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THE WHITE HOUSE
WASHINGTON

May 2, 1977

Bert Lance -

**The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.**

Rick Hutcheson

cc: Stu Eizenstat
Bob Lipshutz
Jack Watson

Re: H. R. 2819 (Brooks and Fountain)
Inspectors General Legislation

THE WHITE HOUSE
WASHINGTON

Mr. President:

Eizenstat and Lipshutz
agree with OMB that you
should oppose the bill
(Option #3).

Stu adds: "It is not wise
to set the precedent of
having Congress statutorily
determine internal agency
organization."

Rick

Jack Watson favors Option 2



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Bert C

THE PRESIDENT HAS SEEN.

APR 27 1977

977 APR 27 PM 4 25

MEMORANDUM FOR THE PRESIDENT

FROM: Bert Lance *RL*

SUBJECT: H.R. 2819 (Brooks and Fountain) - Inspectors
General Legislation

This memorandum requests your guidance on this legislation so that we may advise agencies on the position to take in their reports to Congress.

On April 27 the House Government Operations Committee subcommittee plans to begin hearings on H.R. 2819, which would establish Offices of Inspector General in eleven departments and agencies. This legislation has been introduced because of Representatives Brooks' and Fountain's conviction that agencies have failed to investigate or correct serious internal program abuses and to provide Congress with adequate information about program deficiencies because the audit and investigation function is fragmented, of lower organizational stature, and inadequately staffed.

On February 28, the Attorney General advised you that the provisions in the bill (A) requiring Inspectors General to report directly to Congress and (B) prohibiting the President from removing these officers without notification of his reasons to Congress are unconstitutional. In addition, the proposed reports to Chairman Brooks of eight of the affected agencies oppose the bill on both constitutional and management grounds. The management arguments raised by these agencies are summarized below.

- Requiring direct submission of reports by Inspectors General to Congress without the agency heads' approval conflicts with their overall management responsibilities, dilutes their control over their programs, and invites Congress to assume a management role in agency operations.
- It is inappropriate for Congress to impose statutory internal organization arrangements and specify the duties and responsibilities of subordinate agency

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officers; such arrangements and responsibilities should be administratively determined.

- The authority of the Inspector General to report directly to the Congress could result in an adversary relationship between the Inspector General and the agency head.
- The "Congressional surveillance" contemplated in the bill could invite premature publicity and preempt remedial administrative action, particularly in matters to be referred to the Department of Justice for criminal or civil prosecution.
- Requiring the Inspector General to inform Congress "without delay" of any reduction in his budget request would invite Congressional intervention in the developmental stages of the President's Budget.
- Presidential appointment with Senate confirmation of Inspectors General could be viewed as politicizing positions which have been traditionally held by career personnel.

Finally, three agencies have consolidated their audit and inspection function in a single office reporting to the agency head (General Services Administration, Energy Research and Development Administration, and Department of Housing and Urban Development); the Veterans Administration similarly intends to consolidate and upgrade its audit and investigation function in a single office accountable to the Administrator. In the Departments of Interior and Labor (although Labor's major grant agencies also maintain limited audit staffs), these functions are consolidated into single units directly accountable to an Assistant Secretary; the Departments of Commerce and Agriculture, the Environmental Protection Agency, and the National Aeronautics and Space Administration maintain separate units for audit and investigation, respectively, but which report to an assistant department or agency head. The Department of Transportation has decentralized its external audit and investigation functions among its major line agencies.

Option 1: Support bill as introduced. This would mean accepting constitutionally objectionable provisions.

Agree _____ Disagree _____

Option 2: Support bill if amended to remove unconstitutional provisions and the provision allowing congressional intervention in the budget process. This would remove the most objectionable features of bill. However, it would continue unwise practice of having Congress statutorily determine internal agency organization.

Agree _____ Disagree

Option 3: Oppose bill on grounds that any necessary reorganization action for investigating abuses within agencies can and should be done administratively. (OMB Recommendation).

Agree _____ Disagree _____

J.C.

**Electrostatic Copy Made
for Preservation Purposes**

THE WHITE HOUSE
WASHINGTON

Date: April 28, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat *concur*
Frank Moore
Jack Watson
Bob Lipshutz *aman*

FOR INFORMATION: The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance memo 4/27 re H.R. 2819 (Brooks and Fountain) -
Inspectors General Legislation.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 6:00 P.M.

DAY: Saturday

DATE: April 30, 1977

ACTION REQUESTED:

Other: Your comments

STAFF RESPONSE:

I concur.

Please note other comments below:

No comment.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 27 1977

977 APR 27 PM 4 25

MEMORANDUM FOR THE PRESIDENT

FROM: Bert Lance *DL*

SUBJECT: H.R. 2819 (Brooks and Fountain) - Inspectors
General Legislation

This memorandum requests your guidance on this legislation so that we may advise agencies on the position to take in their reports to Congress.

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On February 28, the Attorney General advised you that the provisions in the bill (A) requiring Inspectors General to report directly to Congress and (B) prohibiting the President from removing these officers without notification of his reasons to Congress are unconstitutional. In addition, the proposed reports to Chairman Brooks of eight of the affected agencies oppose the bill on both constitutional and management grounds. The management arguments raised by these agencies are summarized below.

- Requiring direct submission of reports by Inspectors General to Congress without the agency heads' approval conflicts with their overall management responsibilities, dilutes their control over their programs, and invites Congress to assume a management role in agency operations.
- It is inappropriate for Congress to impose statutory internal organization arrangements and specify the duties and responsibilities of subordinate agency

- officers; such arrangements and responsibilities should be administratively determined.
- The authority of the Inspector General to report directly to the Congress could result in an adversary relationship between the Inspector General and the agency head.
- The "Congressional surveillance" contemplated in the bill could invite premature publicity and preempt remedial administrative action, particularly in matters to be referred to the Department of Justice for criminal or civil prosecution.
- Requiring the Inspector General to inform Congress "without delay" of any reduction in his budget request would invite Congressional intervention in the developmental stages of the President's Budget.
- Presidential appointment with Senate confirmation of Inspectors General could be viewed as politicizing positions which have been traditionally held by career personnel.

Finally, three agencies have consolidated their audit and inspection function in a single office reporting to the agency head (General Services Administration, Energy Research and Development Administration, and Department of Housing and Urban Development); the Veterans Administration similarly intends to consolidate and upgrade its audit and investigation function in a single office accountable to the Administrator. In the Departments of Interior and Labor (although Labor's major grant agencies also maintain limited audit staffs), these functions are consolidated into single units directly accountable to an Assistant Secretary; the Departments of Commerce and Agriculture, the Environmental Protection Agency, and the National Aeronautics and Space Administration maintain separate units for audit and investigation, respectively, but which report to an assistant department or agency head. The Department of Transportation has decentralized its external audit and investigation functions among its major line agencies.

Option 1: Support bill as introduced. This would mean accepting constitutionally objectionable provisions.

Agree _____ Disagree _____

Option 2: Support bill if amended to remove unconstitutional provisions and the provision allowing congressional intervention in the budget process. This would remove the most objectionable features of bill. However, it would continue unwise practice of having Congress statutorily determine internal agency organization.

Agree _____ Disagree _____

Option 3: Oppose bill on grounds that any necessary reorganization action for investigating abuses within agencies can and should be done administratively. (OMB Recommendation).

Agree _____ Disagree _____

Date: April 28, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat
Frank Moore
Jack Watson
Bob Lipshutz ✓

FOR INFORMATION: The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance memo 4/27 re H.R. 2819 (Brooks and Fountain) -
Inspectors General Legislation.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:
TIME: 6:00 P.M.
DAY: Saturday
DATE: April 30, 1977

ACTION REQUESTED:

Other: Your comments

STAFF RESPONSE:

I concur.
Please note other comments below:

No comment.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

April 29, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT *ms/leg*
ANNIE M. GUTIERREZ

SUBJECT: Inspectors General Legislation

I concur with the OMB recommendation that we oppose the bill. It is not wise to set the precedent of having Congress statutorily determine internal agency organization.

April 28, 1977

FOR ACTION:

Stu Eizenstat ✓
 Frank Moore
 Jack Watson
 Bob Lipshutz

FOR INFORMATION: The Vice President

977 APR 28 PM 9 09

*XC Camp
Gutierrez
Lubanskin*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance memo 4/27 re H.R. 2819 (Brooks and Fountain) -
Inspectors General Legislation.

YOUR RESPONSE MUST BE DELIVERED
 TO THE STAFF SECRETARY BY:

TIME: 6:00 P.M.

DAY: Saturday

DATE: April 30, 1977

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Date: April 28, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Frank Moore
Jack Watson ✓
Bob Lipshutz

FOR INFORMATION: The Vice President

1977 APR 29 AM 8 58

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance memo 4/27 re H.R. 2819 (Brooks and Fountain) -
Inspectors General Legislation..

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:
TIME: 6:00 P.M.
DAY: Saturday
DATE: April 30, 1977

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

We think it is unwise to
oppose Jack Brooks' bill.
Better course is Option 2.

Watson/Frank

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

Date: March 25, 1977

MEMORANDUM

FOR ACTION:

Jack Watson
Stu Eizenstat *see attached*
Bob Lipshutz (Attn. Huron) *concur w/sw comment*

FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Jack Watson memo re Inspector General Bill
(H.R. 2819)

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 4:00 P.M.

DAY: Monday

DATE: March 28, 1977



ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

I have sent the attached status report on the Inspectors General Bill to the President. The AG is anxious to get a decision on the bill. The attached OMB memo answers most of Jack's questions. Please get a final recommendation ready for the President as early as possible next week. Thanks.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

cc: Watson
Eizenstat
Lipshutz (attn Huron)

I have sent the attached status report on the Inspectors General Bill to the President. The AG is anxious to get a decision on the bill. Please The attached OMB memo ~~xxxx~~ answers most of Jack's questions. Please get a final recommendation ready for the President as early as possible next week. Thanks.

Date: March 25, 1977

MEMORANDUM

FOR ACTION:

Jack Watson
Stu Eizenstat
Bob Lipshutz (Attn. Huron)

FOR INFORMATION:

*XC copy
Cutter
Rubenstein
210*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Jack Watson memo re Inspector General Bill
(H.R. 2819)

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 4:00 P.M.

DAY: Monday

DATE: March 28, 1977

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

I have sent the attached status report on the Inspectors General Bill to the President. The AG is anxious to get a decision on the bill. The attached OMB memo answers most of Jack's questions. Please get a final recommendation ready for the President as early as possible next week. Thanks.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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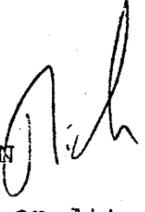
THE WHITE HOUSE
WASHINGTONINFORMATION

25 March 1977

TO:

THE PRESIDENT

FROM:

RICK HUTCHESON 

SUBJECT:

Status Report on Attorney
General's Memo, "Inspectors
General Bill," H.R. 2819

At Monday's Cabinet Meeting, the Attorney General mentioned that he had forwarded to you a memorandum dated February 24 recommending that you oppose the Fountain-Brooks Bill (H.R. 2819), which would establish Inspectors General in eleven different Executive agencies.

On Wednesday, Jack sent you a memorandum recommending that several issues not discussed in Bell's memorandum be investigated before you decide on a course of action. Communications from Eizenstat and Lipshutz yesterday agree with Jack that further investigation is needed.

A final recommendation from Stu, Jack and Bob Lipshutz, accompanying the Attorney General's memo, should be to you early next week.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM TO: THE PRESIDENT
FROM: Jack Watson *Jack*
RE: Inspectors General Bill (H.R. 2819)

At Monday's Cabinet meeting, Griffin Bell said he had forwarded to you a legal memorandum on the captioned subject. The memorandum states that provisions of the Fountain-Brooks bill, which would establish Inspectors General in eleven different Executive agencies, are unconstitutional. The main issues are: (1) the requirement that Inspectors General report directly to the Congress; and (2) limitations on your power over the appointment and removal of those officers. The memorandum recommends modifications in the pending legislation.

Before deciding on a course of action, I think we should consider several other important aspects of the situation:

1. Jack Brooks is a prime sponsor of the bill. Since we have several crucial initiatives pending in his Committee, we need to know how committed he is to the legislation, as drafted;
2. Griffin's memorandum does not assess the constitutionality of a related proposal--to establish a permanent or temporary special prosecutor. You have endorsed the latter, and we need to avoid any inconsistency;
3. Several Cabinet departments already have Inspectors General. We need to know how any position you take on this bill might affect them.

