal years 1987 and 1988 for services such as research studies, we identified five contracts for \$436,000 that we believe should have been classified as consulting services. For example, one of these contracts was for \$42,000 to obtain information on the impact of telephone deregulation on small business. According to the responsible contracting officer, this contract was not considered to be for consulting services because she applied a narrow interpretation of what constituted a consulting service. Thus, in her judgment, the contract did not meet the criteria for consulting services. Since our initial discussions with SBA, a contracting officer

¹The FPDS showed that SBA reported consulting service contract obligations of \$60,000 in fiscal year 1987. Our review of SBA contract documents indicated that this information was incorrectly entered into the system because the services in question were not for consulting services.

told us SBA applied a broader interpretation of consulting services for two recently awarded contracts.

Reporting systems limitations

Our review disclosed three limitations in the FPDS and CPDF reporting systems that contribute to the understating of consultant information. Two of these limitations relate to contracts and one relates to personnel appointments.

First, only contracts over \$25,000 are individually reported by procurement category and entered into the FPDS. Actions of \$25,000 and under are not reported by procurement category but are instead reported on a consolidated agency statement and entered into the system. This makes it impossible to identify consulting services within FPDS for any contract actions of \$25,000 or less. According to the FPDS Standard Report for fiscal year 1987, contract actions for all types of procurements for \$25,000 and under in fiscal year 1987 accounted for 98 percent of the total reported actions and 10 percent of the costs.

Second, understating also occurs if the consulting services do not form the predominant, or principal, part of the contract costs. According to OMB officials and correspondence, if the contract is primarily for products or services other than

consulting services, contracting officers are not to report it as a consulting services contract. Contracting officers are required to check the "yes" block on the FPDS Individual Contract Action Report only if the contract is solely for consulting services or if consulting services constitute the predominant part of the contract. For example, if an agency were to enter into a \$450,000 contract for the purchase of \$400,000 in equipment and \$50,000 for advisory services on the equipment's use, the cost of the advisory services would not be reported as being for consulting services.

Third, agencies report to OPM number of consultant appointments made throughout a reporting period. However, according to an OPM official, OPM reports information on individuals with consultant appointments only as of the last day of the period and does not report on those made and terminated during the reporting period. Thus, the CPDF report can understate the number of consultant appointments made during a quarter and for a year's period. For example, if an agency had appointed a consultant on July 1, 1987, and terminated the appointment on August 30, 1987, this appointment would not be included in the CPDF report for the period ending September 30, 1987. However, this does not necessarily mean that consultant cost data reported by OPM is also understated because the cost of appointments should be included in the agency's payroll system and, thereby, in the cost data reported by OPM.

OMB's new guidance will not totally
resolve reporting problems

OMB's revised Circular No. A-120 generally reflects the Cabinet Council's recommendations as to what exclusively constitutes consulting services and should help clarify some of the ambiguity surrounding the consulting services definition. However, it is too early to tell to what extent improved reporting will result, although it is clear that it will not totally resolve the reporting problems with consulting services for a number of reasons.

- The revised circular does not address the reporting system limitations we have discussed. Thus, these will continue.

- OMB's January 1988 revision of Circular No. A-120 does not completely cover all major procurement categories that according to the Cabinet Council could potentially involve consulting services. This leaves the agencies with a considerable degree of discretion in identifying consulting services contracts, and underreporting could continue.

-- It is unclear at this point to what extent agencies will correctly implement the revised circular. As of May 24, 1988, SBA had not yet begun to use OMB's revised circular for FPDS reporting purposes. According to SBA contracting officials, this was because neither the Federal Acquisition Regulation nor the instructions for FPDS had yet been revised to reflect OMB's revised circular. We understand from OMB that the regulations and the FPDS reporting system instructions are being revised. Also, after we brought our findings to their attention, SBA officials agreed to reconsider how they are interpreting and applying OMB Circular No. A-120 and the Federal Acquisition Regulation for the reporting of consulting services.

