Statement of
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Introduction

Mr. Chairman, I am June Gibbs Brown, Inspector General of the U.S. Department of Health and Human Services. Thank you for the opportunity to testify today regarding the state of the Inspector General (IG) community at the 20th anniversary of the IG Act. Specifically, you asked that I testify about the importance of the relationship between IGs and agency heads and ways to ensure that the goals and objectives of the Federal Government are successfully achieved. In this regard, I will discuss my present working relationship with the Secretary of Health and Human Services and will give you my views on possible improvements to the IG Act, including those proposed in S. 2167, the Inspector General Act Amendments of 1998, sponsored by Senator Collins.

We in the IG community greatly appreciate this Committee's longstanding support of the Federal Inspectors General. I would like to extend my thanks to the Chair for holding this hearing, to Senator Glenn for his longstanding support, and to the other Members for their continuing interest in IG issues. I would especially like to thank Senator Collins and her Permanent Subcommittee on Investigations staff who have devoted considerable effort to promoting and protecting the integrity and independence of IGs generally and have supported the activities of our office in particular.

I believe that it is very useful to periodically take stock of the "health status" of the Inspector General concept through proceedings such as today's hearing. I personally enjoy the opportunity to pause and reflect on the evolution of the Offices of Inspectors General (OIG). As the longest serving member of the IG community and having been the Inspector General in five different Federal agencies since 1979,[1] I am fortunate to have been a participant in this evolution.

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[1] The Department of the Interior, the National Aeronautics and Space Administration, the Department of Defense, the Social Security Administration and currently, the Department of Health and Human Services. I

It gives me particular pleasure to be asked to appear today to discuss the successful working relationship that has been forged between Secretary Shalala and myself. Agency heads and Inspectors General are asked to perform a difficult balancing act. Ideally, an Inspector General should serve as a senior advisor to the Secretary on waste, fraud, and abuse issues. In this role, the IG assists in ensuring that programs are administered in a cost-effective manner, and that they are structured so as to avoid fraud and abuse. Equally important, an Inspector General must maintain the independence and objectivity necessary to investigate, audit and critique those programs in the best interest of the taxpayers. I believe that Secretary Shalala would agree with me that we have successfully struck this balance.

Collaboration between the Inspector General and Agency Head

Since the first day that I entered the Department of Health and Human Services, Secretary Shalala has made it clear that when policy was formulated at HHS, the Inspector General would always have a "seat at the table." This was not my earliest experience. While working as the first Inspector General for the Department of the Interior in 1979, some senior agency managers would signal their displeasure with the IG mission in a number of ways. Some were subtle, and some were not so subtle. As a somewhat comical example, when our audits found fault with program administration, agency management might simply "neglect" to provide a chair for me at senior staff meetings. I soon learned literally to bring my own chair to the room. As the IG Act became better understood, I had no repeat of this gamesmanship.

I am pleased to say that Secretary Shalala has never treated me in such a manner. Perhaps her comfort with and support for the Inspector General's role is attributable, in part, to the fact that she had prior positive experience as a Federal manager interacting with an IG. While serving as an Assistant Secretary at the Department of Housing and Urban Development (HUD), Secretary Shalala worked closely and effectively at that time with HUD's Inspector General, then Charles Dempsey. When she arrived at HHS, Secretary Shalala was already knowledgeable of the responsibilities and authorities of a Federal IG. She viewed

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was also the Inspector General of the Pacific Fleet; a position not covered by the IG Act.

the IG not as an adversary or a threat, but as a valuable resource. So, she affirmatively sought to engage an experienced and aggressive Inspector General, and ensured that the IG's advice was heard on both enforcement issues and program development matters.

Secretary Shalala's philosophy set the tone for managers throughout HHS. Senior managers know that before the Secretary acts, she will likely consult with me to determine whether we have conducted inquiries that bear on pending decisions. Senior managers know that the IG will eventually be consulted, and they confer with OIG staff in early stages of developing program and administrative processes, rules, and procedures. Where we have developed information that reveals vulnerabilities in agency programs or administrative processes, departmental managers act to close these loopholes, avoiding ineffective expenditures or improper conduct.

As independent fact-finders, our audits, evaluations, and investigations produce reliable data on the operation of agency programs. Often, they provide answers to key questions facing management. For example, are there trends indicating vulnerabilities in program accountability? Are the appropriate services reaching the intended beneficiaries? Are program rules and policies sufficiently clear that administrators, providers, and recipients can properly utilize them? Is the Agency's oversight of those rules so lax that it invites abuse? Are controls in place to minimize improper payments?