March 23, 1977



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 24 1977

MEMORANDUM FOR: Mr. Hutcheson

SUBJECT: Jack Watson memo re Inspector General
Bill (H.R. 2819)

I suggest 3 points be kept in mind in considering H.R. 2819:

1. It would be possible to establish a permanent or temporary special prosecutor on a constitutional basis. (See point 2 of Watson memo). Thus, there is no necessary inconsistency between opposing those provisions of the Inspector General bill that the Attorney General believes to be unconstitutional and supporting special prosecutor legislation.
2. As far as we are aware, only HEW has an Inspector General established by law (P.L. 94-505) which presents the same kind of constitutional problems as H.R. 2819; H.R. 2819 appears to be patterned after the HEW statute. (See point 3 of Watson memo). Opposing H.R. 2819 would not necessarily affect any other Inspector General.
3. Three Cabinet Agencies (DOT, HUD, Agriculture) and four independent agencies (GSA, EPA, VA, NASA) have indicated to OMB that they oppose this legislation, in some cases quite strongly. Copies of written views from five of the agencies (two responded informally) are attached. The major reason for their opposition, aside from the constitutional issues, is that the bill would interfere with management control by agency heads.

I should also point out that there is no necessarily compelling virtue in the uniformity that the Brooks bill would apply to the specified departments and agencies. All now have established functions, responsible to the agency heads, for internal audit, investigations, and evaluation.

Sincerely,

James M. Frey
James M. Frey
Assistant Director for
Legislative Reference

Attachment

THE WHITE HOUSE

WASHINGTON

March 24, 1977

MEMORANDUM FOR: RICK HUTCHESON
FROM: STU EIZENSTAT *SE*
SUBJECT: Jack Watson's Memo re: Inspectors
General Bill (H.R. 2819)

The Fountain-Brooks bill, in requiring the Inspectors General to report independently to both Congress and the Executive Branch builds in serious administrative and management difficulties. This Administration has taken a tough stand on fraud, and responsibility should be lodged firmly within the Executive Branch.

I agree that the issues which Jack raises should be explored before any action is taken.

FEB 24 1977

MEMORANDUM FOR THE PRESIDENT

Re: Inspectors General Bill

H.R. 2819 which would establish a single Inspector General for eleven different Executive agencies. The bill combines and reorganizes the present internal audit and investigative units in each of the eleven agencies into a single office with the primary functions of the Inspector General to develop and supervise procedures for the detection and prevention of fraud and abuse; to keep both Congress and the public fully informed regarding these matters; and to recommend and report on the implementation of corrective actions.

I am forwarding to you a memorandum prepared by the Office of Legal Counsel on the question whether the Fountain-Brooks bill which would establish Inspectors General in eleven different Executive agencies is constitutional. I concur in the conclusion of our Office of Legal Counsel that the provisions in the bill requiring the Inspectors General to report directly to Congress coupled with the bill's limitations on your power over the appointment and removal of those officers violate the doctrine of separation of powers and would be constitutionally invalid.

H.R. 2819 was introduced on February 1, 1977 by Representatives Fountain and Brooks and has been referred to the Committee on Government Operations. The bill combines and reorganizes the present internal audit and investigative units in each of the eleven agencies which are the subject of the bill into a single office with the primary functions of the Inspector General to develop and supervise procedures for the detection and prevention of fraud and abuse; to keep both Congress and the public fully informed regarding these matters; and to recommend and report on the implementation of corrective actions.

Griffin B. Bell

Attorney General

Enclosure

The Departments included are Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation.

The other establishments are the Energy Research and Development Administration, the Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration.



Office of the Attorney General

Washington, D. C. 20530

February 21, 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Inspector General legislation

You have asked for our views on the constitutionality of H.R. 2819 which would establish an Office of Inspector General in six Executive departments 1/ and five other Executive establishments. 2/ It is our opinion that the provisions in this bill which make the Inspectors General subject to divided and possibly inconsistent obligations to the Executive and Legislative Branches violate the doctrine of separation of powers and are constitutionally invalid. This memorandum will briefly outline the major provisions of the bill, discuss the constitutional problems presented by those provisions, and recommend modifications to remedy those problems.

A. Description of the Inspector General legislation pending before Congress.

H.R. 2819 was introduced on February 1, 1977 by Representatives Fountain and Brooks and has been referred to the Committee on Government Operations. The bill combines and reorganizes the present internal audit and investigative units in each of the eleven agencies which are the subject of the bill into a single office with certain additional responsibilities. The primary functions of the Inspector General's office would be (1) to develop and supervise programs (including audits and investigations) in the agency to promote efficiency and to prevent fraud and abuse; (2) to keep both the head of the agency and Congress fully informed regarding these matters; and (3) to recommend and report on the implementation of corrective actions.

1/ The Departments included are Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation.

2/ The other establishments are the Energy Research and Development Administration, the Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration.

Each Inspector General is required to prepare and submit to Congress as well as to the head of the agency a variety of reports, and he is required to supply additional documents and information to Congress on request. His reports are required to be submitted directly to Congress without clearance or approval by the agency head or anyone else in the Executive Branch. The Inspector General is authorized to have access to a broad range of materials available to the agency, and is given subpoena power to obtain additional documents and information.

The Inspectors General are to be appointed by the President (with the advice and consent of the Senate) "without regard to political affiliation," and whenever the President removes an Inspector General from office, the bill would require the President to notify both Houses of the reasons for removal.

The bill is modeled on Title II of P.L. 94-505 (1976) which establishes an Office of Inspector General in HEW. No Inspector General for HEW has been appointed to date.

B. Constitutional Objections.

1. As a threshold matter, the Justice Department has repeatedly taken the position that continuous oversight of the functioning of Executive agencies, such as that contemplated by the requirement that the Inspector General keep Congress fully and currently informed, is not a proper legislative function. In our view such continuing supervision amounts to an assumption of the Executive's role of administering or executing the laws. However, at the same time it must be acknowledged that Congress has enacted numerous statutes with similar requirements, many of which are currently in force.

2. An even more serious problem is raised, in our view, by the provisions which make the Inspectors General subject to divided and possibly inconsistent obligations to the Executive and the Legislative Branch, in violation of the doctrine of separation of powers. In particular, the Inspector General's general obligation to keep Congress fully and currently informed, taken with the mandatory requirement that he provide any additional information or documents requested by Congress, and the condition that his reports be transmitted to Congress without Executive Branch clearance or approval, are inconsistent with his status as an officer in the Executive Branch, reporting to

and under the general supervision of the head of the agency. Article II vests the Executive power of the United States in the President. This includes general administrative control over those executing the laws. See Myers v. United States, 272 U.S. 52, 163-164 (1926). The President's power of control extends to the entire Executive Branch, and includes the right to coordinate and supervise all replies and comments from the Executive Branch to Congress. See Congress Construction Corp. v. United States, 314 F.2d 527, 530-532; 161 C. Cl. 50, 55-59 (1963).

3. Under the bill the Inspector General has an unrestricted access to Executive Branch materials and information. And he has an unqualified and independent obligation to provide such materials and documents to the Congress as it may request. Obviously the details of some investigations by the Inspector General (or by the Justice Department) might well, under settled principles, require them to be withheld from Congress through the assertion of executive privilege. But the bill as written would preclude that assertion in view of the Inspector General's duty to make requested materials and information available to Congress.

4. Finally, we are of the view that the requirement that the President notify both Houses of Congress of the reasons for his removal of an Inspector General constitutes an improper restriction on the President's exclusive power to remove Presidentially appointed executive officers. Myers v. United States, 272 U.S. 52 (1926). Although Congress has the authority to limit the President's power to remove quasi-judicial or quasi-legislative officers, Wiener v. United States, 357 U.S. 349 (1958), Humphrey's Executor v. United States, 295 U.S. 602 (1935), the power to remove a subordinate appointed officer within one of the Executive departments is a power reserved to the President acting in his discretion. ^{3/}

C. Suggested Modifications.

We believe that the constitutional problems raised by the proposed legislation could only be cured through modification

^{3/} We also question the validity of the requirement that the President appoint each Inspector General "without regard to political affiliation." This implies some limitation on the appointment power in addition to the advice and consent of the Senate.

which would clearly establish the Inspector General as an Executive Officer responsible to the head of the agency.

The principal problem with the proposed legislation is that the Inspector General is neither fish nor fowl. While the Inspector General is supposed to be under the general supervision of the agency head, the Inspector General reports directly to Congress. He is to have free access to all Executive information within the agency, yet he is not subject to the control of the head of the agency or, for that matter, even to the control of the President.

In our view, the only means by which this bill could be rendered constitutional would be to modify it so as to clearly establish the Inspector General as an Executive Officer subject to the supervision of the agency head and subject to the ultimate control of the Chief Executive Officer. We recommend the following modifications:

1. Reports of problems encountered and suggestions for remedial legislation may be required of the agencies in question, but those reports must come to Congress from the statutory head of the agency who must reserve the power of supervision over the contents of these reports.

2. The Constitutional principle of executive privilege must be preserved. The provision in the bill requiring reports to Congress of all "flagrant abuses or deficiencies" within seven days after discovery would risk jeopardizing ongoing investigations by the agency and the Justice Department, many of which would be subject to a claim of privilege. That provision should be qualified by a specific reference to the possibility of a claim of privilege, or deleted entirely from the bill.

3. Finally, the power of the President to remove subordinate Executive officers must remain intact. The requirement in the bill that the President report to Congress the reasons for his removal of an Inspector General would infringe on this power and should be eliminated.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE

WASHINGTON

April 2, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT *By David Roberts*

SUBJECT: H.R. 2819, The Inspector General Bill

I recommend that a decision on H.R. 2819 be postponed until a Justice, OMB and White House group determines what specific changes are wanted in the bill and whether these changes are acceptable to Congressman Brooks.

I recognize that, as the Attorney General's memorandum indicates, there may be serious separation of power problems with H.R. 2819 as presently drafted. But my understanding is that Brooks is not wedded to the bill in its current form. He has drafted the bill in this form because it follows the form recently used to establish the HEW Inspector General. (Though it should not be a bar to doing so, if we oppose Brooks' bill on constitutional grounds the Administration will seem to be arguing that its HEW Inspector General is operating outside the Constitution.)

One concern about postponing an immediate decision on H.R. 2819 is that Brooks might hold the Energy Department bill hostage. From my discussions with Brooks' staff, I think that possibility is very unlikely. Hearings have begun on the DOE; and the bill must be reported by May 15 at the latest (to meet the budget deadlines). The Inspector General Bill is not nearly that far along; no hearings have yet been held and no action is required by May 15. Given these factors, plus the public attention being focused on DOE, I doubt that Brooks will hold up DOE pending our approval of H.R. 2819.

If you agree, I will coordinate the development of the Administration's position on Inspectors General.

Bob Lipshutz concurs.

_____ Agree

_____ Disagree

THE WHITE HOUSE
WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson *Jack*

March 29, 1977

RE: Inspectors General Bill

In my March 23 memorandum to you on this subject, I recommended further investigation of three issues, only two of which are addressed in the memoranda now being circulated. Missing is any data on the political situation. Will we offend Jack Brooks if we move to oppose his bill or to modify it? I understand Frank Moore is checking this out, and suggest all action await his information.

More generally, I urge that we package our criticisms as proposed modifications to legislation we basically support. Griffin's first memorandum suggests this also. You do not want to be in the position of opposing a program to improve accountability in the various departments.

THE WHITE HOUSE
WASHINGTON

Date: March 23, 1977

MEMORANDUM

FOR ACTION: Bert Lance *no comment*
Stu Eizenstat
Hamilton Jordan *nc*
Bob Lipshutz *disagree - concur*
Frank Moore *nc*

FOR INFORMATION: The Vice President

*Higgin,
7/10/77*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Jack Watson memo re Inspector General Bill
(H.R. 2819)

**YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:**
TIME: IMMEDIATE TURNAROUND
DAY:
DATE:

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

*Bill
to be
in AM*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

INFORMATION

25 March 1977

TO: THE PRESIDENT

FROM: RICK HUTCHESON 

SUBJECT: Status Report on Attorney General's Memo, "Inspectors General Bill," H.R. 2819

At Monday's Cabinet Meeting, the Attorney General mentioned that he had forwarded to you a memorandum dated February 24 recommending that you oppose the Fountain-Brooks Bill (H.R. 2819), which would establish Inspectors General in eleven different Executive agencies.

On Wednesday, Jack sent you a memorandum recommending that several issues not discussed in Bell's memorandum be investigated before you decide on a course of action. Communications from Eizenstat and Lipshutz yesterday agree with Jack that further investigation is needed.

A final recommendation from Stu, Jack and Bob Lipshutz, accompanying the Attorney General's memo, should be to you early next week.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM TO: THE PRESIDENT
FROM: Jack Watson *Jack*
RE: Inspectors General Bill (H.R. 2819)

At Monday's Cabinet meeting, Griffin Bell said he had forwarded to you a legal memorandum on the captioned subject. The memorandum states that provisions of the Fountain-Brooks bill, which would establish Inspectors General in eleven different Executive agencies, are unconstitutional. The main issues are: (1) the requirement that Inspectors General report directly to the Congress; and (2) limitations on your power over the appointment and removal of those officers. The memorandum recommends modifications in the pending legislation.

