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U.S. GOVERNMENT
INFORMATION
GPO

113TH CONGRESS
2D SESSION

S. 2439

To amend the Inspector General Act of 1978 to provide for the Inspector General of the National Security Agency to be appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2014

Mrs. MCCASKILL (for herself, Mr. COATS, Ms. MIKULSKI, Mr. TESTER, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

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A BILL

To amend the Inspector General Act of 1978 to provide for the Inspector General of the National Security Agency to be appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "NSA Internal Watchdog Act".

SEC. 2. INSPECTOR GENERAL OF THE NATIONAL SECURITY AGENCY.

(a) ELEVATION OF INSPECTOR GENERAL STATUS.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8G(a)(2), by striking ''the National Security Agency,''; and

(2) in section 12—

(A) in paragraph (1), by inserting ''the Director of the National Security Agency;'' after ''Export-Import Bank;''; and

(B) in paragraph (2), by inserting ''the National Security Agency,'' after ''the National Aeronautics and Space Administration,''.

(b) DATE OF APPOINTMENT.—Not later than 90 days after the date of the enactment of this Act, the President shall nominate a person for appointment, by and with the advice and consent of the Senate, as Inspector General of the National Security Agency under section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.) consistent with the amendments made by subsection (a).

(c) TRANSITION RULE.—An individual serving as Inspector General of the National Security Agency on the date of the enactment of this Act pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the National Security Agency consistent with the amendments made by subsection (a); and

(2) shall, while serving under paragraph (1), remain subject to the provisions of section 8G of such Act that, immediately before the date of the enactment of this Act, applied with respect to the Inspector General of the National Security Agency and suffer no reduction in pay.

SEC. 3. ANNUAL REVIEW OF MECHANISMS FOR REPORTING EMPLOYEE OR CONTRACTOR COMPLAINTS.

Section 8H(g)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new subparagraph:

''(E) In the case of the Inspector General of the National Security Agency, a review of the mechanisms for submitting complaints that are available to an employee of or contractor to the National Security Agency and any recommendations of the Inspector General for improving such mechanisms.''.

SEC. 4. SPECIAL PROVISIONS CONCERNING THE NATIONAL SECURITY AGENCY.

The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8J the following new section:

"SEC. 8K. SPECIAL PROVISIONS CONCERNING THE NATIONAL SECURITY AGENCY.

"(a) GENERAL COUNSEL TO THE INSPECTOR GENERAL.—

"(1) IN GENERAL.—There is a General Counsel to the Inspector General of the National Security Agency, who shall be appointed by the Inspector General of the National Security Agency.

"(2) DUTIES.—The General Counsel to the Inspector General of the National Security Agency shall—

"(A) serve as the chief legal officer of the Office of the Inspector General of the National Security Agency;

"(B) provide legal services only to the Inspector General of the National Security Agency;

"(C) perform such functions as the Inspector General may prescribe; and

"(D) serve at the discretion of the Inspector General.

"(3) OFFICE OF THE GENERAL COUNSEL.—There is an Office of the General Counsel to the Inspector General of the National Security Agency. The Inspector General may appoint to the Office to serve as staff of the General Counsel such legal counsel as the Inspector General considers appropriate.

"(b) TESTIMONY.—

"(1) AUTHORITY TO COMPEL.—The Inspector General of the National Security Agency is authorized to require by subpoena the attendance and testimony of former employees of the National Security Agency or contractors, former contractors, or former detailees to the National Security Agency as necessary in the performance of functions assigned to the Inspector General by this Act.

"(2) REFUSAL TO OBEY.—A subpoena issued under this subsection, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court.

"(3) NOTIFICATION.—The Inspector General shall notify the Attorney General 7 days before issuing any subpoena under this section.

"(c) PROHIBITIONS ON INVESTIGATIONS FOR NATIONAL SECURITY REASONS.—

"(1) EVALUATIONS OF PROHIBITIONS.—Not later than 7 days after the date on which the Inspector General of the National Security Agency receives notice or a statement under section 8G(d)(2)(C) of the reasons the Secretary of Defense is prohibiting the Inspector General from initiating, carrying out, or completing any audit or investigation, the Inspector General shall submit to the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives and the Select Committee on Intelligence and the Committee on Armed Services of the Senate an evaluation of such notice or such statement.

"(2) INCLUSION IN SEMI-ANNUAL REPORT.—The Inspector General shall include in the semi-annual report prepared by the Inspector General in accordance with section 5(a) a description of the instances in which the Secretary of Defense prohibited the Inspector General from initiating, carrying out, or completing any audit or investigation during the period covered by such report.

"(d) STANDARD FOR AUDITS AND INVESTIGATIONS.—In carrying out any audit or investigation of a surveillance or data collection program, the Inspector General shall—

"(1) assess the impact of such program on civil rights and civil liberties;

"(2) assess the effectiveness and use, including any improper or illegal use, of such program; and

"(3) make any recommendations the Inspector General considers appropriate to improve the protection of civil rights and civil liberties in the operation of such program.

"(e) AVAILABILITY OF REPORTS.—

"(1) AVAILABILITY.—Each report to Congress or a committee of Congress by the Inspector General shall be made available to all Members of Congress.

"(2) MEMBER OF CONGRESS DEFINED.—In this subsection, the term 'Member of Congress' means a Senator, a Member of the House of Representatives, or a Delegate or Resident Commissioner to the Congress.".

SEC. 5. AUDIT OF SURVEILLANCE PROGRAMS AND BACKGROUND INVESTIGATIONS.

(a) AUDIT.—The Inspector General of the National Security Agency appointed under section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.) consistent with the amendments made by section 2(a) of this Act shall perform a comprehensive audit of—

(1) the effectiveness and use, including improper or illegal use, of surveillance and data collection programs of the National Security Agency, including programs conducted pursuant to sections 501 and 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 and 1881a);

(2) the interactions between the National Security Agency and the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)), including the accuracy of the information provided to such court by the Agency and the compliance of the Agency with orders of such court; and

(3) the process for conducting background investigations of persons for purposes of employment or potential employment by the National Security Agency or for receiving access to classified information.

(b) REPORT.—Not later than 180 days after the date on which the Inspector General of the National Security Agency is appointed under section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.) consistent with the amendments made by section 2(a) of this Act, the Inspector General of the National Security Agency shall submit to the Permanent Select Committee on Intelligence of the

House of Representatives and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under subsection (a).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter the responsibility of the Inspector General of the National Security Agency to conduct audits or investigations of the surveillance programs of the National Security Agency and the background investigation process for employment or access to classified information on an ongoing basis in accordance with the Inspector General Act of 1978 (5 U.S.C. App.).

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