MONITORING OF AGENCIES' USE
AND REPORTING OF CONSULTING
SERVICES VARIES

Our preliminary work indicates that the extent of agency monitoring of consulting services varies considerably.

OMB guidance contained in Circular No. A-120 requires that each agency's management control system for consulting services comply with the Federal Acquisition Regulation. According to OMB correspondence, each agency is responsible and accountable for

assuring that the acquisition of consulting services meets all applicable requirements. The Federal Personnel Manual provides that OPM will review consultant appointments during personnel management evaluations of agencies to assure the appointment authority is properly used and to identify problems in individual agencies. Our past work has shown that OPM's agency evaluations, in general, have been limited.² However, we have not specifically examined the extent to which OPM covers consultant appointments during these evaluations.

One possible monitoring mechanism agencies can use is the review of internal controls over agency operations required by the Federal Managers' Financial Integrity Act of 1982. The act requires agencies to identify any material internal control weakness and report on corrective actions being taken in annual reports to the President and Congress. Our analysis of agency reports prepared pursuant to the act for the last 4 years indicated that control weaknesses in procurement and personnel management activities were often reported. However, the reports did not indicate the extent to which the agencies examined the obtaining of consulting services.

As requested by the Subcommittee, we concentrated our preliminary work on monitoring done by the 19 statutory Inspectors General.

²Federal Workforce: OPM's Approach for Conducting Personnel Management Evaluations (GAO/GGD-88-11, Nov. 4, 1987).

Each Inspector General, comparable agency official, or agency head or designee is required by 31 U.S.C. § 1114, enacted in 1982, to submit to Congress each year, as part of the agency's budget justification, an evaluation of consulting services. The evaluation is to consider the agency's progress in establishing effective management controls and improving the accuracy and completeness of the information provided to the FPDS on contracts for consulting services.

We have not addressed the adequacy of annual evaluations made by the Inspectors General. However, at the time of our review, information obtained from statutory Inspectors General at 19 agencies indicates that for 9 of the 19 agencies the evaluations are being done as required. At 10 agencies evaluations are not being done.

Of the 10 agencies where evaluations are not being made, 6 Inspectors General said they thought the law requiring evaluations had been repealed. We found, however, that the law is still in effect (see app. II). Of the other four, two said that their agencies had substantially established proper controls and they did not believe further evaluations were needed, and the other two did not provide explanations.

We could not determine the extent to which all nine Inspectors General making the required evaluations submitted them to

Congress as part of their budget justifications from the information they provided. However, we noted that at least two agencies had not submitted the evaluations as required. One Inspector General said the evaluations had been done but not reported to Congress as part of the budget justification. Instead, he submitted a statement to the Appropriations Committees saying the evaluation had been made, but he had not submitted the evaluation. The other Inspector General included the results of an evaluation in his semiannual report to Congress on his overall operations, but he did not submit the evaluation as part of the agency's budget justification.

PAST PROBLEMS IDENTIFIED BY GAO

Now that we have discussed the issues we have identified during our current work, I would like to briefly mention some other issues disclosed by our previous efforts. We have reported on the government's use of consulting services many times in the past (see app. I). We found problems in such areas as (1) inadequate competition in awarding contracts for consulting services, (2) potential conflicts of interest with consultants, and (3) incomplete justification for hiring consultants.

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This concludes my statement. We would be pleased to answer questions.

GAO Reports And Principal Findings On
Consultant-Related Issues Since 1980

Controls Over Consulting Service Contracts At Federal Agencies
Need Tightening (PSAD-80-35, March 20, 1980)

In six federal agencies we found:

- Little or no consideration was given to in-house capability before consulting services contracts were awarded. Several contracts resulted from unsolicited proposals.
- Extensive sole-source awards were made for consulting services. Several of these awards were made to former agency employees.
- A significant number of contract modifications were made resulting in increased costs and delays in delivery of the end product.
- Questionable use was made of consultants' products.
- Inaccurate reporting of consulting services contracts was caused, in part, by confusion over the OMB definition for such contracts.