Before deciding on a course of action, I think we should consider several other important aspects of the situation:

1. Jack Brooks is a prime sponsor of the bill. Since we have several crucial initiatives pending in his Committee, we need to know how committed he is to the legislation, as drafted;
2. Griffin's memorandum does not assess the constitutionality of a related proposal--to establish a permanent or temporary special prosecutor. You have endorsed the latter, and we need to avoid any inconsistency;
3. Several Cabinet departments already have Inspectors General. We need to know how any position you take on this bill might affect them.

March 23, 1977



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 24 1977

MEMORANDUM FOR: Mr. Hutcheson

SUBJECT: Jack Watson memo re Inspector General
Bill (H.R. 2819)

I suggest 3 points be kept in mind in considering H.R. 2819:

1. It would be possible to establish a permanent or temporary special prosecutor on a constitutional basis. (See point 2 of Watson memo). Thus, there is no necessary inconsistency between opposing those provisions of the Inspector General bill that the Attorney General believes to be unconstitutional and supporting special prosecutor legislation.
2. As far as we are aware, only HEW has an Inspector General established by law (P.L. 94-505) which presents the same kind of constitutional problems as H.R. 2819; H.R. 2819 appears to be patterned after the HEW statute. (See point 3 of Watson memo). Opposing H.R. 2819 would not necessarily affect any other Inspector General.
3. Three Cabinet Agencies (DOT, HUD, Agriculture) and four independent agencies (GSA, EPA, VA, NASA) have indicated to OMB that they oppose this legislation, in some cases quite strongly. Copies of written views from five of the agencies (two responded informally) are attached. The major reason for their opposition, aside from the constitutional issues, is that the bill would interfere with management control by agency heads.

I should also point out that there is no necessarily compelling virtue in the uniformity that the Brooks bill would apply to the specified departments and agencies. All now have established functions, responsible to the agency heads, for internal audit, investigations, and evaluation.

Sincerely,

James M. Frey
James M. Frey
Assistant Director for
Legislative Reference

Attachment

THE WHITE HOUSE

WASHINGTON

March 24, 1977

MEMORANDUM FOR: RICK HUTCHESON
FROM: STU EIZENSTAT *SE*
SUBJECT: Jack Watson's Memo re: Inspectors
General Bill (H.R. 2819)

The Fountain-Brooks bill, in requiring the Inspectors General to report independently to both Congress and the Executive Branch builds in serious administrative and management difficulties. This Administration has taken a tough stand on fraud, and responsibility should be lodged firmly within the Executive Branch.

I agree that the issues which Jack raises should be explored before any action is taken.

THE WHITE HOUSE
WASHINGTON

MARCH 28, 1977

MEMORANDUM FOR

THE PRESIDENT

FROM

Stu Eizenstat *Stu*

RE

H.R. 2819, The Inspectors General Bill

I recommend that H.R. 2819 be opposed in its present form.

The Attorney General and Jack Watson have each prepared memoranda to you indicating their problems with the legislation. My primary objection with the bill stems from the bifurcated responsibility of the Inspectors General to report to both the executive and legislative branches. The practical effect of this separation of powers problem is that the Inspectors General are likely to be responsible to neither and institutionally stronger than the Secretaries nominally in charge of the departments.

I concur with Jack Watson's view that we need to know the depth of Jack Brooks' commitment to this bill. Perhaps he would support modification of the bill to lodge the responsibility for the Inspectors General firmly within the Executive. If he would be willing to do so, then the remaining problems that we all see with the bill could become moot.

Date: March 23, 1977

MEMORANDUM

FOR ACTION: Bert Lance
 Stu Eizenstat
 Hamilton Jordan
 Bob Lipshutz
 Frank Moore ✓

FOR INFORMATION: The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Jack Watson memo re Inspector General Bill
(H.R. 2819)

YOUR RESPONSE MUST BE DELIVERED
 TO THE STAFF SECRETARY BY:

TIME: IMMEDIATE TURNAROUND

DAY:

DATE:

ACTION REQUESTED:

 Your comments

Other:

STAFF RESPONSE:

 I concur No comment

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

MEMORANDUM TO: THE PRESIDENT
FROM: Jack Watson *Jack*
RE: Inspectors General Bill (H.R. 2819)

At Monday's Cabinet meeting, Griffin Bell said he had forwarded to you a legal memorandum on the captioned subject. The memorandum states that provisions of the Fountain-Brooks bill, which would establish Inspectors General in eleven different Executive agencies, are unconstitutional. The main issues are: (1) the requirement that Inspectors General report directly to the Congress; and (2) limitations on your power over the appointment and removal of those officers. The memorandum recommends modifications in the pending legislation.

Before deciding on a course of action, I think we should consider several other important aspects of the situation:

1. Jack Brooks is a prime sponsor of the bill. Since we have several crucial initiatives pending in his Committee, we need to know how committed he is to the legislation, as drafted;
2. Griffin's memorandum does not assess the constitutionality of a related proposal--to establish a permanent or temporary special prosecutor. You have endorsed the latter, and we need to avoid any inconsistency;
3. Several Cabinet departments already have Inspectors General. We need to know how any position you take on this bill might affect them.

March 23, 1977



Office of the Attorney General
Washington, D.C.

March 22, 1977

MEMORANDUM FOR THE PRESIDENT:

Re: Inspector General Bill

I enclose a memorandum dated February 24, 1977, to you with which I enclosed a copy of a memorandum prepared by the Office of Legal on the Inspector General legislation. This matter came up in the Cabinet meeting yesterday, and it may be that you have not seen the memorandum and the attachment.

The Office of Legal Counsel memorandum has not been circulated to the other Cabinet Members. To date, only HEW has been given an inspector general.

Respectfully,

Griffin B. Bell

Griffin B. Bell
Attorney General

Attachment

February 21,

MEMORANDUM FOR FEB 24 1977

MEMORANDUM FOR THE PRESIDENT

Re: **Inspectors General Bill**

H.R. 2019 which would establish an office of Inspector General in each of the eleven different Executive agencies. It is my opinion that the provisions of this bill I am forwarding to you a memorandum prepared

by the Office of Legal Counsel on the question whether the Fountain-Brooks bill which would establish Inspectors General in eleven different Executive agencies is constitutional. I concur in the conclusion of our Office of Legal Counsel that the provisions in the bill requiring the Inspectors General to report directly to Congress coupled with the bill's limitations on your power over the appointment and removal of those officers violate the doctrine of separation of powers and would be constitutionally invalid.

H.R. 2019 was introduced on January 1, 1977 by Representatives Fountain and Brooks and has been referred to the Committee on Government Operations. The bill combines and reorganizes the present internal audit and investigative units in each of the eleven agencies which are the subject of the bill into a single office with certain investigative functions. The primary functions of the Inspector General would be (1) to develop and supervise procedures for audits and investigations in the areas of (a) management, (b) government fraud and abuse; (2) to keep both the President and Congress fully informed regarding these matters; and (3) to recommend and report on the implementation of corrective actions.

Griffin B. Bell
Attorney General

Enclosure

The Departments included are Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation.

The other establishments are the Energy Research and Development Administration, the Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration.



Office of the Attorney General
Washington, D. C. 20530

February 21, 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Inspector General legislation

You have asked for our views on the constitutionality of H.R. 2819 which would establish an Office of Inspector General in six Executive departments 1/ and five other Executive establishments. 2/ It is our opinion that the provisions in this bill which make the Inspectors General subject to divided and possibly inconsistent obligations to the Executive and Legislative Branches violate the doctrine of separation of powers and are constitutionally invalid. This memorandum will briefly outline the major provisions of the bill, discuss the constitutional problems presented by those provisions, and recommend modifications to remedy those problems.

A. Description of the Inspector General legislation pending before Congress.

H.R. 2819 was introduced on February 1, 1977 by Representatives Fountain and Brooks and has been referred to the Committee on Government Operations. The bill combines and reorganizes the present internal audit and investigative units in each of the eleven agencies which are the subject of the bill into a single office with certain additional responsibilities. The primary functions of the Inspector General's office would be (1) to develop and supervise programs (including audits and investigations) in the agency to promote efficiency and to prevent fraud and abuse; (2) to keep both the head of the agency and Congress fully informed regarding these matters; and (3) to recommend and report on the implementation of corrective actions.

-
- 1/ The Departments included are Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation.
- 2/ The other establishments are the Energy Research and Development Administration, the Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration.

Each Inspector General is required to prepare and submit to Congress as well as to the head of the agency a variety of reports, and he is required to supply additional documents and information to Congress on request. His reports are required to be submitted directly to Congress without clearance or approval by the agency head or anyone else in the Executive Branch. The Inspector General is authorized to have access to a broad range of materials available to the agency, and is given subpoena power to obtain additional documents and information.

The Inspectors General are to be appointed by the President (with the advice and consent of the Senate) "without regard to political affiliation," and whenever the President removes an Inspector General from office, the bill would require the President to notify both Houses of the reasons for removal.

The bill is modeled on Title II of P.L. 94-505 (1976) which establishes an Office of Inspector General in HEW. No Inspector General for HEW has been appointed to date.

B. Constitutional Objections.

1. As a threshold matter, the Justice Department has repeatedly taken the position that continuous oversight of the functioning of Executive agencies, such as that contemplated by the requirement that the Inspector General keep Congress fully and currently informed, is not a proper legislative function. In our view such continuing supervision amounts to an assumption of the Executive's role of administering or executing the laws. However, at the same time it must be acknowledged that Congress has enacted numerous statutes with similar requirements, many of which are currently in force.

2. An even more serious problem is raised, in our view, by the provisions which make the Inspectors General subject to divided and possibly inconsistent obligations to the Executive and the Legislative Branch, in violation of the doctrine of separation of powers. In particular, the Inspector General's general obligation to keep Congress fully and currently informed, taken with the mandatory requirement that he provide any additional information or documents requested by Congress, and the condition that his reports be transmitted to Congress without Executive Branch clearance or approval, are inconsistent with his status as an officer in the Executive Branch, reporting to

and under the general supervision of the head of the agency. Article II vests the Executive power of the United States in the President. This includes general administrative control over those executing the laws. See Myers v. United States, 272 U.S. 52, 163-164 (1926). The President's power of control extends to the entire Executive Branch, and includes the right to coordinate and supervise all replies and comments from the Executive Branch to Congress. See Congress Construction Corp. v. United States, 314 F.2d 527, 530-532; 161 C. Cl. 50, 55-59 (1963).

3. Under the bill the Inspector General has an unrestricted access to Executive Branch materials and information. And he has an unqualified and independent obligation to provide such materials and documents to the Congress as it may request. Obviously the details of some investigations by the Inspector General (or by the Justice Department) might well, under settled principles, require them to be withheld from Congress through the assertion of executive privilege. But the bill as written would preclude that assertion in view of the Inspector General's duty to make requested materials and information available to Congress.

4. Finally, we are of the view that the requirement that the President notify both Houses of Congress of the reasons for his removal of an Inspector General constitutes an improper restriction on the President's exclusive power to remove Presidentially appointed executive officers. Myers v. United States, 272 U.S. 52 (1926). Although Congress has the authority to limit the President's power to remove quasi-judicial or quasi-legislative officers, Wiener v. United States, 357 U.S. 349 (1958), Humphrey's Executor v. United States, 295 U.S. 602 (1935), the power to remove a subordinate appointed officer within one of the Executive departments is a power reserved to the President acting in his discretion. ^{3/}

C. Suggested Modifications.

We believe that the constitutional problems raised by the proposed legislation could only be cured through modification

^{3/} We also question the validity of the requirement that the President appoint each Inspector General "without regard to political affiliation." This implies some limitation on the appointment power in addition to the advice and consent of the Senate.

which would clearly establish the Inspector General as an Executive Officer responsible to the head of the agency.

The principal problem with the proposed legislation is that the Inspector General is neither fish nor fowl. While the Inspector General is supposed to be under the general supervision of the agency head, the Inspector General reports directly to Congress. He is to have free access to all Executive information within the agency, yet he is not subject to the control of the head of the agency or, for that matter, even to the control of the President.