This and a host of similar information is generated by the Federal Inspectors General. At HHS, Secretary Shalala and her senior staff actively solicit this information and seek to incorporate it into their program management. Frequently, these managers even approach me or my staff and request an evaluation or study of one of their program areas. Though our findings are sometimes unflattering, in the long run, the programs benefit. We also regularly refer to the Secretary's priorities in developing our work plans. Where possible, we schedule fact-finding reviews that will assist the Secretary and her managers in these priority areas. Agency responses to OIG recommendations are reflected in legislative proposals and regulatory changes as well as in less formal administrative actions and modifications. Thus, our preventive efforts often

amplify the effectiveness of OIG activities by instituting legislative, regulatory and operational change throughout a given program or operation.

An Inspector General must also share half of the responsibility for maintaining a successful partnership with the agency head. An IG has to earn a seat at the table. The quality of the OIG audits, evaluations, and investigations must be unassailable. A Secretary would quite rightly lose faith in an IG whose work was unreliable or biased. In this regard, I have been favored with a staff — both those hired by me and those in place when I arrived -- of the highest caliber and commitment. Their work consistently makes me proud. But I also know, and regularly caution my staff, that an IG must remain vigilant. One irresponsible or carelessly prepared work product can do substantial damage to the credibility of the entire Office, and to the Inspector General concept as a whole.

I also believe that a successful Inspector General must be willing to broaden the focus of OIG efforts beyond just the traditional after-the-fact investigations and audits of past conduct. I urge that Inspectors General honor both of the dual requirements of the IG Act, that they not just detect, but also prevent, waste, fraud, and abuse. When Inspectors General do this, I believe that cooperative and productive relationships with agency managers will usually follow.

Both the Inspector General and the Secretary must remain mindful that there is a risk that if an IG develops too close a relationship with the Secretary and agency management, the IG could be, or appear to be, inappropriately co-opted. No longer the watchdog, the IG would instead be viewed as a house pet, unwilling to criticize or embarrass agency colleagues by issuing negative reports or conducting meritorious investigations. Certainly this could occur, but a Secretary and an Inspector General are fully capable of avoiding this outcome by keeping sight of their organizational roles.

Enforcement has been, and remains, a vital responsibility of the Inspectors General. Wrongdoers inside and outside the agency must be identified; their schemes to abuse and defraud Federal programs must be halted; and their ill-gotten gains must be returned. Individual audits, investigations and evaluations serve these critical functions — to improve and protect the fiscal integrity of

programs such as Medicare, to safeguard federal beneficiaries and property, and to deter would-be abusers.

I believe that Secretary Shalala and I have struck the right balance. We have demonstrated, I hope, that an Inspector General can be a valued internal advisor on issues relating to fraud and abuse, without compromising any of the Inspector General's independence. Secretary Shalala arrived at HHS with a firm understanding of what an IG is and does. She has never--not even once--sought to encroach on the independence of my office and its efforts. By virtue of her professionalism, management philosophy, and perhaps even her personality, the Secretary wants to hear the plain truth of what the IG has found. She would rather deal with the facts as they are, and would never ask us to shade our findings to avoid criticism. Even in those uncomfortable instances when I have informed the Secretary that we were investigating a member of HHS management, she has been unwavering. The OIG should "do what you need to do," she has said, whatever the outcome.

The Secretary has also supported OIG independence in more tangible ways. For example, she has consistently sought to provide the OIG with needed resources. She was a strong proponent of the Health Insurance Portability and Accountability Act of 1996 — a statute that provided new resources and authorities for the critical fight against health care fraud and abuse in this country.

Though I am consulted on agency programs and management issues, both the Secretary and I are careful that I not assume "program operating responsibilities" that would endanger my ability to independently audit or investigate those programs. I freely provide factual information that will assist decision-makers in setting policy and procedures for administration of their programs — but I am not asked to participate, nor do I participate, in the day-to-day operations of those programs. For example, my auditors might be consulted about appropriate record-keeping requirements for a grant program; however, we would not participate in the selection of a grantee.

A key component of OIG independence is our direct communication with the Members and staff of the Congress. Frankly, I suspect that no agency head relishes the fact that IGs have, by law, an independent relationship with oversight

Committees. Information can and must go directly from the Inspectors General to the Hill, without prior agency and administration clearance. Secretary Shalala has never sought to interfere in these important communications in any way.

During meetings with Committee staff in advance of today's hearing, I was asked whether I had any recommendations on how other Inspectors General might achieve the same sort of productive working relationship with their agency heads that I am fortunate to have at HHS. I have given this a great deal of thought; and, as I have discussed here today, I believe that one critical key to our success at HHS has been the Secretary's clear understanding of the appropriate role of an Inspector General.

