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The Honorable Abraham Ribicoff
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

In response to your request of April 5, 1977, we have the following comments on S. 991, 95th Congress, a bill to establish a Department of Education, and for other purposes.

Although a Department of Education would provide greater visibility to education matters at the national level, by showing the Federal concern for education, there is no evidence that its creation would improve education across the Nation. This would especially be true since the Federal role in education has traditionally been that education is a State and local responsibility, with the Federal Government assisting in these efforts. On the other hand, if the Federal role in education is to change, such as the Federal Government having more control over the use of Federal funds, and having more voice in the direction of State and local education programs, a new Department of Education might have more merit. If this is to be the Federal role, then it should be stated in the bill.

In addition, we believe that improved management of existing programs stressing coordination of efforts and consolidation of similar program objectives may achieve most of the same objectives, as proposed in the bill for the Department of Education. Section 522 of the Education Amendments of 1976 requires the Secretary of Health, Education, and Welfare to conduct a study to determine the extent to which reorganization of the Education Division is necessary or appropriate. This report is due to the Senate Committee on Human Resources and the House Committee on Education and Labor no later than June 30, 1977. This report, when issued, could be helpful in providing information concerning the need for reorganization in the Education Division and could give some insight into a need for a separate Department of Education.

The following are specific comments concerning the bill:

Section 5 - Powers and Duties of the Secretary

Section 5(b)(1) would give the Secretary the authority to appoint and fix the compensation of officers and employees. We believe that such officers and employees should be clearly covered by the Civil Service laws concerning appointment, selection, and compensation. Accordingly, we recommend that the committee replace this provision with the language of section 14(o)(6) of the bill where the Inspector General would be given similar authority but would clearly be subject to appropriate Civil Service laws.

Section 13 - National Advisory Commission on Education

Subsection 13(f) provides for the reimbursement of travel of members of the National Commission by reference to section 5703 of title 5, United States Code. In view of an amendment of section 5703 by Public Law 94-22 (May 19, 1975), and to provide customary limitations on the amount of expenses that are reimbursable, we suggest that the language following the word "subsistence" on line 8 of page 18 be revised to read as follows:

"* * * not to exceed the rates prescribed in sections 5702 and 5704 of title 5, United States Code, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5."

Section 14 - Office of the Inspector General

Section 14 of this bill would provide for essentially the same type of Office of Inspector General as was created for the Department of Health, Education, and Welfare in the last session of Congress (P.L. 94-505). The House Government Operations Subcommittee on Intergovernmental Relations and Human Resources is presently considering legislation (H.R. 14761, 95th Congress) to establish similar Offices of Inspector General in 11 departments and agencies.

As you know, the GAO has been a staunch advocate of effective internal audit for many years. GAO must rely extensively on the effectiveness of the internal audit within the departments and agencies in carrying out its own work and we therefore have a real concern about any actions that might weaken that function.

We strongly support the upgrading of the organizational status of the investigative and audit functions and the emphasis on their importance which the bill provides. However, there are some features of section 14 which we believe may serve

to change the internal audit function and its relationships with department management in a manner that would serve to weaken or eliminate some of the principal functions of internal audit. We wish to convey our concerns and hope that your committee will give them careful consideration in finalizing this bill. If changed as we are suggesting, we believe section 14 would be very beneficial and we would support it strongly.

Several Features of Section 14 May
Affect Inspector General's Ability to
Serve Management

There are several features of the bill which tend to weaken the management's control over internal audit and create uncertainty as to the relationship between the Inspector General and the agency head. We believe these features may cause top management to regard the Inspector General as an adversary and therefore not use him or rely on him to help solve management's problems. In this regard, section 14(o)(5) gives the Inspector General direct access to the Congress to protest his budget and section 14(o)(6) gives him authority to select personnel independent of his agency head. Section 14(n) directs the Inspector General to provide reports issued under the authority of subsections 14(j), (k), and (l), directly to the Congress or committees or subcommittees of the Congress without further clearance or approval.

Although section 14(c) makes the Inspector General subject to the "general supervision" of the Secretary, the cumulative effect of the provisions cited above seems to us to outweigh any general supervision he might receive from the Secretary. As a result, some of the basic tenets of the internal audit relationship with management, which were established under the Accounting and Auditing Act of 1950 may be violated. In this respect, the principal basis for the internal audit groups which today exist in Government can be found in section 113(a) of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a(a)(1970)). This act makes the head of each executive agency responsible for establishing and maintaining systems of internal control designed to provide, among other things, effective control and accountability for all funds, property, and other assets for which the agency is responsible, including appropriate internal audit.