In our view, the only means by which this bill could be rendered constitutional would be to modify it so as to clearly establish the Inspector General as an Executive Officer subject to the supervision of the agency head and subject to the ultimate control of the Chief Executive Officer. We recommend the following modifications:

1. Reports of problems encountered and suggestions for remedial legislation may be required of the agencies in question, but those reports must come to Congress from the statutory head of the agency who must reserve the power of supervision over the contents of these reports.
2. The Constitutional principle of executive privilege must be preserved. The provision in the bill requiring reports to Congress of all "flagrant abuses or deficiencies" within seven days after discovery would risk jeopardizing ongoing investigations by the agency and the Justice Department, many of which would be subject to a claim of privilege. That provision should be qualified by a specific reference to the possibility of a claim of privilege, or deleted entirely from the bill.
3. Finally, the power of the President to remove subordinate Executive officers must remain intact. The requirement in the bill that the President report to Congress the reasons for his removal of an Inspector General would infringe on this power and should be eliminated.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

Date: March 23, 1977

MEMORANDUM

FOR ACTION: Bert Lance
 Stu Eizenstat
 Hamilton Jordan
 Bob Lipshutz
 Frank Moore

FOR INFORMATION: The Vice President

206

*X C Bert Casp
 David Rubenstein
 A. Gutierrez*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Jack Watson memo re Inspector General Bill (H.R. 2819)

YOUR RESPONSE MUST BE DELIVERED
 TO THE STAFF SECRETARY BY:
 TIME: IMMEDIATE TURNAROUND
 DAY:
 DATE:

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Done: Watson memo
 Inspector Pen.
 Bill (H. C. 2919)
 THE WHITE HOUSE
 WASHINGTON

ACTION	FYI	
<input checked="" type="checkbox"/>		MONDALE
		COSTANZA
<input checked="" type="checkbox"/>		EIZENSTAT
<input checked="" type="checkbox"/>		JORDAN
<input checked="" type="checkbox"/>		LIPSHUTZ
<input checked="" type="checkbox"/>		MOORE
		POWELL
		WATSON

FOR STAFFING
 FOR INFORMATION
FROM PRESIDENT'S OUTBOX
LOG IN/TO PRESIDENT TODAY
 IMMEDIATE TURNAROUND

ENROLLED BILL
 AGENCY BILL
 Staffing comments
 should go to Bert
 Carp within 48
 hours; due from
 Carp to Staff
 Secretary next day.

CAB DECISION
 EXECUTIVE ORDER
 Staffing comments
 should go to Doug
 Huron within 48
 hours; due from
 Huron to Staff
 Secretary next day.

ACTION	FYI	
		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		GAMMILL
		HARDEN
		HOYT
		HUTCHESON
		JAGODA
		KING
		KRAFT
<input checked="" type="checkbox"/>		LANCE
		LINDER
		MITCHELL
		POSTON
		PRESS
		B. RAINWATER
		SCHLESINGER
		SCHNEIDERS
		SCHULTZE
		SIEGEL
		SMITH
		WELLS
		VOORDE



OFFICE OF MANAGEMENT AND BUDGET

Date: 3-25-77

TO : Rick Hutcheson, Staff Secretary

FROM: James M. Frey
Assistant Director for
Legislative Reference

This was inadvertently detached
from the Memo responding to it, which
was forwarded to your office on 3-24.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

March 16, 1977

Honorable Thomas B. Lance
Director
Office of Management and Budget
Washington, D. C.

Dear Mr. Lance:

This will respond to your legislative referral memorandum of February 23, 1977, requesting the views of this Department with respect to H.R. 2819, a bill designed to increase the economy and efficiency of the Executive Branch by establishing Offices of Inspector General within certain named Departments and agencies, including the Department of Agriculture.

This Department agrees with the objective of improving the economy and efficiency of Government. In light of the Constitutional and other deficiencies discussed below, however, we recommend against enactment of H.R. 2819.

H.R. 2819 would create Offices of Inspector General within six Departments and five independent agencies of the Executive Branch. In each case, the Inspector General and a Deputy Inspector General would be appointed by the President by and with the advice and consent of the Senate, and they would be selected "solely on the basis of integrity and demonstrated ability and without regard to political affiliation." Each Inspector General would be called upon to appoint an Assistant Inspector General for Auditing and an Assistant Inspector General for Investigations, each to be appointed in accordance with the laws and regulations governing the civil service. We conclude it is the intent of the bill that the Assistant Inspectors General be appointed from the career Federal service.

The bill would require that each Inspector General report to, and be under the general supervision of, the head of his Department or agency, with the proviso that the authority of the head of the agency in this regard could be delegated to the agency's second-ranking officer but to no other officer or employee. It would be the responsibility of each Inspector General to provide policy direction for auditing and investigative activities; to make recommendations designed to promote

economy and efficiency, and to prevent and detect fraud and abuse, in the administration of the agency's program; and to coordinate with other government agencies with responsibilities for audit and investigative activities.

Each Inspector General would be required to report annually and quarterly to the head of the agency, and to the Congress, identifying, among other things, problem areas and recommendations for corrective action. The Inspector General would also be required to report immediately to the head of the establishment, and within seven days thereafter to the appropriate Congressional committees or subcommittees, any serious or flagrant problems, abuses, or deficiencies in program administration and operations. The bill specifically provides that all such reports as are required to be made to the Congress shall be made by the Inspector General without further clearance or approval.

We are particularly concerned about the provisions of the bill which require numerous reports directly to Congress, and to Congressional Committees and Subcommittees, without the clearance or approval of the Secretary. The mandate of the legislation for annual, quarterly, and immediate reports on known "problems, abuses, and deficiencies" will involve not only Congressional Committees, but also Congressional staff in the day-to-day administration and operation of this and other Departments. The extent of this involvement and the direct reporting requirement present an apparent violation of the "separation of powers" doctrine which requires clear delineation of Legislative and Executive responsibilities. It is our understanding the Attorney General has concluded that H.R. 2819, if enacted, would violate the Constitution in this regard.

We believe that this type of surveillance, and the potential it provides for premature intervention and publicity, will tend to defeat rather than enhance the objective of improved economy and efficiency stated in the bill. As the responsible executives, the Cabinet officers and Agency Heads must have the opportunity to detect and correct administrative problems without daily surveillance by Congress. Experience has shown that often this surveillance causes premature publicity and pre-empts administrative processes that should have been allowed to run their course. Moreover, the disclosure of information concerning ongoing criminal investigations would create serious problems and possible interference with criminal justice proceedings. It does not take much embarrassment resulting from trial by publicity to dry up sources of information and discourage agency requests for audit and investigative services. As a consequence, relatively minor situations may be left unattended and become serious due to lack of early attention.

The Office of Audit and the Office of Investigation, successors to this Department's Office of Inspector General, provide Department management annually with almost 5,000 reports on matters of varying degrees of significance. They have carefully designed procedures for assuring that those reports are properly acted upon by responsible officials, including escalation to higher levels of authority (including the Secretary), when necessary.

Certainly Congress should have periodic reports on how well the programs of a Department are working. Several avenues already exist to provide such information. These include the annual appropriation hearings, oversight hearings, reviews conducted by the General Accounting Office, requests for specific information from Congressional Committees and Subcommittees, and Freedom of Information Act requests from individual Members of Congress.

Since the head of a Department is totally responsible for the integrity and performance of his organization, consideration should be given to having the Inspector General appointed by, and fully responsive to, such official. In this regard, Comptroller General Staats, in comments on a similar bill enacted during the last Congress relating to the Department of Health, Education and Welfare, recommended that the Inspector General be appointed by the Secretary of that Department.

The totally independent reporting channel to the Congress, which the bill would require, could bring about an adversary relationship between the Secretary and the Inspector General. This could very well impair open and candid communication and the Inspector General's ability to serve the Secretary and Department management.

An Office of Inspector General existed in the Department of Agriculture between 1962 and 1974. The Inspector General, appointed by and reporting to the Secretary of Agriculture, carried out a mission very similar to that provided for in H.R. 2819. The USDA Inspector General was able to meet the needs of the Secretary of Agriculture while developing a reputation for objective cooperation with many Committees of the Congress.

The bill would require the Inspector General to inform Congress "without delay" of any reduction in his budget request which he deems seriously detrimental to the adequate performance of his function. This seems to us to erode the President's prerogative to submit "his" budget, and the requirement of the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), that the President submit a "unified budget" for the Executive Branch.

For the Constitutional and other reasons set forth above, this Department does not recommend enactment of H.R. 2819.

Sincerely,

Signed

Bob Bergland
Secretary



National Aeronautics and
Space Administration

Washington, D.C.
20546

Office of the Administrator

MAR 16 1977

Honorable Bert Lance
Director
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

Dear Bert:

This responds to Mr. Bernard H. Martin's memorandum of February 23, 1977, requesting the views of the National Aeronautics and Space Administration on the bill H.R. 2819, "To reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation, and within the Energy Research and Development Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, and the Veterans' Administration, and for other purposes."

As it would pertain to NASA, H.R. 2819 would establish within NASA an all but autonomous Office of the Inspector General. The proposed Inspector General would be appointed by the President, subject to the advice and consent of the Senate, at Level IV of the Executive Schedule, a grade equal to that of NASA's third-ranking official. The NASA Office of Inspector General would also include a Deputy Inspector General, at Level V of the Executive Schedule, who also would be appointed by the President subject to the advice and consent of the Senate.

The proposed NASA Inspector General would be given significant independent powers which presumably could be exercised without regard to the authority of the NASA Administrator. These powers would include the power to appoint two Assistant Inspectors General, one for auditing and one for investigations; to select, appoint and employ officers and employees of the Office

of Inspector General; to enter into contracts and other arrangements with private persons; to make such payments as may be necessary; and to require by subpoena the production of documents, presumably from those doing business with NASA. The budget for the proposed Office of Inspector General would be included within NASA's budget, but if a budget request of the office were to be reduced, the Inspector General would be required to inform Congress without delay if he or she determined such action to be seriously detrimental to the adequate performance of the office under the act.

The proposed Office of Inspector General would be required to report to the NASA Administrator and to Congress directly on the activities of the office during the preceding year. He or she would also be required to report quarterly regarding problems which in his or her opinion, were not being adequately resolved. Finally the Inspector General would be required to report to the NASA Administrator and within seven days thereafter to appropriate committees of Congress whenever the Office "becomes aware of particularly serious or flagrant problems, abuses, or deficiencies" relating to NASA or its programs.

The stated purpose of H.R. 2819 is to promote economy and efficiency in the administration of NASA, to prevent and detect fraud or abuse in NASA's programs and operations, and to provide a means of keeping Congress informed about problems and deficiencies in the administration of NASA's programs and the necessity for and progress of corrective action.

It is our very strong opinion that far from achieving those objectives, the establishment of the Office of Inspector General within NASA would seriously hamper NASA's ability to maintain its record of economy and efficiency in management and in formulating and implementing fast and appropriate responses to problems.

Throughout NASA's history it has depended upon line management, from the Administrator through the program Associate Administrators, the NASA Center Directors, and the field center program and project managers to carry out its programs in

aeronautics and space research and development in a way which achieves program objectives on time and within budget. At the same time the NASA management system is structured so that the NASA Comptroller, who has overall responsibility for budgeting and financial management, can exercise effective control over the allocation of resources. Under the control of the NASA Comptroller and NASA's line managers, about 75% of the overall NASA funding goes to contractors who are continuously audited by the Defense Contract Auditing Agency (DCAA). NASA's internal audit is performed by the Office of Management Audit which reports directly to a Level V official in the Office of the Administrator. In the inspections area, the NASA Office of Inspections and Security, which includes inspectors co-located at each of NASA's field installations but who report directly to Headquarters, also reports to that same senior official in the Office of the Administrator. External checks and balances are applied through the audit and review function of the General Accounting Office and through such statutory bodies as the Aerospace Safety Advisory Panel, established by NASA under section 6 of Public Law 90-67.

The decisive difference between the organization envisaged by H.R. 2819 and NASA's present system--which depends upon line management, the NASA Comptroller, the Office of Management Audit and the Office of Inspections and Security--is that those offices are an integral part of NASA directly responsible to the NASA Administrator. The Administrator and the Deputy Administrator are each appointed by the President, subject to the advice and consent of the Senate. Once programs are approved and funded by the Congress, the Administrator has the overall responsibility to see that the programs are carried out on time and within budget, and within the framework of all relevant laws and regulations. If he fails to do so he is directly accountable to the President and to the relevant Congressional committees. To establish the proposed Inspector General within NASA, partly responsible to the Administrator but with significant independent powers, would clearly tend to dilute both the

responsibility and the accountability of the NASA Administrator, and would disrupt the NASA management systems which are generally regarded as singularly effective.

NASA is, of course, keenly aware of its obligation to keep appropriate Congressional committees fully and currently informed on NASA's programs, and on problems and deficiencies in those programs requiring corrective action. Given the annual review of NASA's programs by its authorization and appropriation committees and the strong oversight functions exercised by those committees, NASA's responsibilities in this regard have been effectively discharged over the years. Moreover, NASA's response to correcting problems in management are generally regarded by the Congressional committees concerned as being among the best in Government.

