



Comptroller General
of the United States

Washington, D.C. 20548

B-203900

February 2, 1989

The Honorable Edward R. Roybal
Chairman, Subcommittee on Treasury,
Postal Service and General Government
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

By letter dated November 23, 1988, you asked that we review the provisions of section 102 of the Inspector General Act Amendments of 1988 (IG Act Amendments), Pub. L. No. 100-504, 102 Stat. 2515 (October 18, 1988), to determine whether they conflict with the restrictions contained in section 104 of the Treasury, Postal Service and General Government Appropriations Act of 1989 (Treasury Appropriation Act), Pub. L. No. 100-440, 102 Stat. 172 (September 22, 1988). As explained below, we conclude that a conflict exists between certain provisions of section 102 of the IG Act Amendments and section 104 of the Treasury Appropriation Act. Accepted rules of statutory construction provide that where an irreconcilable conflict exists between two statutes, the provision latter in time supersedes the earlier provision to the extent of the conflict. See Radzanower v. Touche, Ross & Co., 426 U.S. 148 (1976). Accordingly, the IG Act Amendments have effected a pro tanto modification of section 104 of the Treasury Appropriation Act to only preclude the use of appropriated funds to place the United States Secret Service, the United States Customs Service or the Bureau of Alcohol, Tobacco and Firearms (BATF) under the operational control of the Treasury Inspector General (IG).

BACKGROUND

Since 1985, the annual Treasury Appropriations Act has restricted the use of appropriated funds to place certain Treasury organizational elements under the operation, oversight or jurisdiction of the Treasury Inspector General. As contained in section 104 of the Treasury Appropriations Act, this restriction reads as follows:

"None of the funds made available in this Act may be used to place the United States Secret Service, the United States Customs Service, or the Bureau of Alcohol, Tobacco and Firearms under the operation,

oversight, or jurisdiction of the Inspector General of the Department of the Treasury."

Approximately a month after enacting the 1989 Treasury Appropriation Act, Congress enacted the IG Act Amendments into law. Subsection 102(c) of the IG Act Amendments created an Office of Inspector General within the Department of the Treasury, and subsection 102(d)(9) transferred to that Office the internal audit staffs of the Secret Service, the Customs Service (referred to collectively as Services), and the BATF.^{1/} Pub. L. No. 100-504, § 102(c), (d)(9), 102 Stat. 2515-2516. Subsection 102(d)(9) provides that such transfer should occur "notwithstanding any other provision of law." Id.

In addition, the Amendments added a new section 8C to the Inspector General Act of 1978, 5 U.S.C. App., containing special provisions governing the Treasury IG. In this regard, subsection 8C(b) provides that the Treasury IG, in carrying out the responsibilities specified in the IG Act, shall have "oversight responsibility for the internal investigations" performed by the Office of Internal Affairs of the BATF and Customs Service, the Office of Investigation of the Secret Service, and for "the internal audits and investigations" performed by the Office of Assistant Commissioner (Inspection) of the Internal Revenue Service (IRS). Subsection 8C(c) provides that, notwithstanding subsection 8C(b), the IG may initiate, conduct, and supervise "such audits and investigations" in the Department generally, and the BATF, Customs Service, Secret Service, and IRS specifically, as the IG considers appropriate. Subsection 8C(d) further specifies that if the IG notifies the head of such Bureau or Services, he can preempt the initiation or continuation of any audit or investigation into the subject of the IG's audit or investigation. Pub. L. No. 102-504, § 102(f), 102 Stat. 2519.

^{1/} The Secretary of the Treasury established a non-statutory Office of Inspector General in the Department of the Treasury in 1978. 53 Fed. Reg. 21758 (June 9, 1988). The Secretary limited the IG's authority to investigate matters involving the BATF or the Services to allegations concerning senior officials or notorious or sensitive matters. Id. With respect to audits, the Secretary delegated to the IG the authority to perform internal audits of all Treasury bureaus and offices, with the exception of the BATF, the Services, and the IRS. Id. at 21759.

DISCUSSION

We sought the views of the Secretary of the Treasury and the Treasury IG concerning the question presented. Mr. Michael Hill, Inspector General of the Treasury Department, responded with a letter dated January 4, 1989 setting forth the Department's position. The Department concluded that on the effective date of the IG Act Amendments, subsection 102(d)(9) will nullify the prohibition in section 104 against placing the internal audit functions of BATF and the Services under the jurisdiction of the Inspector General. The Department also concluded that section 8C of the IG Act as added by subsection 102(f) supersedes the section 104 prohibition on placing the internal investigation functions of these organizations under the oversight of the Treasury Inspector General.

Transfer of Audit Staff and Function

As noted earlier, subsection 102(d)(9) of the IG Act Amendments directs the transfer of the internal audit staffs of the BATF and the Services to the Office of Inspector General, "notwithstanding any other provision of law." Section 104 of the Treasury Appropriation Act of 1989 restricts the use of appropriated funds to place the BATF and the two Services under the operation, oversight or jurisdiction of the IG. Arguably there is no necessary conflict between the two provisions. Subsection 102(d)(9) literally requires no more than a transfer of staff to the IG, and does not, by itself, place these organizational components of the Department under the operation, oversight or jurisdiction of the Inspector General. However, as discussed below, to the extent section 104 can be viewed as an obstacle to the transfer of the audit staff and function, the "notwithstanding any other provision of law" language of subsection 102(d)(9) would effectively override the appropriations restriction.