Government Earns Low Marks On Proper Use of Consultants (FPCD-80-48, June 5, 1980)

In over 30 reports dating back to 1961, we identified a need for federal agencies to better manage consulting services. For example:

- Adequate competition was not obtained in awarding consulting services contracts nor did controls exist to minimize costs.
- Reasonableness of fees paid for consulting services was questionable.
- Consulting services were used to perform work that should have been performed by regular government employees.
- Federal repositories were not being searched before new consultant studies were initiated, and many completed studies were not submitted to repositories.
- Appearances of conflicts of interest existed in the award of consulting services contracts.

- A disproportionate number of consulting services contracts were awarded in the final quarter of the fiscal year.
- OMB's efforts to improve agencies' management of consulting services were not effective because of its ambiguous definition of consulting services and lack of rigorous agency procedures for approving consulting services contracts.

Agencies Should Disclose Consultants' Roles In Preparing
Congressionally Mandated Reports (FPCD-80-76, August 19, 1980)

- Consulting services contracts were used to meet over 40 percent of seven agencies' congressionally mandated reporting requirements. Agencies generally based their justification for using consulting services on (1) the lack of in-house expertise and (2) limited in-house resources and related time constraints.
- The seven agencies paid approximately \$17 million in 3 years to outside consultants representing two-thirds of the cost of meeting these reporting requirements.
- Approximately 60 percent of the reports either did not disclose or inadequately disclosed consultants' involvement.
- Two agencies used outside consultants on a continuing basis to help prepare recurring reports.

Controls Over DOD's Management Support Service Contracts Need
Strengthening (MASAD-81-19, March 31, 1981)

- DOD's use of consultants was weakening its in-house capability to perform work essential to fulfilling the defense mission.
- Much of the work was performed by former Defense employees.
- Extensive contract awards resulted from unsolicited proposals.
- Continuous renewal of contracts occurred.
- Consultant services were of questionable need and use.
- Sole-source awards were overused.
- Contract modifications were extensive.

- DOD's interpretation of a consultant service was narrow, resulting in underreporting.

Civil Servants and Contract Employees: Who Should Do What For The Federal Government? (FPCD-81-43, June 19, 1981)

- Federal agencies used contractors for work that should have been done by federal employees because the work involved basic management functions and should have been performed by federal employees to assure control over the direction of agency policies and programs.
- In contrast, federal employees provided commercial services that contractors could have provided, in many cases at lower cost.

Use of Consultants By The Department of Justice (GGD-81-55, April 17, 1981)

- The Department's litigative divisions awarded a majority of their contracts without competition.
- The majority of the Department's Law Enforcement Assistance Administration contracts were awarded on a cost-plus-fixed-fee basis, which provided little incentive for contractors to minimize costs.

The Subcontracting Practices of Large Department of Energy Contractors Need to Be Improved (EMD-82-35, April 22, 1982)

We reviewed two major Energy contractors to determine their subcontracting practices and found that the contractors:

- Engaged in subcontracting practices that prevented or limited competition.
- Awarded subcontracts directly for Department program offices, allowing these offices to bypass federal and Department procurement regulations and policies.
- Did not fully comply with federal and Department conflict of interest regulations.
- Had not been required to follow federal and Department guidelines on the use of consultant-type contracts.
- Had not established adequate controls to evaluate the utility of subcontractor work products and ensure that subcontractor efforts were not duplicative.