In our view, the establishment of a Presidentially appointed Inspector General at a level outranking all but three of NASA's line managers would serve to disrupt NASA's management system which depends heavily on such line managers. Moreover, the direct reports that such an official would be required to submit to the Congress would not foster the frank and candid exchange of information which now flows between NASA and appropriate Congressional committees, but to the contrary would seem to inhibit such an exchange.

Finally, we believe that significant constitutional questions involving separation of powers would be raised by enactment of H.R. 2819, and suggest that you may wish to solicit the views of the Attorney General on that aspect of the proposed legislation.

In view of the foregoing, NASA recommends that the Administration strongly oppose enactment of H.R. 2819.

Sincerely,


James C. Fletcher
Administrator



THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

MAR 15 1977

Mr. James H. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Ms. Martha Ramsey

Dear Mr. Frey:

Subject: H. R. 2819, 95th Congress (Fountain/Brooks)

This is in response to your request for our views on the
above bill.

As a matter of principle, we do not believe that it is generally desirable to specify in legislation particular organizational arrangements that preclude the head of an Executive agency from organizing in the manner that he or she determines is most effective in accomplishing that agency's mission. This does not mean that we would oppose the basic objective of creating within each agency an organization or office capable of effective and coordinated audit and investigative services. To the contrary, this Department has had more than five years of experience with an independent Office of Inspector General and believes that there are major advantages to such an office that may be realized by other Departments and agencies as well where such an office does not now exist. But we do not believe that such an office should necessarily be exempt from organizational reassessments, such as this Department is now engaged in connection with all its operations. Thus, if such offices are to be established where they do not now exist, we think this would be far better done by Executive branch action -- perhaps in response to a Presidential initiative if desired -- than through legislation.

Furthermore, we believe that this bill has two features which are highly objectionable and which should be strongly opposed by the Administration:

1. Dual Reporting Requirements and Budget Communications

The legislation would require that an Inspector General serve two masters -- the head of the department or agency, and the Congress. (See generally, section 4, and section 5(a)(5).) The bill's Congressional reporting requirements could place an Inspector General (as well as the head of his department) in a very precarious position, and would create a potential source of friction within an agency. Not only would the Inspector General be required to report to Congress directly, he would also be required to report to his agency head and be under the general supervision of that person. This is tantamount to the Secretary's watchdog watching the Secretary. The content of the data submitted to Congress undoubtedly would be influenced by the agency head's control over the Inspector General, and by the IG's allegiance to the agency head. Conversely, the potential for abuse of power by an Inspector General would be invited by the proposed statutory division of loyalty and responsibility.

Moreover, the difficulties associated with routinely reporting to Congress on "problems, abuses, or deficiencies" in an agency's operations are both real and unnecessary. No OIG organization is infallible. Recommendations to correct operating deficiencies within an agency must sometimes stand the test of time. Also, management must be provided time to institute improvements and to focus its resources -- without premature outside pressures. There is also the likelihood of premature release of information -- information not yet fully verified or which has not had an opportunity to be acted upon. Additionally, premature disclosure of significant fraud or program abuses may interfere with the outcome of criminal or administrative proceedings.

A process already exists for the provision of needed information to Congress regarding OIG activities. But the establishment of a formal reporting relationship could overload and perhaps duplicate the system through which such information is currently being provided. Congress has sufficient oversight capacity through the General Accounting Office, its appropriating and authorizing committees, its investigative arms, and its ability to call upon Cabinet officers at any time for appropriate data and explanations. We believe any reporting to Congress should remain the responsibility of the head of the department or agency.

Our experience at HUD with the OIG concept has shown that the Inspector General is the Secretary's most effective means of ensuring independent and objective reporting on Departmental operations. But the Secretary, respecting OIG's obligation to be independent and objective, must nevertheless have the freedom to exercise authority over such an organization. Anything less would severely diminish the ability of the Secretary to administer the Department's affairs.

We also object, for similar reasons, to section 5(a)(5), providing for direct communication by the Inspector General to the Congress concerning the adequacy of OIG budget requests.

2. Appointment of the Inspector General by the President

The bill provides that the Inspector General and his Deputy would be appointed by the President, with the advice and consent of the Senate. Although the apparent intention is to upgrade the prestige of the office and thereby increase its independence, we believe it will be perceived instead as a politicization of the office. Accordingly, sections 2(a) and (b) could adversely affect the real independence and objectivity needed in the Inspector General position. These provisions would also negatively affect the continuity of OIG operations. Such positions, in our view, should be occupied by career personnel.

Sincerely,

S. Leigh Curry, Jr.
Acting Deputy General Counsel



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your request for views of the Department of Transportation (DOT) concerning proposed legislation H.R. 2819, a bill

"To reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General within the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation, and within the Energy Research and Development Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, and the Veterans' Administration, and for other purposes."

The bill would establish a semi-independent "Inspector General" within 11 Federal Departments and agencies who would provide leadership and coordination, and recommend policies for activities designed: (a) to promote economy and efficiency in the administration of Federal programs and operations, and (b) to prevent and detect fraud and abuse in such programs, and (c) to provide a means for keeping the Secretary and Congress fully and currently informed about problems and deficiencies relating to the administration of programs and operations and the necessity for and progress of corrective action. The Inspector General would be required to submit annual reports to Congress and the Secretary detailing significant program abuses and the outcome of matters referred to prosecutors for action as well as to submit immediate reports concerning flagrant problems or abuses to the Secretary and then to the Congress within seven days. He would also be granted access to all departmental materials needed to carryout his responsibilities; be granted subpoena power; and be required to report to Congress if he found departmental or Presidential budget reductions to be "detrimental" to the performance of his assigned duties.

DOT strongly opposes the enactment of H.R. 2819. We believe the Office of Inspector General outlined in this bill is unwarranted and unnecessary. The bill would duplicate on-going activities; it would seriously impair objective efforts to carry out the Department's mission; it appears to be inconsistent with the concept of separation of powers between the Executive and Legislative branches of Government; and it is contrary to the principles of good management.

Following are specific reasons for this position:

Separation of Powers. (A) Creating within an Executive Branch agency a semi-independent Inspector General who reports directly to Congress may violate basic Constitutional safeguards separating the Executive and Legislative branches of Government.

(B) Under H.R. 2819, the Inspector General would be an officer in an Executive Branch Department but would have semi-independent status reporting directly to Congress as well as the Secretary. Neither the Secretary nor the President would have effective management control over his policies and activities thereby impairing the integrity of both the Executive Branch and the DOT organization; it also has the potential of causing severe management and organizational conflicts between the Inspector General and senior departmental officials. It could negatively affect the performance of line organizations in that they will not be held accountable to line management for audit and investigation activities, but to a semi-independent Inspector General.

(C) Being kept informed about departmental programs and operations is a proper and necessary responsibility of Congress in fulfilling its legislative and oversight responsibilities. However, securing such information directly from a subordinate officer of an Executive Branch agency head appears to run counter to a healthy environment for viable interaction between the Executive Branch and Congress.

Congressional Justification. The precedent for H.R. 2819 is contained in P.L. 94-505 which established an Office of Inspector General in the Department of Health, Education and Welfare (HEW). However, much of the justification used for establishing an Inspector General in HEW does not, we believe, apply to the Department of Transportation. DOT has the internal capabilities to audit departmental programs and to responsibly investigate those potential areas of fraud or program abuse which have been uncovered.

The only apparent Congressional justification applicable to DOT for adopting this proposal is the decentralized organizational structure of the Department's investigation and external audit functions. The Department can make changes in this area by further consolidation of these functions.

In addition, DOT has maintained healthy and active relationships with the many Congressional committees charged with DOT oversight responsibilities. The reporting requirements proposed in this bill would serve only to further exacerbate the paperwork requirements currently in-force with no substantially increased benefit for either the DOT or the Congress.

Organization Problems. (A) H.R. 2819 would authorize the Inspector General to exercise subpoena powers to produce all information, documents, reports, answers, records, accounts, papers and other data necessary in the performance of his assigned functions. At present, only the Secretary or appropriate delegated officials possess subpoena power in DOT. To vest such power in an element of the Department which is not totally accountable to the Secretary would be an unwise administrative practice.

(B) H.R. 2819 would direct the Inspector General to inform Congress in the event his budget request is reduced to a "detrimental" level by the Secretary or the President. This action has the potential for causing serious rifts between the Secretary and the Inspector General and could cause situations which might be injurious to the Secretary's ability to provide effective leadership and management of transportation activities.

(C) H.R. 2819 would remove the audit and investigation functions from the direct managerial control of the Secretary or agency head. This action would critically inhibit the Secretary's capability to investigate problem areas in departmental programs and operations; such a capability is an essential managerial prerogative and vital to the Secretary's responsibility for managing the Department. Accordingly, were this function to be reassigned to an Inspector General, a similar function may have to be reestablished within the full control of the Secretary.

Duplication of GAO Functions. The establishment of the Office of Inspector General would largely duplicate many of the existing functions currently performed by the Government Accounting Office (GAO). The major objective of GAO is to assist Congress in carrying out their legislative and oversight responsibilities. Major GAO activities in this regard include: (1) auditing the programs, activities, and financial operations of Federal Departments and agencies; and, (2) investigating all matters relating to the receipt, disbursement, and application of public funds.

The breadth and scope of GAO audit activities as currently practiced appears to provide Congress with sufficient means to carry out its legislative and oversight responsibilities in a manner which does not disrupt the organizational and managerial relationships of the Department.

Reports. The proposed legislation imposes quarterly reporting requirements on the Inspector General. We believe quarterly reporting places an undue administrative burden upon both the Congress and the Department. Annual reports would be sufficient in this regard.

For the reasons outlined above, the Department of Transportation opposes enactment of H.R. 2819.

Sincerely,

Linda Kamm
General Counsel



VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

22-11775
L.G. (4)

March 14, 1977

The Honorable
Bert Lance
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lance:

This is in reference to your request for the views of the Veterans Administration on H.R. 2819, a bill which would establish an Office of Inspector General within the Veterans Administration, as well as ten other Federal agencies. By establishing an Office of Inspector General with no program responsibilities, but with overall authority in the agency to conduct and supervise audits and investigations relating to programs and operations of the agency, the bill would purportedly prevent and detect fraud and abuse in such programs and operations, and, in general, promote economy and efficiency within the several agencies.

The Veterans Administration endorses the concept of establishing an Office of Inspector General or comparable position within the agency to accomplish those objectives noted. At the present time, the Office of Planning and Evaluation is the arm of this agency vested with independent, objective audit and investigative capabilities. That office has performed both the audit function and the investigative function for this agency over the years and has, within its limited capabilities, performed well. However, due to the small size of the audit and investigative staffs, as compared with the large and complex structure of the Veterans Administration, it is apparent that the current apparatus available for conducting timely audits and thorough investigations is unacceptable. A number of reports by the General Accounting Office have been critical of the staffing in this area. For example, one recent report (FGMSD 77-3) noted that of the forty-nine major and minor auditing agencies in the Federal Government, the Veterans Administration ranked last in both the ratio of auditors to agency employees (1-2600) and the ratio of auditors to agency appropriations (1-\$238 million dollars).

The extensive number of programs administered by this agency provide constant targets for fraud and abuse, and we are fully aware of problems in this area that exist today. It is my personal intention to take steps internally to reorganize and upgrade the audit and investigative functions, by establishing an Office of Inspector General or comparable position within the Office of the Administrator, and by significantly increasing the resources and status of the present investigation and audit services. This office will be directly responsible to me. I am committed to this course independent of possible enactment by the Congress of H.R. 2819.

Under section 210(b) of title 38, United States Code, the Administrator of Veterans Affairs has the authority to ". . . consolidate, eliminate, abolish, or redistribute the functions of the bureaus, agencies, offices, or activities in the Veterans' Administration, create new bureaus, agencies, offices, or activities therein, and fix the functions thereof and the duties and powers of their respective executive heads." Additionally, section 219(a) of title 38 requires measurement and evaluation of the impact of all agency programs ". . . in order to determine their effectiveness in achieving stated goals in general, and in achieving such goals in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services." Under this reorganization authority, I am confident that, by internal reorganization and the appointment of a high level official answerable to me, we will be able to accomplish the purposes to which H.R. 2819 is directed.

H.R. 2819 as introduced would establish a semiautonomous Inspector General appointed by the President, with the advice and consent of the Senate, but removable only by the President. Although the Bill would place the Inspector General under the "general supervision" of the head of the agency, it is clear that this person is intended to operate independently of the agency head. Examples of the independent status of the Inspector General are found in Section 4(e) of the Bill, which requires the Inspector General to transmit reports to Congress without further clearance or approval, Section 5(a)(5) which requires him to immediately inform Congress of reductions in his budget requests, and Section 5(b)(2) which requires him to report the circumstances of a failure to provide information requested under Section 5(a)(1) or (2).