Most new political appointees are drawn directly from the private sector, and have little familiarity with Inspectors General. These new officials, perhaps understandably, are apprehensive of an internal "cop" looking over their shoulders. If these new appointees could be better informed at the very beginning of their tenure concerning the responsibilities and independence of the IG, misunderstandings could be avoided. The new Secretary would be assured that a strong Inspector General is an asset, not a liability, and their collaboration would stand a better chance of "getting off on the right foot."

I recall that during the early years after the IG Act was implemented, new political appointees attended sessions that were part "pep talk" -- the President addressed the audience -- and part substantive instruction. This kind of training provided valuable information to new appointees on how to be a Federal manager and included a discussion of the role of the IGs. I believe it would be beneficial to re-institute such training for new senior Federal managers, and even invite Inspectors General to address these groups.

Similarly, IGs could benefit from early training on matters such as their dual responsibilities for enforcement and prevention; their independence and how to safeguard it; and the role they can play in support of agency policy-making without compromising their independence. When I was Vice Chair of the President's Council on Integrity and Efficiency (PCIE) from 1994-1997, I made it a practice to meet with each new Inspector General to answer questions, offer suggestions and provide guidance on issues such as independence. This, of

course, was only the most informal sort of "coaching." I believe it is appropriate to raise for PCIE discussion the possibility of instituting some kind of more structured orientation for new Inspectors General. The orientation might include pointers on working cooperatively and effectively with agency management.

Perhaps with such early education and communication, through more formal orientation sessions or otherwise, an IG and a Secretary might dispel potential misconceptions about one another's roles. IGs could be admonished to exercise fully their independence, and agency managers to vigorously protect that independence and the valuable, objective information it generates. Both could also be instructed as to the importance of the IGs' role in ensuring "up front" that programs are administered in a cost effective manner and structured so as to avoid fraud and abuse. Then, as envisioned by this Committee when passing the IG Act of 1978, the Inspector General could truly be "the strong right arm[2]" of the Secretary in combating fraud, waste and abuse.

<u>Proposed Amendments to the Inspector General Act</u>

As I testified earlier this year before the House Committee on Government Reform and Oversight (Subcommittee on Government Management Information and Technology), I believe that the last two decades have demonstrated that the overall structure of the IG Act is sound and does not need to be radically altered. Having said that, there are occasional roadblocks to OIG effectiveness that could be legislatively removed. For this reason, I welcomed Senator Collins' carefully crafted bill, S. 2167, the "Inspector General Act Amendments of 1998." This bill does not scrap the fundamental IG concept — that of an internal yet independent agency watchdog who reports dually both to the agency head and to the Congress. Instead, Senator Collins has proposed more specific amendments that would address the few problem areas encountered by IGs during the last 20 years. I would like to briefly discuss a few of these provisions.

! <u>Term of Office</u>: Congress sought to insulate statutory IGs from political influences in various ways. For example, IGs are selected without regard to

[2]Report of the Senate Committee on Governmental Affairs, accompanying the Inspector General Act of 1978; Report. No. 95-1071, at page 9.

political affiliation and solely on the basis of qualifications and merit; and, if the President chooses to remove an IG, he must communicate his reasons to the Congress. However, history has shown that even with these protections, changes in administration may cause lengthy periods of uncertainty in the IG community. Months can go by while IGs await news of whether their services will be continued under a new administration — the resulting "limbo" could inhibit OIG operations and staff. Senator Collins' bill would eliminate this uncertainty by establishing a fixed term of office of 9 years for IGs in establishment agencies. Such a fixed term would foster continuity and stability even during a transition period. It would also contribute to job security for those considering service as an IG, and might enhance the appeal of an IG position. The length of the fixed term is less important, so long as the term does not simply coincide with a Presidential term of office — thus 5 or 9 years seems reasonable. The provision also is careful not to impede the President's ability to remove an Inspector General when warranted. For these reasons, I endorse the fixed term of office included in the proposed amendments.

! Salary Level: As a way to attract career government employees to IG positions, to raise the stature of the IG position within the Agency, and to eliminate any controversy over IGs accepting bonuses, a provision in Senator Collins's bill would increase the salary of IGs from Executive Level IV to Executive Level III. However, because of a provision in Title 5 authorizing career members of the Senior Executive Service (SES) to receive locality pay up to level III of the Executive Schedule, this legislative fix may not achieve its intended purpose.