EPA's Use of Management Support Services (CED-82-36, March 9, 1982)

- Most EPA program office requests for management support services to be procured under contract were not subject to agency procedures that would tighten management control of their use.
- A limited definition of what constituted a consulting service was used, thus omitting a substantial number of consulting services contracts.
- Contractors may have performed work that should have been done by federal employees, but we could not determine if the contractors' actions were improper because of the lack of criteria to distinguish between assistance and performance.
- Eighty-eight percent of the management support services contracts were on a cost-plus-fixed-fee basis. Sixty percent were modified to increase costs, expand the scope of work, and/or extend the period of performance. Thirty percent were awarded sole-source.
- Information indicated the existence of many potential organizational conflict of interest situations that could have diminished the contractors' ability to give impartial, objective advice.
- Of the 30 management support services contracts that we reviewed in detail, we found 11 contracts for which work products either were not received or appeared to be of questionable value.

Improvements Needed in Evaluation of Cost Proposals and Technical Administration of Management Support Services Contracts (PLRD 82-50, March 10, 1982)

- No documentation was available for 10 of 11 contract files to show how technical evaluators determined that labor costs and other direct costs proposed by the contractors were fair and reasonable. Technical contract administration was generally weak.

The U.S. Synthetic Fuels Corporation's Contracting With Individual Consultants (GAO/RCED-84-106, February 7, 1984)

For 10 individual consultant contracts, we found:

- The cost of contracting for the 10 consultants was not compared with the cost of hiring permanent employees.

- Conflict-of-interest provisions were not in two consultant contracts.
- The Corporation did not demonstrate that the 10 consultants were uniquely qualified to do the contract services or were needed on a time-critical basis.
- Contract files did not contain evaluations of six consultants' qualifications.

U.S. Synthetic Fuels Corporation's Contracting Policies and Practices for Consulting Services (GAO/RCED-85-162, August 15, 1985)

We reviewed 79 contracts of which 43 were awarded to individuals and 36 were awarded to firms. We found that:

- Contracts with individual consultants were awarded on a sole-source basis without competition. Contracts with consulting firms were awarded on either a competitively negotiated basis or a noncompetitive basis.
- Completion of written documentation for comparing the cost of the contract with the cost of hiring permanent employees was not required before contracts were awarded, and guidance was not provided for such comparisons.

United States Information Agency's Use of Consultant Services (GAO/NSAID-85-85, May 23, 1985)

The scope of this review was limited to 17 consultant contracts, and we found that:

- Justification for the need of consultants was usually not well documented or was questionable. Seven of the 10 descriptions we reviewed were vague.
- Most consultants were paid improperly; eight were overpaid and one was underpaid.

PERSONNEL PRACTICES: Use of Consultants and Experts in the Immediate Office of the Secretary, HHS (GAO/GGD-87-49BR, March 18, 1987)

We reviewed 29 official personnel folders of appointed consultants and experts and found that:



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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June 1, 1988

The Honorable David Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your request for our opinion regarding the status of a law requiring the Inspector General (IG) or comparable official at each executive agency to submit to Congress an evaluation of the agency's progress in establishing effective management controls and improving the accuracy and completeness of the information provided to the Federal Procurement Data System on contracts for consulting services. This statutory requirement currently is located at 31 U.S.C. § 1114 (1982).

We understand that some Inspectors General are not complying with the statute under the belief that the reporting requirement no longer exists. It is our view that the statutory requirement still is in effect since 31 U.S.C. § 1114 has not been repealed. The following is a summary of legislation containing the IG reporting requirement, along with an analysis of what has taken place in the past that led to the current status of the legislation.

History of Legislation

The current IG reporting requirement has its basis in a 1980 statute establishing a Federal Procurement Data System (FPDS) reporting requirement for fiscal year 1982. Section 307(b) of the Supplemental Appropriations and Rescission Act, 1980, approved, July 8, 1980, Public Law No. 96-304, 94 Stat. 928, provided that:

"Effective October 1, 1981, for application in fiscal year 1982, the Inspector General of . . . [an executive] department, agency, or

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establishment, or comparable official . . . shall submit to the Congress along with the agency's budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements."

This provision was a temporary measure that by its terms was to be applied only for fiscal year 1982.

