

INSPECTOR GENERAL ACCESS ACT OF 2017

NOVEMBER 27, 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. 3154]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 3154) to amend the Inspector General Act of 1978 relative to the powers of the Department of Justice Inspector General, 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. 3154, the Inspector General Access Act of 2017, harmonizes the Department of Justice (DOJ) Office of Inspector General's (OIG) authority to investigate all allegations of misconduct at the Department of Justice. The bill repeals a provision requiring the OIG to refer certain allegations of misconduct involving DOJ attorneys to the DOJ Office of Professional Responsibility (OPR).

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3154 addresses a statutory relic that prevents the DOJ OIG from investigating certain misconduct at DOJ. Currently, the DOJ OIG must refer allegations of misconduct by DOJ attorneys to the DOJ OPR, rather than initiate an investigation itself. The DOJ OPR was in existence prior to the statutory creation of the DOJ OIG in 1988, and DOJ OPR retained this specific authority when the DOJ OIG was created. The legislation addresses this issue by amending section 8E of the *Inspector General Act of 1978* to repeal the provision requiring the DOJ OIG to refer allegations of misconduct.¹

This bifurcation of investigative authority is unnecessary. The DOJ OIG is in some cases better positioned to conduct investigations of DOJ attorneys than OPR. For instance, the DOJ OIG—like all federal OIGs—maintains a level of independence from the management of the agency it oversees.² This helps limit the potential for conflicts of interest that may cause a biased review. OPR does not have the same statutory requirement for independence. The Director of OPR is selected and appointed by the Attorney General, answers to the Attorney General, and can be removed or disciplined by the Attorney General. The DOJ Inspector General is appointed by the President, confirmed by the Senate, and can only be removed by the President after notification to Congress.³

The DOJ OIG's independence is bolstered by the transparency of the work the office conducts. For instance, DOJ OIG audits and investigative reports are available on a publicly accessible website.⁴ The public website contains a full archive of DOJ OIG's completed reports and limits information only when necessary pursuant to statutory or other restrictions. The OIG recently began publishing summaries of investigations that resulted in findings of administrative misconduct, even when the subject is not prosecuted.⁵ This is in stark contrast to the content available on the DOJ OPR's website. The DOJ OPR only publishes summaries of a sample of cases investigated by the office and in a single, annual report.⁶ Thus, it is difficult to assess the office's findings and conclusions.

The restrictions on the scope of DOJ OIG's investigative authority are unique. With few exceptions, other OIGs do not face similar

¹ 5 U.S.C. App.

² Inspector General Act of 1978 § 3(a); Pub. L. No. 95-452.

³ Council of the Inspectors Gen. on Integrity & Efficiency, the Inspectors General, (July 14, 2014), https://www.ignet.gov/sites/default/files/files/IG_Authorities_Paper_-_Final_6-11-14.pdf.

⁴ Dep't of Justice Office of the Inspector Gen., *Reports*, <https://oig.justice.gov/reports/> (last visited Oct. 16, 2018).

⁵ Dep't of Justice Office of the Inspector Gen., *Investigative Findings in Cases Involving Administrative Misconduct*, <https://oig.justice.gov/reports/inv-findings.htm> (last visited Oct. 16, 2018).

⁶ Dep't of Justice Office of Professional Responsibility, *Resources: OPR Annual Reports*, <https://www.justice.gov/opr/resources> (last visited Oct. 16, 2018).

limitations on their investigative authority. DOJ Inspector General Michael Horowitz testified before the Committee on November 15, 2017, on this very issue, explaining the need to repeal the provision.⁷ The Government Accountability Office offered a similar recommendation, advising Congress that “transferring OPR’s functions into [the] OIG would promote the basic principles underlying the Inspector General Act.”⁸

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 amend the *Inspector General Act of 1978* relative to the powers of the Department of Justice Inspector General.