The General Accounting Office and the Bureau of the Budget (now Office of Management and Budget) were the principal architects of this act and have continued to support the concept that Government managers need internal audit to see that their systems of internal management checks are being followed and that problems with their agency's activities are being surfaced

for prompt solution. This latter concept was aptly expressed in House Report No. 456, 88th Congress, 1st Session (1963) House Committee on Government Operations, which indicates the relationship between internal audit and the head of the establishment:

"* * * The head of a large executive department or agency must have his own 'eyes and ears' within the organization, responsible solely to him, independent of operations and with unlimited jurisdiction to review any and all functions wherein waste or inefficiency might exist."

These words "eyes and ears" of management are not just rhetoric. Agency heads can and do use internal auditors to help them solve management problems. In many cases, internal auditors have ferreted out developing problems which management had not become aware of, thereby permitting prompt corrective measures to be taken.

We believe the provisions of section 14 cited above run contrary to the philosophy of the Accounting and Auditing Act of 1950. If the Inspector General can protest reductions in his budget by dealing directly with Congress, choose his own people without concern for agency restrictions, issue his reports to Congress without, in many cases, obtaining the comments of the Secretary, and do so without any clearance or approval within the proposed department, he would be in effect free of the supervision of the Secretary and the superior-subordinate relationship is eliminated. The result, as we see it, would be that the Secretary may either forego having internal audit as a management tool or he or she may establish a separate essentially duplicative internal audit group reporting directly to him or her. Moreover, under section 14 as it now stands, it would be difficult to hold the Secretary responsible for maintaining efficient and effective internal audit systems because the responsibility for this activity would be essentially shifted to the Inspector General and ultimately to Congress.

Another area of importance concerning Inspector General/Secretary relationships is the matter of obtaining comments from management on all Inspector General reports. We have found that including management's comments in audit reports tends to provide a more balanced presentation of the auditors' findings and that failure to give management an opportunity to comment may result in overlooking corrective actions being taken or other pertinent matters that should be considered.

We also note from the Committee report (H.R. Rep. No. 94-1573) on H.R. 15390, 94th Congress, which became title II of Public Law 94-505, that the purpose of the language "without further clearance or approval" was to:

"* * * eliminate lengthy delays in furnishing information due to HEW 'clearance' procedures."

While the Committee may have identified the existence of this problem at the Department of Health, Education, and Welfare as it now exists, we do not know that such a problem would carry over in a new Department of Education. Further, we believe that a potential problem of lengthy delays in obtaining Inspector General reports could be dealt with by establishing deadlines or timetables rather than by including language in the bill which tends to create uncertainty as to the relationship between the Inspector General and the Secretary.

In concluding on these provisions of section 14, we would like to point out that we firmly endorse the idea that internal audit should report to the highest levels in a department--if practicable to the department head. We also support the premise that Congress should have access to internal audit reports. We think, however, that section 14 goes further than is necessary to ensure that the Inspector General will be effective and have enough independence to be an objective investigator and auditor.

Congress May Get too Many Reports

Under subsections 14(j), (k), (l), and (m) of the bill, the Inspector General is to issue an annual report; quarterly reports; individual reports on particularly serious or flagrant problems, abuses, or deficiencies; and supplementary information as may be requested by either House of Congress.

We believe the annual reporting provision will provide a valuable tool for congressional review of the activities of the proposed department. However, the quarterly and other specialized reports and information may place too heavy a burden on the Inspector General and create a potential for flooding Congress with reports and information. We believe the special needs of the Congress can be met through requests made to the Secretary as is the present practice. As previously noted, we do not believe that direct congressional access to the Inspector General is necessary or consistent with the philosophy of internal audit. Moreover, Congress can, of course, request copies of any other report the agency has prepared.

Accordingly, we recommend that subsections 14(j), (k), (l), and (m) of the bill be deleted and the following provisions substituted.

