



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

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before the

Senate Homeland Security and Governmental Affairs Committee concerning

“Safeguarding Inspector General Independence and Integrity”

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Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee:

Thank you for inviting me to appear before you today in my role as the Chairperson of the Council of the Inspectors General on Integrity and Efficiency, known as CIGIE. Since January 1, 2021, I have had the honor of serving as CIGIE’s Chairperson, and for 6 years prior to that I served as its Vice Chair. My testimony today will focus on actions to strengthen IGs’ independence and the tools to help ensure integrity in Federal government programs and operations.

Despite the tumult caused by the pandemic, our community has remained focused on its vital mission. In fiscal year 2020, our auditors, inspectors, and evaluators issued more than 3000 Reports, and the work of OIG investigators and investigative attorneys led to more than 4000 indictments and informations and almost 1300 successful civil actions. In response to our recommendations, agencies made more than 4000 suspensions and debarments and took more than 3,500 personnel actions. Altogether, our work in FY 2020 resulted in significant improvements to the economy and efficiency of programs governmentwide, with potential savings totaling approximately \$53 billion—a \$17 return on every dollar invested in the OIGs.

Inspectors General also strive to provide another valuable service that cannot be quantified with a dollar figure return on investment. We strive to provide impartial oversight over, and transparency into, some of the most difficult issues faced by the agencies we oversee. Our success in doing so depends on the trust that administrations, Congress, and the American people place in Inspectors General (IGs), a trust that we will perform our work without regard to partisanship and that we uphold the independence required of us. That trust allows IGs to be a

critical, credible source for answers when controversial allegations of mismanagement or wrongdoing arise.

Last week, our community gathered to present 87 awards for excellence in areas such as auditing, evaluations, investigations, information technology, and law and legislation to individuals and teams from CIGIE's 75 member agencies. We also presented 7 Special Category Awards, including ones for work focused on maintaining the public's confidence in air travel in the wake of crashes involving Boeing 737 MAX aircraft; for promoting integrity in the USDA's National Organic Program; for ensuring the health and safety of US military family housing; and for providing independent and effective oversight of Federal programs in the Trans Sahara regions of West Africa and in Overseas Contingency Operations. The variety of the actions honored by these awards gives a hint of the depth and breadth of the work of our community. For accomplishments like this to continue and expand, action is necessary. My testimony will detail some of the steps CIGIE believes will help ensure our community's continued success.

Oversight Priorities

The IG community has been working and continues to work with this Committee and Congress as a whole to address oversight challenges that range across government. With your assistance, we seek to enhance our ability to provide the independent, non-partisan work that Congress and the American people expect from the IG community. During the beginning of each new Congress, the CIGIE Legislation Committee presents to the Office of Management and Budget and Congress a set of legislative initiatives.¹ If addressed, these initiatives would enhance government oversight and integrity or address legal challenges that the Inspector General community faces.

CIGIE's priorities strongly focus on IG independence because that aspect of our work is essential in order for IGs to be impartial, credible sources for oversight of agency spending, and provide answers when controversial allegations of mismanagement or wrongdoing arise. Today I want to highlight some of those initiatives which are part of HR 2662 and included in the Peters/Portman substitute amendment.

Strengthen the Independence of Inspectors General

Vacancies Act Reform and Notification when an IG is Placed on Non-Duty Status

To be effective, IGs must be independent both in mind and appearance. Being independent is no less important for individuals temporarily serving as head of an OIG. Under the Federal Vacancies Reform Act of 1998 (Vacancies Act), the IG's selected deputy and career oversight official typically assumes leadership of an OIG upon the departure of the Presidentially appointed, Senate-confirmed (PAS) IG. However, the Vacancies Act does not limit the selection

¹ https://www.ignet.gov/sites/default/files/untracked/CIGIE_Legislative_Priorities_117th_Congress.pdf

of an acting IG to that individual or someone in the oversight community. The Vacancies Act allows the President to direct a PAS appointee or a senior management employee from the agency overseen by the OIG to temporarily serve as acting IG. The possibility of a political appointee or an agency management official serving as an IG presents both actual and apparent conflicts that undermine the acting IG's ability to maintain independence and act in a non-partisan fashion. Such appointments may also erode whistleblowers' trust that their identities will be protected, making them less inclined to provide much-needed evidence of fraud, waste, or abuse to the OIG. Finally, the appointment of such individuals may create a disincentive for the President to nominate a successor IG—a fact which could extend the length of the vacancy, as well as the associated concerns about the acting IG's impact on the independence of the OIG. Accordingly, CIGIE recommends that the Vacancies Act be amended to require that the “first assistant” to the IG (i.e., the deputy) assume leadership of an office if the IG position becomes vacant.