During the same year, Congress passed the Department of Transportation and Related Agencies Appropriation Act, 1981, approved October 9, 1980, Public Law No. 96-400. Section 323(c) of Public Law No. 96-400, 94 Stat. 1699, was the first of a series of appropriation act provisions containing the IG reporting requirement with no time limitation on its application. Section 323(c) began "For fiscal year 1982 and thereafter," followed by the same language contained in section 307(b) of Public Law No. 96-304, supra. Congress then passed identical provisions in a series of appropriation acts: Public Law 96-436, § 126, 94 Stat. 1869 (October 13, 1980); Public Law 96-514, § 309, 94 Stat. 2984 (December 12, 1980); Public Law 96-528, § 616, 94 Stat. 3117 (December 15, 1980); Public Law 97-102, § 318, 95 Stat. 1461 (December 23, 1981); and Public Law 97-369, § 318, 96 Stat. 1783 (December 18, 1982). Based on the provisions that had been enacted through 1980, the language of the IG reporting requirement was included in title 31 of the United States Code as 31 U.S.C. § 28(b) (1976 ed., Supp IV 1980).

On September 13, 1982, Congress enacted Public Law 97-258, revising, codifying and enacting into positive law title 31 of the United States Code. The purpose of the codification was to "restate in comprehensive form, without substantive change, certain general and permanent laws related to money and finance and to enact those laws as title 31, United States Code." H. R. Rep. No. 651, 97th Cong., 2d Sess. 1 (1982). Included in this legislation as 31 U.S.C. § 1114(b) was the IG reporting requirement, as follows:

"The Inspector General or comparable official of each agency shall submit to Congress each year, with the budget justification for the agency, an evaluation of the progress of the agency in establishing effective management controls and improving the accuracy and completeness of the information provided to the Federal Procurement

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Data System on contracts for consulting services. If the agency does not have an Inspector General or comparable official, the head of the agency or officer or employee designated by the head of the agency shall submit the evaluation."

The Codification Act, 96 Stat. 1083, repealed all of the appropriation provisions referred to above, with the exception of Public Law 97-369, § 318, which had not yet been enacted. The Congressional Reports Elimination Act of 1982 was then enacted on December 21, 1982, Public Law 97-375, 96 Stat. 1819. Section 101 of this Act repealed two of the appropriation act provisions referred to above-- Public Law 96-436, § 126, and Public Law 96-528, § 616. The Reports Elimination Act cites section 28 of title 31 as the U.S. Code reference for these two appropriation provisions. The Act does not mention section 1114 (b) of title 31.

The House committee report on the Reports Elimination Act, H.R. Rep. No. 97-804, 97th Cong., 2d Sess. 5 (1982), states that section 101 "[r]epeals reporting requirement of the Inspector General or comparable official requiring an evaluation of an agency's progress" with regard to information provided to the FPDS. The House report also notes that "[t]his is one of six similar provisions for reporting requirements contained in six different appropriations measures." Id.

Analysis/Conclusion

Based on the historical development of the statutes containing the IG reporting requirement, it appears that the provision enacted in Public Law 97-258 and located in section 1114 of title 31 is current law. Congress enacted this provision as part of the codification of title 31 in September 1982 and has not repealed it. At the time of enactment of the Congressional Reports Elimination Act, the two IG reporting provisions "repealed" by the act already had been repealed with the revision of title 31. While it remains unclear exactly what Congress intended when it enacted the Reports Elimination Act, it is clear that the

APPENDIX II

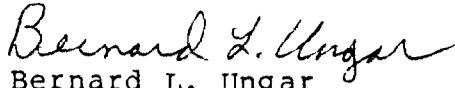
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Elimination Act did not repeal 31 U.S.C. § 1114. As such, the IG reporting requirement remains in effect.

If you have any questions, please contact me on 275-5074.

Sincerely yours,


Bernard L. Ungar
Associate Director