It is in this area that H.R. 2819 in its present form troubles us. We agree that an Inspector General, who has independent investigative and audit authority, is organizationally desirable to accomplish the purposes of this Bill; however, we are at present unpersuaded that the direct reporting to Congress provisions are necessary to insure that the aims of the Bill are realized. The head of an agency needs an independent Inspector General function. However, he also needs the opportunity to evaluate problems candidly within his organization and put his house in order. The Congressional reporting provisions of this Bill may very well deny him these opportunities or significantly inhibit them.

We further question whether the Bill would result in a duplication of the role of the General Accounting Office. Since the General Accounting Office is an arm of Congress which reports directly to it, the requirement for agency Inspectors General to report to the Congress may well duplicate functions of the General Accounting Office. I recognize that the General Accounting Office is only capable of a given number of investigations and audits of any given agency, and that the agency Inspector General might be able to give more frequent updates to the Congress. In any event, irrespective of these provisions, an Inspector General can achieve the aims of the Bill, namely to prevent fraud and abuse as well as promote efficiency of operations, without the Congressional reporting provisions. The agency would benefit thereby, the aims of the legislation would be realized and oversight responsibility of Congress would be adequately served through annual reports by the agency and traditional General Accounting Office examination of agency activities. Further, the General Accounting Office would have access to the reports of any Agency's Inspector General, which would permit adequate oversight by Congress. In short, we are concerned that a confusion of roles will occur should this Bill be enacted in its present form, with the result that the duplication of the General Accounting Office function will detract from the ability of the Inspector General to perform his intended function.

Further confusion of responsibility and roles may arise with regard to the Inspector General's duty, under the Bill, to investigate fraud and abuses within the agency and to make referrals to the proper authorities for prosecution. Such referrals are now required to be promptly made by the head of this

agency to the Attorney General of the United States pursuant to title 28, United States Code, section 535(b). We question whether this requirement under Section 535(b) may be fulfilled in view of the proposed IG's authority to investigate and refer for prosecution. It is also unclear whether primary investigative responsibility for fraud and abuses within this agency would vest in the Inspector General or in the Federal Bureau of Investigation.

While we continue to have reservations over what might be considered a blurring of legislative and executive functions, we will defer to the wisdom of the Congress on this point. We do not think that, in the absence of any specific showing to the contrary, Congress should find it necessary to assume the need to question the Administrator's capacity to properly administer the agency.

Although we generally agree with the aims of H.R. 2819, to promote economy and efficiency in the administration of, and to prevent and detect fraud and abuse in, programs and operations, there are specific provisions with which we take issue. We have enclosed a section-by-section analysis of the Bill in which we note our objections and comments.

An estimate of costs associated with this proposed legislation will depend on several factors. By merely following the dictates of the Bill, by transferring our current audit and investigation functions to the Office of the Inspector General, we would incur no new costs, with the exception of the higher salaries of the Inspector General and his Deputy. However, as noted previously, it is my intention to improve significantly these functions within the Veterans Administration, which will require an increased allocation of resources to accomplish this goal. For example, under Section 6(a)(2), the agency head may transfer other internal functions to the Inspector General, with his consent, to the extent they are properly related to the operations of the new office. Although it is too early to determine whether any additional existing offices will be transferred, we can safely predict that some increases in our current staffs will be needed to effect the improvements we seek and which are sought by H.R. 2819.

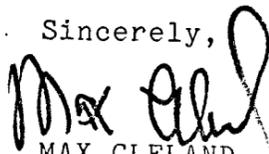
To conform to the recommendations of the General Accounting Office and to bring our investiga-

tive and audit staffs up to a level of truly effective performance, we estimate that approximately 260 more employees, with training and equipment needs, will be required, costing \$8.1 million in FY 1978. After the initial training and procurement, costs will drop slightly in FY 1979 to \$7.675 million. The following years' projections are: FY 1980 - \$7.8 million; FY 1981 - \$7.925 million; and FY 1982 - \$8.050 million. These costs are based on our assesment of deficiencies in the investigative and audit areas, and are not necessarily directly related to enactment of H.R. 2819.

In summation, I wish to make clear my endorsement of the broad aims of H.R. 2819, those of promoting economy and efficiency and detecting and preventing fraud and abuse in the programs and operations of the Veterans Administration. However, I believe that these goals can be reached within the agency, without establishing an office outside the direct control of the Administrator. Both the programs and operations of the agency will benefit if the authority of the Administrator exists over both the discovery of deficiencies and the personnel and resources needed to correct them. Certain of the requirements that the Inspector General report directly to Congress, and his authority to complain to Congress if he fails to receive the budget allocations or other assistance he desires, impedes too severely the Administrator's authority to put his own house in order.

While we remain committed to the legislation's basic purpose of prevention of abuse and the promotion of economy and efficiency in Government, we cannot for the reasons set forth in this report support H.R. 2819 in its present form.

Sincerely,


MAX CLELAND
Administrator

Enclosure

THE WHITE HOUSE,
WASHINGTON

May 2, 1977

Stu Eizenstat -

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

Re: Aircraft Noise

THE WHITE HOUSE
WASHINGTON

Mr. President:

Comments from Jack
Watson, and dissenting
comments from OMB, are
attached.

Rick

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

April 28, 1977

*Stu - This is
a mess which I
don't understand.
You, Brock & Bert
get together &
meet with me or give
me a coherent
& simple memo
Stu J.C.*

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT
BILL JOHNSTON
KURT SCHMOKE

SUBJECT:

Aircraft Noise

BACKGROUND

Secretary Adams has been asked to testify on May 5 on H.R. 4539, Congressman Glenn Anderson's bill to assist air carriers and airport operators to reduce noise. The bill would:

- 1) Require noise compatibility land use planning at about 250 of the nation's airports.
- 2) Raise outlays from the Airport and Airway Development Trust Fund by a total of \$800 million over the next 3 years. These grants would go to airport operators to be used, presumably, for noise abatement programs.
- 3) Establish a noise abatement trust fund for the replacement, re-engining and retrofitting (installation of sound absorbing material around the engine) of aircraft that do not meet federal noise standards. The fund would be financed from a 2% surcharge on air passenger fares. This would be offset by a corresponding 2% decrease in air fare taxes that now go into the Airport Trust Fund (which currently has a surplus). Though revenues would remain unchanged, the new outlays from the noise abatement trust fund would increase the unified budget deficit by about \$400 million annually.

The momentum for the retrofit/replacement trust fund has been generated primarily by the FAA's 1976 ruling requiring all existing aircraft to meet Federal Airline Regulation (FAR) 36 by 1985. FAR 36 is the 1969 standard that sets maximum allowable noise levels for aircraft engines. Since the useful life of many non-complying aircraft goes beyond 1985, this rule imposes on the airlines the costs of the retrofitting or prematurely replacing these planes. Without the retroactive rule the last of the non-complying aircraft would go out of service by 1993.

**Electrostatic Copy Made
for Preservation Purposes**

AGENCY VIEWS

DOT has proposed testimony that would:

- 1) Oppose the noise planning requirements.
Secretary Adams believes that the federal role in local noise planning should be one of encouragement rather than regulation.
- 2) Oppose the extra outlays from the Airport Development Trust Fund
- 3) Adopt a modified version of the noise abatement trust fund. Like Anderson bill, Secretary Adams plan would involve a 2% surcharge on tickets, (offset by a similar reduction in existing ticket taxes). Unlike the Anderson bill however, Adams plan would allow each airline to receive grants from the trust fund only to the extent of its contributions, minimizing the cross-subsidy of air carriers with noisy fleets by those with quiet ones. Although the fund would be under the joint supervision of the FAA and the CAB, federal intervention into airline decision making would be minimized.

Adams plan would also encourage replacement of old aircraft, rather than retrofit. The total size of the program, \$3.3 billion, is significantly in excess of the \$700 million - \$1.3 billion needed to retrofit all aircraft. Compared to retrofit/replacement would have much more significant noise reductions and fuel savings.

CEQ and EPA oppose federal noise planning unless it were as tough as the strongest existing local ordinances. They favor establishment of a noise abatement trust fund, but believe it should be used to finance aircraft meeting the quieter 1975 noise standards rather than the more lenient standards of the retroactive rule.

OMB agrees with DOT in opposing the noise planning and the greater expenditures from the Airport Development Trust Fund. They oppose, however, the establishment of a noise abatement trust fund, even in the modified form proposed by Secretary Adams. They believe that the Secretary should be instructed to develop options for providing financing only to the airlines that will be financially unable to meet the noise rules by 1985.

OPTIONS

We recommend that you concur with the agency recommendations to oppose the noise planning requirements and the higher expenditures from the Airport Development Trust Fund. On the remaining issues there are four options:

- I. Accept the DOT modified trust fund proposal.
- II. Instruct DOT to prepare more limited aircraft noise financing options (OMB recommendation).
- III. Instruct DOT to prepare limited financing options as in (II) and request DOT to reconsider the retroactive noise rule.
- IV. Take no position on noise financing. Inform the House committee that we believe no noise financing plan should be enacted prior to enactment of airline regulatory reform.

I. Accept the DOT Proposal

PRO

- o Supporters of the trust fund argue that the imposition of new federal rules on existing aircraft noise implies some federal financial responsibility. They point out that air passengers rather than the general public are paying most of the cost of the noise abatement program.
- o They argue further that the weak financial condition of the industry requires a substantial program allowing replacement as well as retrofit. This will enable the industry to shift to newer, much quieter, more fuel efficient aircraft, with attendant beneficial impacts on the aircraft construction industry.
- o A substantial replacement-oriented program is widely viewed as a necessary "sweetener" for our regulatory reform proposals. We have been told that Congressman Anderson, whose assistance on air deregulation issues is crucial to us in the House, will not support our airline reform proposals if we oppose his bill to provide replacement financing.

CON

- o Opponents of a federal role argue that we should avoid setting a precedent for federal assistance to meet environmental rules. Even in its modified form the Adams trust fund involves greater rewards to airlines that have noisier fleets, and greater intervention by the federal government into private decision making.
- o The budget deficit will be increased by \$400 million annually.

II. Instruct DOT to Prepare Financing Options Limited to Airlines Financially Unable to Meet Noise Rules (OMB Option)

The arguments in favor and against this option are the reverse of those for the DOT trust fund proposal.

III. Direct DOT to Prepare Minimum Financing Options as in (II) and to Reconsider the Retroactive Application of the Noise Rule

Retroactive application of FAR 36 was agreed to by President Ford in the heat of the 1976 Presidential campaign. Some critics have questioned the rationale for this decision. Arguments in favor of reconsideration of the rule:

PRO

- o There is no persuasive evidence that the benefits of the retroactive rule are greater than its costs. The calculation of the benefits used in the Environmental Impact Statement relied almost entirely on the value of "reduced annoyance" to those living near airports. This was determined to be \$400 per person per year, a figure set by a Los Angeles judge in a damage case. According to the FAA, aircraft noise "does not present any direct physical health danger to the vast majority of people exposed."
- o Two and three engine jets are only marginally above current noise standards. Retrofitting these planes to bring them into compliance would involve a decrease in noise levels of from 1 to 7 decibels on approach, and a 0-3.7 decibel decrease on takeoff. For a single overflight, human observers at most locations could not detect the difference between a retrofitted and a non-retrofitted aircraft.

- o The retroactive rule places the government in the undesirable position of accepting some responsibility for aircraft noise reduction, and carries the danger of major federal intervention into the investment decisions of the air carriers.

CON

- o Even small changes in average noise levels can significantly decrease the numbers of people reporting objectionable noise. In terms of annoyance, the effects of cumulative noise exposure are more important than single events.
- o The decision to require retroactive application of FAR 36 was reached only after great political support for noise relief had built up in Congress and the affected communities. To retreat from the standard would certainly trigger a shock wave of bitter protest from the affected communities, especially in New York where the Concorde has generated heated opposition, primarily because of its noise.
- o A new noise rule would require a year or more of contentious proceedings, including a new EIS and probable court proceedings. In addition, relaxation of the noise rule could give momentum to efforts by local jurisdictions to impose their own noise restrictions, potentially threatening the integrity of the air transport system.
- o Two and three engine jets (whose exemption from the retroactive rules is most often suggested) make a significant contribution to the total noise problem. Eighty-four percent of all daily air traffic involves these jets.
- o The heads of Transportation, EPA and CEQ as well as Congressman Anderson feel strongly that no change should be proposed in the existing rule.

- IV. Take no position on the financing aspects of the bill.
Argue that noise abatement financing should only be considered after airline regulatory reforms are legislated.

PRO

- o Airline reform will significantly change the economic environment in which airlines operate. Air carriers freedom to set prices and their ability to finance new aircraft may change sharply. It is inconsistent to support new federally imposed ticket taxes, and federally supervised trust funds at the same time we are seeking greater freedom for the air carriers from federal regulation.
- o It will give Representative Anderson a strong incentive to help us pass airline regulatory reform.

