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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-203900

October 6, 1981

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your June 23, 1981, request for our views and recommendations on S. 1327 which would amend the Inspector General Act of 1978. We appreciate the opportunity to comment on the proposed legislation.

According to the congressional staff that drafted the legislation, the intent of Section 2(a)(3) of the bill is to require the inspectors general to establish schedules and deadlines for resolving audit findings. However, when read in conjunction with Section 3(7), this provision could be interpreted as requiring the establishment of schedules and deadlines for completing the audits themselves rather than resolving the findings and recommendations resulting from the audits. We believe the intent of Section 2(a)(3) could be clarified by inserting the words "findings and recommendations resulting from" after the word "all" on line 2 page 2.

In addition, we believe Section 3(7) also needs clarification to show that the reporting requirement contained in this provision pertains to the agencies' failure to resolve audit findings rather than failure to complete the audits within a predetermined time-frame. The intent of this section could be clarified by striking line 24 page 2, through line 7 page 3, and inserting the following:

"(7) a description of each audit finding or recommendation which has not been resolved by the deadline established under Section 4(a)(1)(B), or in the case for which no deadline has been established, within 6 months after the date on which the audit was completed, and an explanation why such audit findings or recommendations have not been resolved by such deadline or within such specified time; and * * *."

Although we agree that timely and effective resolution of auditors' findings has been a pervasive problem, it should be noted that the inspectors general have no direct authority over agency operations. Agency management is, and should be, accountable for seeing to it that audit recommendations are resolved in a timely manner. As such, we believe they should be held accountable for setting schedules and deadlines for resolving audits.

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In line with this, we recommended in a recent report that Federal agencies make the timeliness and quality of audit resolution a written performance standard and a factor in determining bonuses for Senior Executive Service members and merit pay for supervisors.^{1/} We believe this approach is more appropriate and practical than requiring the inspectors general to set deadlines.

With regard to the proposed reporting requirement itself, however, we agree there is merit in having the inspectors general or agency management report to the Congress on unresolved audit findings. Accordingly, we suggest you consider three alternatives to the proposed reporting requirement in Section 3(7). We would be glad to provide you specific language to incorporate one of these alternatives into the bill.

First, we recently recommended that the Office of Management and Budget (OMB) include oversight of agency audit resolution practices in the budget review process to provide (1) an assessment of progress in establishing, revising, and implementing resolution systems, (2) an adjustment of agency budget allowances where appropriate, and (3) a report to the Chairpersons of the House and Senate Committees on Appropriations on progress and action plans.^{2/} OMB has agreed to consider unresolved audit findings in its budget review process but has not agreed to report to the Chairpersons of the House and Senate Committees on Appropriations. We believe the Congress should consider the merits of mandating this type of report through legislation.

Another approach would be to require agencies to report to their legislative oversight committees and to the Senate and House Appropriations Committees on unresolved audit findings within a specified period of time after an audit is completed. The requirement could be modeled after Section 236 of the Legislative Reorganization Act of 1970 which requires agency heads to report to the Congress on actions taken on GAO recommendations.

A third alternative would be to expand the current reporting requirements in the Inspector General Act. Section 5(a)(3) of the Act already requires the inspectors general to report on significant recommendations on which corrective action has not been taken. This requirement could be expanded to include all unresolved audit findings. The Senate Committee on Appropriations in its report on the Supplemental Appropriations and Recission

^{1/}"Disappointing Progress in Improving Systems for Resolving Billions in Audit Findings," AFMD-81-27, Jan. 23, 1981.

^{2/}Ibid.

Bill of 1980 (Report No. 96-829) directed the inspectors general to include as part of their semiannual reports to the Congress a summary of unresolved audits including total numbers, dollar amounts, status, and age. Such a requirement could be incorporated into the Inspector General Act. If this is done, however, we suggest that a provision be included requiring the inspectors general to highlight the most significant recommendations.

Section 2(b) of S. 1327 adds a new Section 4(e) to the Act that would authorize each inspector general to initiate civil litigation to recover Federal funds where a violation of law has been reported to the Attorney General and the Attorney General has declined to take action on the report. The bill would authorize the inspector general to request legal assistance and support from the Attorney General and from the agency general counsel to initiate the civil litigation.

We favor the concept of allowing inspectors general to litigate cases that cannot be handled by the Attorney General in order to recover Federal funds where a violation of law has occurred. However, we believe the provision could be strengthened and improved if the following changes were made.

We believe that all litigation involving the United States should be subject to the supervision and direction of the Attorney General as the chief legal officer of the Government. The Attorney General should have authority to enter into memoranda of understanding with inspectors general to provide expeditious procedures for processing cases and, where appropriate, to provide advanced authorization for inspectors general to initiate civil litigation in certain types of cases without forwarding such actions to the Attorney General for review. We also believe that inspectors general should have authority to employ outside counsel where necessary to promote efficiency and economy or to avoid conflict-of-interest situations. As a control measure, the cost of the services of an outside counsel should be borne by appropriations available to the inspector general.

We suggest you delete Section 2(b), lines 6 through 14 and substitute the following legislative language to implement the above recommended changes:

"(e)(1) Each Inspector General is authorized, where appropriate, to commence a civil action to recover Federal funds in any case in which the Inspector General or the respective Federal agency reported a violation of law to the Attorney General and the Attorney General declined to take action on such report for reasons not related to the legal merits of the case. In carrying out such action, the Inspector General may utilize attorneys employed by his agency or department or, with the advice of the

Attorney General, contract for special employment of outside counsel notwithstanding the restrictions contained in 5 U.S.C. 3106. Appropriations available to the Inspector General shall be utilized to procure the services of outside counsel."

"(2) The Attorney General may enter into memoranda of understanding with any Inspector General to provide expeditious procedures for processing cases under subsection (1) of this section. Such memoranda of understanding may provide advanced authorization to initiate proceedings under subsection (1) of this section with respect to any particular type or class of actions."

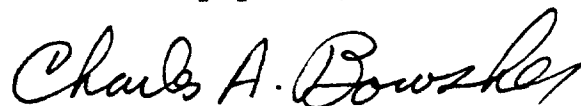
"(3) The activities of attorneys utilized by the Inspectors General in bringing suit under this section shall be subject to the direction and supervision of the Attorney General of the United States and to such terms and conditions as the Attorney General may prescribe."

"(4) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or any agency or officer of the United States is a party."

Finally, Section 3(8) of S. 1327 would require the inspectors general to identify any savings from agency budgets resulting from their activities during the semiannual reporting period, and provide an estimate of any budget savings that might be realized during the 6-month period in which the report is made. The inspectors general already do this to varying degrees, and we see no reason why this should not be made a legal requirement.

If you have any questions on our comments or any additional issues involving the proposed legislation, please do not hesitate to contact us.

Sincerely yours,



Comptroller General
of the United States