In 2020, CIGIE wrote to Congress on two occasions,^{2,3} to ask that Congress take action to legislatively ensure the independence of acting Inspectors General. Of particular concern to the IG community was the selection of an agency or political official as an acting Inspector General. The May 2020 designation of a State Department PAS official and the subsequent September 2020 designation of a Foreign Service officer and appointed Ambassador to serve as the acting IG at the State Department raised independence concerns, as did similar appointments in past administrations. In May 2020, the Deputy IG at the U.S. Department of Transportation was replaced as the acting Inspector General with a PAS official who was also serving as the head of the Department's Federal Pipeline and Hazardous Materials Safety Administration. Addressing independence principles for Inspectors General, GAO noted in June 2020 that “the extended use of temporarily assigned agency management staff to head an OIG can affect the perceived independence of the entire office in its reviews of agency operations.... the practice is not consistent with the independence requirements of generally accepted government auditing standards, other professional standards that IGs follow, and the purposes of the IG Act.” In the same report, GAO recognized the potential for significant threats to independence posed by IGs with “dual-hatted” roles.

This concern is not new, nor is it limited to one administration, nor is it unique to CIGIE. At a 2015 hearing to discuss OIG vacancies, Chairman Johnson and multiple witnesses discussed the perception that the State Department's acting IG, a career Foreign Service Officer and former ambassador under President Clinton, had failed to conduct independent and effective oversight of then-Secretary Clinton because of the acting IG's temporary appointment and the inherent conflict of interest created when an official serves in both a management and an oversight role simultaneously.⁴ Similarly, in a letter to CIGIE and then-Secretary of State Kerry in 2015,

² https://www.ignet.gov/sites/default/files/files/S3994_CIGIE_Views_letter_07082020.pdf

³ https://www.ignet.gov/sites/default/files/files/CIGIE-Views-Letter-House-NDAA-HR-6395-Sec1115_10082020.pdf

⁴ Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs (June 3, 2015). <https://www.govinfo.gov/content/pkg/CHRG-114shrg95656/html/CHRG-114shrg95656.htm>

Senator Grassley raised specific concerns about the performance of the State Department's acting IG, noting, "[a]s these examples demonstrate, an inspector general must be independent, because agencies cannot be trusted to investigate themselves."⁵

CIGIE recommends that, if there is no "first assistant," the President be allowed to direct another PAS IG or senior official within any OIG to serve as acting IG. Enacting CIGIE's recommended changes to the Vacancies Act would deter politically motivated removals, or removals because the IG was doing their job, because the person serving as acting IG (the first assistant, another presidentially appointed IG, or a senior official in the IG community) would continue to provide independent oversight. Moreover, such reforms would ensure that an acting IG is sufficiently independent in mind and appearance to maintain the public's trust and would provide a wide pool of professional oversight officials eligible to manage the OIG until the next IG is nominated and confirmed.

CIGIE also recommends requiring congressional notification when an IG is placed on non-duty status, whether that status is paid or unpaid. Sections 3(b) and 8G(e) of the IG Act include language intended to protect the institutional independence of OIGs by requiring congressional notification on the reasons for removal no later than 30 days before the removal or transfer of an IG. These unparalleled safeguards were recently described GAO as critical components to support IG independence. However, these safeguards are undermined when an IG is placed on "administrative leave" or "suspended without pay." Therefore, CIGIE recommends amending the IG Act to require congressional notification if the Inspector General is placed in either a paid or unpaid non-duty status. Such a notification does not limit the President's or agency head's ability to change the IG's status; rather, it ensures that Congress understands the basis for that decision so it can decide how best to respond.

We appreciate that these safeguards are part of the Peters/Portman substitute amendment to HR 2662. The bill would put in place a number of protections which support IG independence, including provisions that bolster the congressional notification requirements when removing or transferring an IG and requirements for congressional notification when an IG is placed on non-duty status. The bill would also modify the Vacancies Reform Act so that acting Inspector Generals are the first assistant to the IG by default, but with the flexibility for the President to direct another senior oversight professional who is either a PAS IG or senior-level employee from the IG community to serve in that role. We note that Senator Grassley, along with eleven bipartisan cosponsors, including Chairman Peters, Ranking Member Portman, Senator Hassan, Senator Romney, Senator Sinema, Senator Lankford, and Senator Carper, initially introduced the bill in the Senate as the Securing Inspector General Independence Act (S. 587).⁶

⁵ Letter from Senator Charles Grassley to the Honorable Michael Horowitz and the Honorable John Kerry (August 27, 2015). <https://www.grassley.senate.gov/sites/default/files/news/upload/2015-08-27%20CEG%20to%20CIGIE%20and%20State%20Dept%20%28IG%20Vacancy%29.pdf>