CON

- o This option is only viable if we plan ultimately to support significant relief for the air carriers to purchase quieter planes. Before postponing his noise bill and taking up regulatory reform, Anderson will certainly insist on clarification of what he can expect from us on airline noise. We must either agree to support his financing plan in some form, or, if he works to pass our regulatory reform bill, be legitimately accused of double-crossing him.
- o It will make corporate planning more difficult for the air carriers. We may not pass regulatory reform this year. Meanwhile the clock is running on the retroactive rule, the first stage of which takes effect in 1981. Airline planning will become more complex as this period of uncertainty drags on.

WATSON COMMENTS

THE WHITE HOUSE
WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM:

Jack Watson
Jane Frank

Jack
April 30, 1977

RE:

Aircraft Noise

We concur with EPA and CEQ in favor of establishing a noise abatement trust fund to be financed by airline users. OMB's position against the fund is unrealistic since all airlines will claim that they are financially unable to meet the FAR 36 standard, and any whose claims are disallowed will then argue that they are placed at a competitive disadvantage. Meanwhile, nothing will happen to quiet the existing noisy fleet.

Aircraft noise is a health hazard and an intensely politicized issue to those who live around major airports. The Noise Pollution Control Act of 1972 imposes a federal obligation to protect the public from the adverse effects of noise. The CEQ/EPA proposal--or as second choice, Brock's modified fund proposal--enables that mandate to be carried out.

OMB COMMENTS

THE WHITE HOUSE
WASHINGTON

INFORMATION

2 May 1977

TO: THE PRESIDENT
FROM: RICK HUTCHESON *R.H.*
SUBJECT: OMB Comments on "Aircraft Noise"

1. OMB: Unwise to endorse prematurely any but the most limited level of financing. The financial impact of the approaches to date are wholly inadequate -- cost data and projections are speculative or non-existent:
 - a. no cost impact data is available for the Anderson Bill
 - b. the annual impact of the DOT financing proposal is understated at \$400 million; DOT proposes establishing a large Federal guarantee program for aircraft re-engining (sic) and replacement, which the Federal budget should reflect
 - c. DOT's estimates of the least-cost approach to noise abatement, retrofit, are overstated at \$700-1300 million. Only a few carriers with large fleets of noisy aircraft (PanAm, TWA, Eastern) are expected to require federal assistance -- the great majority of carriers have the ability to finance noise reduction measures. OMB estimate of cost: \$300-500 million.
2. OMB's assessment of the advantages of the OMB proposal:
 - a. permits the Administration to determine specifically which air carriers require financial assistance and at what level -- a "rifle" vs. a "shotgun" approach
 - b. as opposed to the DOT option and Anderson Bill, under OMB's proposal Federal involvement would be minimized
 - c. OMB's proposal is less costly
 - d. the DOT or Anderson approaches run counter to the philosophy of deregulation -- loan guarantees and out-right financial grants to air carriers would compete with private sector money

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE
WASHINGTON

April 28, 1977

*Stu. This is
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Adams plan would also encourage replacement of old aircraft, rather than retrofit. The total size of the program, \$3.3 billion, is significantly in excess of the \$700 million - \$1.3 billion needed to retrofit all aircraft. Compared to retrofit/replacement would have much more significant noise reductions and fuel savings.

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OMB agrees with DOT in opposing the noise planning and the greater expenditures from the Airport Development Trust Fund. They oppose, however, the establishment of a noise abatement trust fund, even in the modified form proposed by Secretary Adams. They believe that the Secretary should be instructed to develop options for providing financing only to the airlines that will be financially unable to meet the noise rules by 1985.

OPTIONS

We recommend that you concur with the agency recommendations to oppose the noise planning requirements and the higher expenditures from the Airport Development Trust Fund. On the remaining issues there are four options:

- I. Accept the DOT modified trust fund proposal.
- II. Instruct DOT to prepare more limited aircraft noise financing options (OMB recommendation).
- III. Instruct DOT to prepare limited financing options as in (II) and request DOT to reconsider the retroactive noise rule.
- IV. Take no position on noise financing. Inform the House committee that we believe no noise financing plan should be enacted prior to enactment of airline regulatory reform.

I. Accept the DOT Proposal

PRO

- o Supporters of the trust fund argue that the imposition of new federal rules on existing aircraft noise implies some federal financial responsibility. They point out that air passengers rather than the general public are paying most of the cost of the noise abatement program.
- o They argue further that the weak financial condition of the industry requires a substantial program allowing replacement as well as retrofit. This will enable the industry to shift to newer, much quieter, more fuel efficient aircraft, with attendant beneficial impacts on the aircraft construction industry.
- o A substantial replacement-oriented program is widely viewed as a necessary "sweetener" for our regulatory reform proposals. We have been told that Congressman Anderson, whose assistance on air deregulation issues is crucial to us in the House, will not support our airline reform proposals if we oppose his bill to provide replacement financing.

CON

- o Opponents of a federal role argue that we should avoid setting a precedent for federal assistance to meet environmental rules. Even in its modified form the Adams trust fund involves greater rewards to airlines that have noisier fleets, and greater intervention by the federal government into private decision making.
- o The budget deficit will be increased by \$400 million annually.

II. Instruct DOT to Prepare Financing Options Limited to Airlines Financially Unable to Meet Noise Rules (OMB Option)

The arguments in favor and against this option are the reverse of those for the DOT trust fund proposal.

III. Direct DOT to Prepare Minimum Financing Options as in (II) and to Reconsider the Retroactive Application of the Noise Rule .

Retroactive application of FAR 36 was agreed to by President Ford in the heat of the 1976 Presidential campaign. Some critics have questioned the rationale for this decision. Arguments in favor of reconsideration of the rule:

PRO

- o There is no persuasive evidence that the benefits of the retroactive rule are greater than its costs. The calculation of the benefits used in the Environmental Impact Statement relied almost entirely on the value of "reduced annoyance" to those living near airports. This was determined to be \$400 per person per year, a figure set by a Los Angeles judge in a damage case. According to the FAA, aircraft noise "does not present any direct physical health danger to the vast majority of people exposed."
- o Two and three engine jets are only marginally above current noise standards. Retrofitting these planes to bring them into compliance would involve a decrease in noise levels of from 1 to 7 decibels on approach, and a 0-3.7 decibel decrease on takeoff. For a single overflight, human observers at most locations could not detect the difference between a retrofitted and a non-retrofitted aircraft.

- o The retroactive rule places the government in the undesirable position of accepting some responsibility for aircraft noise reduction, and carries the danger of major federal intervention into the investment decisions of the air carriers.

CON

- o Even small changes in average noise levels can significantly decrease the numbers of people reporting objectionable noise. In terms of annoyance, the effects of cumulative noise exposure are more important than single events.
- o The decision to require retroactive application of FAR 36 was reached only after great political support for noise relief had built up in Congress and the affected communities. To retreat from the standard would certainly trigger a shock wave of bitter protest from the affected communities, especially in New York where the Concorde has generated heated opposition, primarily because of its noise.
- o A new noise rule would require a year or more of contentious proceedings, including a new EIS and probable court proceedings. In addition, relaxation of the noise rule could give momentum to efforts by local jurisdictions to impose their own noise restrictions, potentially threatening the integrity of the air transport system.
- o Two and three engine jets (whose exemption from the retroactive rules is most often suggested) make a significant contribution to the total noise problem. Eighty-four percent of all daily air traffic involves these jets.
- o The heads of Transportation, EPA and CEQ as well as Congressman Anderson feel strongly that no change should be proposed in the existing rule.

- IV. Take no position on the financing aspects of the bill.
Argue that noise abatement financing should only be considered after airline regulatory reforms are legislated.

PRO

- o Airline reform will significantly change the economic environment in which airlines operate. Air carriers freedom to set prices and their ability to finance new aircraft may change sharply. It is inconsistent to support new federally imposed ticket taxes, and federally supervised trust funds at the same time we are seeking greater freedom for the air carriers from federal regulation.
- o It will give Representative Anderson a strong incentive to help us pass airline regulatory reform.

CON

- o This option is only viable if we plan ultimately to support significant relief for the air carriers to purchase quieter planes. Before postponing his noise bill and taking up regulatory reform, Anderson will certainly insist on clarification of what he can expect from us on airline noise. We must either agree to support his financing plan in some form, or, if he works to pass our regulatory reform bill, be legitimately accused of double-crossing him.
- o It will make corporate planning more difficult for the air carriers. We may not pass regulatory reform this year. Meanwhile the clock is running on the retroactive rule, the first stage of which takes effect in 1981. Airline planning will become more complex as this period of uncertainty drags on.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM:

Jack Watson
Jane Frank



April 30, 1977

RE:

Aircraft Noise

We concur with EPA and CEQ in favor of establishing a noise abatement trust fund to be financed by airline users. OMB's position against the fund is unrealistic since all airlines will claim that they are financially unable to meet the FAR 36 standard, and any whose claims are disallowed will then argue that they are placed at a competitive disadvantage. Meanwhile, nothing will happen to quiet the existing noisy fleet.

Aircraft noise is a health hazard and an intensely politicized issue to those who live around major airports. The Noise Pollution Control Act of 1972 imposes a federal obligation to protect the public from the adverse effects of noise. The CEQ/EPA proposal--or as second choice, Brock's modified fund proposal--enables that mandate to be carried out.

THE WHITE HOUSE
WASHINGTON

INFORMATION

2 May 1977

TO: THE PRESIDENT
FROM: RICK HUTCHESON *R.H.*
SUBJECT: OMB Comments on "Aircraft Noise"

1. OMB: Unwise to endorse prematurely any but the most limited level of financing. The financial impact of the approaches to date are wholly inadequate -- cost data and projections are speculative or non-existent:
 - a. no cost impact data is available for the Anderson Bill
 - b. the annual impact of the DOT financing proposal is understated at \$400 million; DOT proposes establishing a large Federal guarantee program for aircraft re-engining (sic) and replacement, which the Federal budget should reflect
 - c. DOT's estimates of the least-cost approach to noise abatement, retrofit, are overstated at \$700-1300 million. Only a few carriers with large fleets of noisy aircraft (PanAm, TWA, Eastern) are expected to require federal assistance -- the great majority of carriers have the ability to finance noise reduction measures. OMB estimate of cost: \$300-500 million.
2. OMB's assessment of the advantages of the OMB proposal:
 - a. permits the Administration to determine specifically which air carriers require financial assistance and at what level -- a "rifle" vs. a "shotgun" approach
 - b. as opposed to the DOT option and Anderson Bill, under OMB's proposal Federal involvement would be minimized
 - c. OMB's proposal is less costly
 - d. the DOT or Anderson approaches run counter to the philosophy of deregulation -- loan guarantees and out-right financial grants to air carriers would compete with private sector money

THE WHITE HOUSE
WASHINGTON

Date: April 28, 1977

MEMORANDUM

FOR ACTION:

The Vice President
Hamilton Jordan
Jack Watson
Bert Lance - *attached*

FOR INFORMATION: Bob Lipshutz
Frank Moore *NC*
Charles Warren *NC*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Stu Eizenstat, Bill Johnston, Kurt Schmoke memo
4/28 re Aircraft Noise.

**YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:**

TIME: 6:00 P.M.

DAY: Saturday

DATE: April 30, 1977

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

April 28, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT *Stu*
BILL JOHNSTON
KURT SCHMOKE

SUBJECT: Aircraft Noise

BACKGROUND

Secretary Adams has been asked to testify on May 5 on H.R. 4539, Congressman Glenn Anderson's bill to assist air carriers and airport operators to reduce noise. The bill would:

- 1) Require noise compatibility land use planning at about 250 of the nation's airports.
- 2) Raise outlays from the Airport and Airway Development Trust Fund by a total of \$800 million over the next 3 years. These grants would go to airport operators to be used, presumably, for noise abatement programs.
- 3) Establish a noise abatement trust fund for the replacement, re-engining and retrofitting (installation of sound absorbing material around the engine) of aircraft that do not meet federal noise standards. The fund would be financed from a 2% surcharge on air passenger fares. This would be offset by a corresponding 2% decrease in air fare taxes that now go into the Airport Trust Fund (which currently has a surplus). Though revenues would remain unchanged, the new outlays from the noise abatement trust fund would increase the unified budget deficit by about \$400 million annually.

The momentum for the retrofit/replacement trust fund has been generated primarily by the FAA's 1976 ruling requiring all existing aircraft to meet Federal Airline Regulation (FAR) 36 by 1985. FAR 36 is the 1969 standard that sets maximum allowable noise levels for aircraft engines. Since the useful life of many non-complying aircraft goes beyond 1985, this rule imposes on the airlines the costs of the retrofitting or prematurely replacing these planes. Without the retroactive rule the last of the non-complying aircraft would go out of service by 1993.