"(j) The Inspector General shall, not later than March 1 of each year, submit a report to the Secretary summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to:

(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

"(k) Based on the management needs of the Department, the Inspector General shall make investigations and such further reports as may be directed by the Secretary. Such investigations and reports may also be based upon requests for reports or information from either House of Congress, its committees or subcommittees.

"(l) The Inspector General may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable.

"(m) The Secretary shall, not later than March 31 of each year, submit to the Congress the annual report of the Inspector General. In addition, the Secretary shall make available to the Congress, or committees or subcommittees thereof, any other reports prepared by the Inspector General if requested to do so by either House of Congress, its committees or subcommittees. The comments of the Secretary may be appended to any report

provided to either House of Congress, its committees or subcommittees under this section."

Title of Inspector General Position
Could be More Descriptive

The title Inspector General tends to suggest to us a narrower function than is given the Inspector General under section 14. Not only does the Inspector General have the investigative function but he has the full scope of audit which includes audits to determine financial integrity and compliance with pertinent laws and regulations, audits to identify inefficiencies or wasteful practices, and audits to assess effectiveness in achieving program goals. Because the scope of the work will be so broad, we suggest that the title "Office of Inspector and Auditor General" be used. We believe this change would retain the impact of the title "Inspector General" while still indicating that this official is also responsible for audit.

Need to Insure that Inspector General Has
Appropriate Professional Qualifications

We are also concerned about the need to insure that those appointed to Inspector General and Deputy Inspector General positions have the professional qualifications needed to perform the highly technical work their jobs will require of them. We believe that the bill would be improved in this respect by inserting after "ability" in section 14(c) (page 19, line 4) and section 14(d) (page 19, line 13) of the bill:

"* * * in the fields of accounting, auditing, law, financial analysis, management analysis or investigations."

Authority Given for Subpoena
Power May be too Broad

Section 14(o) provides the Inspector General with access to all records, documents, and other material available to the Department and he is given the power to subpoena the production of information, data, and written material necessary to the performance of the functions assigned by section 14. We agree with the inclusion of the subpoena power for the Inspector General.

We are, however, concerned that, as written, the subpoena power given the Inspector General under section 14(o)(3) leaves open the question of whether it may be used against other Federal entities. Subsections 14(o)(1) and (2), provide respectively for the availability of data within the Department and the authority of the Inspector General to request information

from other governmental units. Section 14(p) recognizes by implication limits on the Inspector General's authority to obtain information from other Federal agencies. It seems apparent from these provisions that the subpoena power is not intended to be as broad as the wording of subsection 14(o)(3) suggests. In order to make clear that the subpoena power is not applicable to Federal entities, we recommend the inclusion of the following language after "evidence," at the end of line 13 of section 14(o)(3) "in the possession of non-Federal persons or organizations and which is." We also recommend, for purposes of clarification, that section 14(o)(1) be amended by substituting the following language for line 3, page 24 of the bill: "material to which the Department is entitled and which it has in its possession and which relate to pro-."

Department of Education may be too
Small to Warrant Inspector General

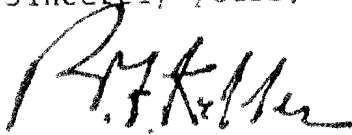
The size of the agencies involved in the bill for the Department of Education is not large in comparison to most other Federal agencies. Also, as we discussed in our general comments, the Federal role in education has been traditionally that education is a State and local responsibility with little Federal involvement. With this in mind, the proposed Inspector General is to be an executive level IV appointee with a level V deputy, supported by an as yet unclassified Assistant Inspector General. Such positions could create an unnecessary and expensive administrative superstructure in relation to what is intended to be accomplished by the creation of the Department of Education.

Section 16 - Administrative Provisions

We believe that the words "in advance" should be deleted from line 16 on page 33. Since the bill provides for the working capital fund to be established using capital obtained from appropriations and other assets and inventories transferred to it, there should be no need for subsequent reimbursements to the fund to be made in advance. Other working capital funds have been established without a requirement for advance reimbursements. For example, refer to 15 U.S.C. 1521, which established a working capital fund at the Department of Commerce.

Some words appear to have been omitted in subsection 15(e) line 24, page 31 and line 1, page 32. Finally, we note that the reference to "subsection (i)" at line 1 of page 21, appears to be in error. It would appear that "subsection (j)" is the intended reference.

Sincerely yours,



Deputy Comptroller General
of the United States