LEGISLATIVE HISTORY

On June 29, 2017, Representative Cedric Richmond (D–LA) introduced H.R. 3154, the Inspector General Access Act of 2017, with Representatives Jody Hice (R–GA) and John Conyers (D–MI). H.R. 3154 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 3154 at a business meeting on September 27, 2018 and ordered the bill favorably reported by unanimous consent.

Senator Mike Lee (R–UT), Senator Chuck Grassley (R–IA), and Senator Lisa Murkowski (R–AK) introduced S. 3003, the Senate companion to H.R. 3154, on June 6, 2018. S. 3003 was referred to the Senate Committee on the Judiciary.

In the 114th Congress, Representative Richmond introduced H.R. 2240, the Inspector General Access Act of 2015, an identical bill to H.R. 3154. H.R. 2240 was referred to the Committee on Oversight and Government Reform. Also in the 114th Congress, Senator Lee introduced S. 618 as a companion to H.R. 2240.

COMMITTEE CONSIDERATION

On September 27, 2018, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by unanimous consent, without amendment.

ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 3154.

⁷ *Recommendations and Reforms from the Inspectors General: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 115th Cong. (2017) (statement of Michael Horowitz, Inspector Gen., Dep’t of Justice), <https://oig.justice.gov/testimony/t170321.pdf>.

⁸ Letter from Office of Gen. Counsel, General Accounting Office, to Jack Brooks, Chairman, H. Comm. on the Judiciary (GAO/OGC–94–24) (Apr. 15, 1994), <http://www.gao.gov/assets/400/390452.pdf>.

EXPLANATION OF AMENDMENTS

There were no amendments to H.R. 3154 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 amends the Inspector General Act of 1978 relative to the powers of the Department of Justice Inspector 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 does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

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 Act of 1974 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, October 11, 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. 3154, the Inspector General Access Act of 2017.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 3154—Inspector General Access Act of 2017

H.R. 3154 would shift authority within the Department of Justice to investigate certain cases of internal misconduct. Some cases that are now handled by the Office of Professional Responsibility would instead be handled by the Office of Inspector General. Using information from the department, CBO estimates that implementing H.R. 3154 would not significantly affect spending in any fiscal year because the department could implement the bill with existing personnel.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3154 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3154 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed 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. Investigations of Department of Justice personnel

Section 2 amends section 8E of the Inspector General Act of 1978 (Appendix to title 5, United States Code) to repeal a provision requiring the Department of Justice Inspector General to refer allegations of misconduct involving Department attorneys to the Office of Professional Responsibility if the allegations relate to the exer-

cise of the authority of an attorney to investigate, litigate, or provide legal advice. Also, this section makes several technical changes to the surrounding paragraphs to reflect the repeal.

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

* * * * *

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF JUSTICE

SEC. 8E. (a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Attorney General with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

- (A) ongoing civil or criminal investigations or proceedings;
- (B) undercover operations;
- (C) the identity of confidential sources, including protected witnesses;
- (D) intelligence or counterintelligence matters; or
- (E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, from accessing information described in paragraph (1), or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation, access such information, or to issue such subpoena, if the Attorney General determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent the significant impairment to the national interests of the United States.

(3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General 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 Committees on Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary 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 of the Department of Justice—

- (1) may initiate, conduct and supervise such audits and investigations in the Department of Justice as the Inspector General considers appropriate;

(2) except as specified in subsection (a) **and paragraph (3)**, may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice;

[(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;]

[(4)] (3) may investigate allegations of criminal wrongdoing or administrative misconduct by a person who is the head of any agency or component of the Department of Justice; and

[(5)] (4) shall forward the results of any investigation conducted under **paragraph (4)] paragraph (3)**, along with any appropriate recommendation for disciplinary action, to the Attorney General.

(c) Any report required to be transmitted by the Attorney General 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 Committees on the Judiciary and Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives.

(d) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice**], except with respect to allegations described in subsection (b)(3),]** shall report that information to the Inspector General.

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