AGENCY VIEWS

DOT has proposed testimony that would:

- 1) Oppose the noise planning requirements.
Secretary Adams believes that the federal role in local noise planning should be one of encouragement rather than regulation.
- 2) Oppose the extra outlays from the Airport Development Trust Fund
- 3) Adopt a modified version of the noise abatement trust fund. Like Anderson bill, Secretary Adams plan would involve a 2% surcharge on tickets, (offset by a similar reduction in existing ticket taxes). Unlike the Anderson bill however, Adams plan would allow each airline to receive grants from the trust fund only to the extent of its contributions, minimizing the cross-subsidy of air carriers with noisy fleets by those with quiet ones. Although the fund would be under the joint supervision of the FAA and the CAB, federal intervention into airline decision making would be minimized.

Adams plan would also encourage replacement of old aircraft, rather than retrofit. The total size of the program, \$3.3 billion, is significantly in excess of the \$700 million - \$1.3 billion needed to retrofit all aircraft. Compared to retrofit/replacement would have much more significant noise reductions and fuel savings.

CEQ and EPA oppose federal noise planning unless it were as tough as the strongest existing local ordinances. They favor establishment of a noise abatement trust fund, but believe it should be used to finance aircraft meeting the quieter 1975 noise standards rather than the more lenient standards of the retroactive rule.

OMB agrees with DOT in opposing the noise planning and the greater expenditures from the Airport Development Trust Fund. They oppose, however, the establishment of a noise abatement trust fund, even in the modified form proposed by Secretary Adams. They believe that the Secretary should be instructed to develop options for providing financing only to the airlines that will be financially unable to meet the noise rules by 1985.

OPTIONS

We recommend that you concur with the agency recommendations to oppose the noise planning requirements and the higher expenditures from the Airport Development Trust Fund. On the remaining issues there are four options:

- I. Accept the DOT modified trust fund proposal.
- II. Instruct DOT to prepare more limited aircraft noise financing options (OMB recommendation).
- III. Instruct DOT to prepare limited financing options as in (II) and request DOT to reconsider the retroactive noise rule.
- IV. Take no position on noise financing. Inform the House committee that we believe no noise financing plan should be enacted prior to enactment of airline regulatory reform.

- I. Accept the DOT Proposal

PRO

- o Supporters of the trust fund argue that the imposition of new federal rules on existing aircraft noise implies some federal financial responsibility. They point out that air passengers rather than the general public are paying most of the cost of the noise abatement program.
- o They argue further that the weak financial condition of the industry requires a substantial program allowing replacement as well as retrofit. This will enable the industry to shift to newer, much quieter, more fuel efficient aircraft, with attendant beneficial impacts on the aircraft construction industry.
- o A substantial replacement-oriented program is widely viewed as a necessary "sweetener" for our regulatory reform proposals. We have been told that Congressman Anderson, whose assistance on air deregulation issues is crucial to us in the House, will not support our airline reform proposals if we oppose his bill to provide replacement financing.

CON

- o. Opponents of a federal role argue that we should avoid setting a precedent for federal assistance to meet environmental rules. Even in its modified form the Adams trust fund involves greater rewards to airlines that have noisier fleets, and greater intervention by the federal government into private decision making.
- o. The budget deficit will be increased by \$400 million annually.

II. Instruct DOT to Prepare Financing Options Limited to Airlines Financially Unable to Meet Noise Rules (OMB Option)

The arguments in favor and against this option are the reverse of those for the DOT trust fund proposal.

III. Direct DOT to Prepare Minimum Financing Options as in (II) and to Reconsider the Retroactive Application of the Noise Rule

Retroactive application of FAR 36 was agreed to by President Ford in the heat of the 1976 Presidential campaign. Some critics have questioned the rationale for this decision. Arguments in favor of reconsideration of the rule:

PRO

- o. There is no persuasive evidence that the benefits of the retroactive rule are greater than its costs. The calculation of the benefits used in the Environmental Impact Statement relied almost entirely on the value of "reduced annoyance" to those living near airports. This was determined to be \$400 per person per year, a figure set by a Los Angeles judge in a damage case. According to the FAA, aircraft noise "does not present any direct physical health danger to the vast majority of people exposed."
- o. Two and three engine jets are only marginally above current noise standards. Retrofitting these planes to bring them into compliance would involve a decrease in noise levels of from 1 to 7 decibels on approach, and a 0-3.7 decibel decrease on takeoff. For a single overflight, human observers at most locations could not detect the difference between a retrofitted and a non-retrofitted aircraft.

- o The retroactive rule places the government in the undesirable position of accepting some responsibility for aircraft noise reduction, and carries the danger of major federal intervention into the investment decisions of the air carriers.

CON

- o Even small changes in average noise levels can significantly decrease the numbers of people reporting objectionable noise. In terms of annoyance, the effects of cumulative noise exposure are more important than single events.
- o The decision to require retroactive application of FAR 36 was reached only after great political support for noise relief had built up in Congress and the affected communities. To retreat from the standard would certainly trigger a shock wave of bitter protest from the affected communities, especially in New York where the Concorde has generated heated opposition, primarily because of its noise.
- o A new noise rule would require a year or more of contentious proceedings, including a new EIS and probable court proceedings. In addition, relaxation of the noise rule could give momentum to efforts by local jurisdictions to impose their own noise restrictions, potentially threatening the integrity of the air transport system.
- o Two and three engine jets (whose exemption from the retroactive rules is most often suggested) make a significant contribution to the total noise problem. Eighty-four percent of all daily air traffic involves these jets.
- o The heads of Transportation, EPA and CEQ as well as Congressman Anderson feel strongly that no change should be proposed in the existing rule.

- IV. Take no position on the financing aspects of the bill. Argue that noise abatement financing should only be considered after airline regulatory reforms are legislated.

PRO

- o Airline reform will significantly change the economic environment in which airlines operate. Air carriers freedom to set prices and their ability to finance new aircraft may change sharply. It is inconsistent to support new federally imposed ticket taxes, and federally supervised trust funds at the same time we are seeking greater freedom for the air carriers from federal regulation.
- o It will give Representative Anderson a strong incentive to help us pass airline regulatory reform.

CON

- o This option is only viable if we plan ultimately to support significant relief for the air carriers to purchase quieter planes. Before postponing his noise bill and taking up regulatory reform, Anderson will certainly insist on clarification of what he can expect from us on airline noise. We must either agree to support his financing plan in some form, or, if he works to pass our regulatory reform bill, be legitimately accused of double-crossing him.
- o It will make corporate planning more difficult for the air carriers. We may not pass regulatory reform this year. Meanwhile the clock is running on the retroactive rule, the first stage of which takes effect in 1981. Airline planning will become more complex as this period of uncertainty drags on.

Date: April 28, 1977

MEMORANDUM

FOR ACTION:

The Vice President
Hamilton Jordan
Jack Watson
Bert Lance

FOR INFORMATION: Bob Lipshutz
Frank Moore ✓
Charles Warren

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Stu Eizenstat, Bill Johnston, Kurt Schmoke memo
4/28 re Aircraft Noise.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 6:00 P.M.

DAY: Saturday

DATE: April 30, 1977

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

Please note other comments below:

No comment.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

April 29, 1977

MEMORANDUM

TO: Rick Hutcheson
FROM: Charles Warren *ew.*
SUBJECT: Stu Eizenstat, Bill Johnston, Kurt Schmoke memo
4/28 re Aircraft Noise

We have reviewed the above memo. It appears to us fairly to present the options. We have no further comments.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 29 1977

ACTION

MEMORANDUM FOR: MR. RICK HUTCHESON
FROM: JAMES T. McINTYRE *Jim McIntyre*
SUBJECT: Administration Position on H.R. 4539, Federal
Financing of Aircraft Noise Reduction

You requested on April 28 our recommendation on Stu Eizenstat's memo on Aircraft Noise. We continue to support the position we took in Bert Lance's memo to the President of April 22 (option 2 in Stu Eizenstat's memo).

While we recognize the need for giving an administration position on aircraft noise reduction measures in early May, we believe it would be unwise to endorse prematurely any but the most limited level of financing plan.

The financial impact of the approaches to date are wholly inadequate in that cost data and projections for the various plans are speculative or non-existent:

- No cost impact data or projections are available for the provisions of Congressman Anderson's bill (H.R. 4539).
- The annual impact of the DOT financing proposal is understated at \$400 million. It should be noted that the backbone of the DOT proposal is the establishment of a large Federal guarantee program for aircraft re-engining and replacement purposes. The Federal budget should reflect the level imposed by such a program.
- We believe that DOT's estimates of the least-cost approach to noise abatement, retrofit, are overstated at \$700-1,300 million. The great majority of carriers can be expected to continue to have the ability to finance noise reduction measures. Only a few carriers with large fleets of noisy aircraft (e.g. PanAm, TWA, Eastern) are expected to require Federal assistance. Our calculation of a retrofit program supports an estimate of \$300-500 million.

We believe that it is misleading and somewhat confusing to characterize the pros and cons of the OMB option as the reverse of those for the DOT trust fund proposal. In concise terms the advantages of the OMB proposal are as follows:

- 1). It provides an opportunity for this Administration to determine which specific air carriers would require financial assistance and what level of funds would be needed in each case. A "rifle" rather than "shotgun" is contemplated.
- 2). Federal involvement would be minimized as opposed to the provisions of the Anderson bill and the DOT option which reflect a considerable degree of Federal monitoring, review, and decisionmaking.
- 3). Implementation of the type of approaches developed under our proposal would be less costly and hence have a smaller impact of the budget deficit in future years.
- 4). Financing options considered to date run counter to the concept and the philosophy of deregulation. Actions to compete with private sector money market by way of loan guarantees and out right financial grants to air carriers will not be viewed by the public as a movement toward fostering greater reliance upon the competitive forces of the market place.

The disadvantages of the OMB option are:

- 1). The Administration will not be prepared to provide the House Aviation Committee with a specific plan on May 5. Such a plan would have to be transmitted at a later date.
- 2). If, in fact, there is to be a quid pro quo of Federal financing assistance as price for meaningful deregulation legislation, our option is not expected to provide much leverage for such a compromise.

Date: April 28, 1977

MEMORANDUM

FOR ACTION:

The Vice President
Hamilton Jordan
Jack Watson ✓
Bert Lance

FOR INFORMATION: Bob Lipshutz
Frank Moore
Charles Warren

1977 APR 29 AM 8 58

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Stu Eizenstat, Bill Johnston, Kurt Schmoke memo
4/28 re Aircraft Noise.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 6:00 P.M.

DAY: Saturday

DATE: April 30, 1977

ACTION REQUESTED:

Your comments

Other:

STAFF RESPONSE:

I concur.

No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone 7052)

MEMORANDUM

Jack

THE WHITE HOUSE
WASHINGTON

1977 APR 27 PM 12 40

INFORMATION

27 April 1977

TO: BERT LANCE

FROM: RICK HUTCHESON *R.H.*

SUBJECT: Your Memo of 22 April, "Administration Position on H.R. 4539, Federal Financing of Aircraft Noise Reduction"

As the the hearings on H.R. 4539 have been postponed until May 5, in order that the President have time to meet with concerned parties in the Administration on this decision, I am holding your memorandum indefinitely.

Stu Eizenstat is preparing a decision memorandum for the President on this subject, which will be staffed to OMB when it reaches me. OMB may be interested in participating in the meeting with the President.

Please have your staff get in touch with me if you have any problem with this procedure. Thanks.

cc Jack Watson

*Rich - keep me
Please keep me
in the loop on this
matter - Thanks -
JW*

THE ATTORNEY GENERAL



March 22

TO: Tim Kraft

For the President.

Griffin B. Bell



Office of the Attorney General
Washington, D.C.

March 22, 1977

MEMORANDUM FOR THE PRESIDENT:

Re: Inspector General Bill

I enclose a memorandum dated February 24, 1977, to you with which I enclosed a copy of a memorandum prepared by the Office of Legal on the Inspector General legislation. This matter came up in the Cabinet meeting yesterday, and it may be that you have not seen the memorandum and the attachment.

The Office of Legal Counsel memorandum has not been circulated to the other Cabinet Members. To date, only HEW has been given an inspector general.

Respectfully,

Griffin B. Bell

Griffin B. Bell
Attorney General

Attachment

THE ATTORNEY GENERAL



March 22

TO: Tim Kraft

For the President.

Griffin B. Bell



Office of the Attorney General
Washington, D.C.

March 22, 1977

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Re: Inspector General Bill

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The Office of Legal Counsel memorandum has not been circulated to the other Cabinet Members. To date, only HEW has been given an inspector general.

Respectfully,

A handwritten signature in cursive script that reads "Griffin B. Bell".

Griffin B. Bell
Attorney General

Attachment