Subsection 102(c) of the IG Act Amendments establishes a statutory IG in the Department of the Treasury charged with the responsibility to audit and investigate, as he considers appropriate, departmental programs and operations. Pub. L. No. 100-504, §§ 102(c), (f), 102 Stat. 2515. As a result, on the effective date of the IG Act Amendments, the programs and operations of the BATF and the Services will be subject to audits conducted by IG staff. Thus, the BATF and the Services will be subject to the audit oversight and jurisdiction of the IG. We are unable to reconcile the Treasury IG's audit functions with section 104's restriction on placing the BATF and the Services under the IG's oversight and jurisdiction. Given what we think is

the fair implication of the "notwithstanding any other provision of law" language of subsection 102(d)(9), namely, that the subsection is intended to consolidate all audit staffs in the Office of the IG to perform all departmental audits, we conclude that the IG Act Amendments have superseded section 104's restriction to the extent of the conflict.

Oversight and Conduct of Internal Investigations

As detailed earlier, subsection 102(f) of the IG Act Amendments added a new section 8C to the IG Act of 1978 that recognized the primary responsibility of BATF and the Services for internal investigations subject to the Inspector General's "oversight responsibility for the internal investigations" they perform. Although these organizational entities have primary responsibility for the conduct of internal investigations, the IG, should he so choose, may preempt a BATF or Service investigation of a bureau or service matter in favor of an investigation conducted by his Office.

A review of the provisions of section 8C in light of the section 104 appropriations restriction reveals that it establishes no organizational relationship between the Inspector General and the BATF and the Services that permits the Inspector General to direct or command the operations of these organizations. Therefore, this provision does not "place" these organizations under the "operation" of the Inspector General as this term is used in section 104 of the Treasury Appropriation Act. (Nor, for that matter, does the consolidation of the audit function in the IG place the BATF or the Services under his operation.)

On the other hand, section 8C explicitly authorizes the Inspector General to exercise oversight over the investigations performed by the internal investigation units of the BATF and the Services. Inasmuch as section 8C authorizes the Inspector General to exercise "oversight" over these units or to preempt Bureau or Service investigations, it places these units within the ambit of the Inspector General's jurisdiction. Accordingly, we conclude that section 8C conflicts with the provisions of the section 104 appropriations restriction prohibiting the use of appropriated funds to place the BATF and Services under the oversight or jurisdiction of the Inspector General.

Although implied repeals are not favored, Congress may impliedly repeal an earlier statute where the conflict between the earlier and later statutes are irreconcilable.

Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978); Morton v. Mancari, 417 U.S. 535 (1974). Where the conflict between statutory provisions is irreconcilable, the latter of the two statutes will supersede the earlier to the extent of the conflict. Radzanower v. Touche, Ross & Co., 426 U.S. 148 (1976); Hines, Inc. v. United States, 551 F.2d 717 (6th Cir. 1977).

We have been unable to reconcile the IG's oversight and investigative authority contained in section 8C of the IG Act as added by the IG Act Amendments with section 104 of the Treasury Appropriations Act. Indeed, we can discern no way for section 104's restriction on the use of appropriated funds to co-exist with the provisions of the IG Act Amendments discussed earlier without frustrating the operation of the latter act. Accordingly, since the IG Act Amendments were enacted into law subsequent to the Treasury Appropriation Act, the provisions of section 8C of the IG Act Amendments supersede the restriction on the use of appropriated funds to place the BATF or Custom or Secret Service under the "oversight or jurisdiction" of the IG.

RECOMMENDATIONS

You asked us for any recommendations we may have regarding this matter. We believe the appropriations restriction, as modified by the IG Act Amendments, reflects the restriction on the transfer of program operating responsibilities presently contained in section 9(a) of the IG Act of 1978. This Office has strongly supported the establishment of a statutory Inspector General in the Department of the Treasury with authority to oversee the internal investigative units of Treasury's law enforcement organizations.^{2/} As we have construed section 104 as modified by the IG Act Amendments, it does not prevent the Inspector General from exercising oversight or jurisdiction to the extent of his audit and investigative authority over the BATF and Services, but it does continue to prohibit his involvement in their operations that might impair his independence and objectivity.

Since the IG Act of 1978, as now amended, restricts the transfer of program operating responsibilities to the IG, you may conclude that there is no longer a need for a restriction in the Treasury Appropriation Act. However, if

^{2/} See Treasury Department: An Assessment of the Need for a Statutory Inspector General (GAO/AFMD-86-3, August 21, 1986) and The Inspector General Act Amendments of 1987 (GAO/T-AFMD-87-14, May 12, 1987).

an appropriations restriction similar to section 104 is included in future Treasury Appropriation Acts, we recommend that the wording of the restriction be revised consistent with the construction offered here. To this end, we suggest the following:

"None of the funds made available by this Act may be used to place the United States Secret Service, the United States Customs Service, or the Bureau of Alcohol, Tobacco and Firearms under the operation of the Inspector General of the Department of the Treasury. As used in this section, operation means the authority to direct the activities and operations of such organizations other than as provided by the Inspector General Act of 1978, as amended."

Unless you publicly announce the contents of this opinion earlier, we do not plan to distribute it further until 30 days after its date of issuance.

Sincerely yours,

for 
Comptroller General
of the United States