Under 5 U.S.C. § 5304 (g) (2) (A), career members of the Senior Executive Service can receive locality pay in addition to their base salary, but only up to level III of the Executive Schedule. As a result, raising IG pay to Executive Level III does not provide any additional incentive for career SES employees to accept an IG position since many may already be earning at the "cap" set at the Executive Level III salary. Possible modifications to this provision may be to lift the cap (although we would need to consult with the Office of Personnel Management concerning the

broader impact of such a decision). Alternatively, the bill might raise IG salaries to Executive Level II, thus allowing the intended outcome.

- External Reviews: The Senate's bill would require an independent, external review of specified operations of each OIG every three years, including a review of contracting, hiring, and travel and training expenditures by the IG. This provision is in apparent response to the findings of the Subcommittee during their review of practices at the Department of Treasury OIG. We have no objection to such oversight reviews. We suggest only that the reviews not duplicate existing "peer reviews" such as the internal quality control reviews required of OIG Audit offices (also once every three years) under the "Yellowbook" standards of the General Accounting Office and the IG Act.

- Annual Reporting: The bill would substitute an annual report for the semiannual reports currently required of Inspectors General. We have no objection to reducing the frequency of these reports. Although the change would not affect the resource level my office dedicates to reporting activities, the bill's provision would ease the administrative burden on some of the smaller OIG offices. We note that the HHS report, already quite long, would be even lengthier if issued annually. Therefore, we would continue to include an introductory section that highlights and directs the reader to significant reviews during the reporting period. The Collins bill also proposes certain substantive amendments to the contents of the Annual Report. We believe that certain of these technical amendments should be revisited. For example, the bill appears to change the correlation between the IG report and the separately issued report by departmental management summarizing the results of its implementation of the IG's recommendations. I would be happy to have our staff consult with Subcommittee staff on these technical details.

- Statutory Law Enforcement Authorities: Senator Collins has expressly asked for the views of the IG community on the critical issue of statutory law enforcement authority — that is, authority to execute search and arrest warrants, make arrests without warrants in certain circumstances, and carry firearms — for qualified investigators of the HHS Office of Inspector

General. I am deeply appreciative of the Senator's efforts to raise and resolve this issue.

Let me be clear. Law enforcement authorities are fundamental to the effective investigation of fraud against HHS programs and operations. More importantly, they are critical to the safety of OIG personnel. Our need for law enforcement powers is amply illustrated by the fact that over 95 percent of our 276 criminal investigators are currently deputized as Special Deputy U.S. Marshals under a variety of "blanket deputations," covering health care cases, child support enforcement cases and others. These deputations constitute a clear recognition by the Department of Justice that law enforcement tools are necessary to the effective and safe accomplishment of HHS investigations. A statutory grant of law enforcement authority would not enlarge the authorities that we are already exercising under deputations at HHS, but legislative authority would remove the administrative burden and uncertainty of temporary, limited deputations.

Relying on a patchwork of deputations for our law enforcement authority also raises liability issues, not only for the OIG generally, but also for individual special agents. We believe that it is time, even past time, to eliminate the piecemeal approach of our several blanket deputations, and confer upon HHS criminal investigators the statutory law enforcement authorities they have already been long and properly exercising.

We are pursuing this legislative proposal within the Executive Branch, in accordance with the Administration Policy Statement concerning statutory law enforcement, and hope to present it to this Committee and the Congress in the near future.

Fragmentation of Inspector General Functions

In July, the Congress passed and the President signed the Internal Revenue Service Restructuring and Reform Act of 1998. In part, this statute established a second presidentially appointed Inspector General within the Department of the Treasury; an Inspector General whose focus is to be limited exclusively to the programs and operations of the Internal Revenue Service. I am aware that this

legislation responded to unique problems and needs in both the Treasury OIG and Internal Revenue Service, and perhaps is an appropriate reaction to an atypical situation.

I would, however, like to voice my unease at any widespread return to fragmented internal audit and investigative responsibilities. The original IG Act wisely consolidated these functions under a single, high-level, visible, and independent Inspector General. Splintering the functions among more than one internal unit runs the risk of again diluting their effectiveness. Having said this, I acknowledge that the best way to avoid this outcome is for individual IGs not to present the Congress with any need to single out any individual agency program for special treatment. So long as we in the Inspector General community are operating as intended, there should be no compelling reason to form program specific Inspectors General within our agencies.

Conclusion

Thank you again for the invitation to testify. I believe that the Committee's focus today on the working relationship between Inspectors General and their respective agency heads will prove useful to managers and IGs alike as they seek to establish or improve an effective alliance with one another. I hope that my remarks have contributed to such an outcome. I welcome your questions.