⁶ <https://www.congress.gov/bill/117th-congress/senate-bill/587?q=%7B%22search%22%3A%5B%22s+587%22%5D%7D&s=1&r=1>

Strengthen Oversight Tools and Integrity

Expansion of Testimonial Subpoena Authority

Inspector General oversight can be substantially hampered by the inability to compel the testimony of witnesses who have information that cannot be obtained by other means. Congress could address this concern by providing IGs with the authority to subpoena the testimony of certain witnesses as necessary in the performance of OIG oversight. This authority is especially important in cases where a Federal employee resigns or retires. Without testimonial subpoena authority, that employee's resignation or retirement can limit an IG audit, investigation, or other review into matters pertaining to that individual's former responsibilities. IGs can also face difficulty accessing key information during an inquiry into other individuals or entities with whom the Federal government does business. Examples include contractors, grantees, guarantors, volunteers, and entities that have no contractual relationship with the Federal Government but are suspected of defrauding a federally funded program. In these cases, IGs have limited recourse if these individuals refuse to provide information to the IG. CIGIE recommends that testimonial subpoena authority for IGs mirror the IGs' current documentary subpoena authority, similar to the testimonial subpoena authority recently granted to the Pandemic Response Accountability Committee of CIGIE.

We want to express our appreciation to Chairman Peters and Ranking member Portman for including this authority in the substitute amendment. We greatly appreciate the initial introduction of a Senate bill authorizing IG testimonial subpoena authority S. 1794 by Senator Hassan and Senator Grassley. Providing Inspectors General with testimonial subpoena authority has been a bipartisan effort in this committee since at least 2015, when the Committee put forward the IG Empowerment Act. Then in 2018 the House passed H.R. 4917.⁷ We are committed to continuing to work with you and providing technical assistance, as appropriate, to help ensure the effectiveness of this oversight tool and the judicious exercise of the authority.

Reform of OIG Semiannual Reports

Since the IG Act was enacted in 1978, IGs have been required to report semiannually on the major activities of their offices. The original IG Act semiannual requirements were just six broad reporting requirements calling for descriptions or summaries of major activities or findings, and a list of all audits. While the speed and methods by which information about OIG work is shared have evolved in the intervening decades, the semiannual reporting requirements have not kept pace. To the contrary, despite the availability of much OIG work on OIGs' websites and

⁷ In 2018, the U.S. House of Representatives unanimously passed H.R.4917, the IG Subpoena Authority Act. The Act was strongly supported by CIGIE, see:

https://www.ignet.gov/sites/default/files/files/CIGIE%20Views%20letter_HR4917_June7_2018.pdf. Previously, under Chairman Issa's leadership the House Committee on Government Affairs passed the Inspector General Empowerment Act of 2014 (H.R.5492) which included testimonial subpoena authority for Inspectors General and was supported by CIGIE. See https://www.ignet.gov/sites/default/files/files/CIGIE_Views_-_H_R_5492.pdf

Oversight.gov, over the years many more requirements have been incorporated into the relevant legislation, and substantial IG resources that could be applied elsewhere more effectively are devoted to preparation of the semiannual report. CIGIE recommends reforming OIG semiannual reports to allow OIGs to focus on the most significant activities of the OIG and the most critical issues facing the agencies they oversee. The Committee's legislative proposal would streamline and enhance the semiannual reporting requirements. Improving the content, clarity, and relevance of information reported in the semiannual report will increase transparency. IGs will also have more flexibility to use the semiannual report as a conduit for already public information and leverage existing resources such as Oversight.gov. We appreciate the interest of Congress in helping us reform this process, in particular the efforts of Senator Hassan in highlighting this issue.

Protection of Whistleblowers

Our work as IGs would be far less impactful without the information provided to us by whistleblowers. Indeed, in 2019, CIGIE issued a report that illustrated the importance of individuals coming forward to report waste, fraud, abuse, and misconduct to OIGs. As CIGIE Chairperson, I want to assure the Committee that I will encourage all OIGs to prioritize internal whistleblower education for OIG employees. Just as we encourage agency employees to come forward to assist OIGs with our investigations, audits, and reviews, it is also critical that OIG employees feel empowered to blow the whistle if they see wrongdoing within their own office and that they fully understand the process for making a disclosure and filing a retaliation complaint. I note that OIGs have historically been leaders in these internal education efforts, and nearly all OIGs have completed the U.S. Office of Special Counsel's whistleblower certification process under 5 U.S.C. § 2302(c), often well before their agencies. I also support the language in the Peters/Portman substitute amendment that would codify these and related internal education efforts, by requiring Whistleblower Protection Coordinators to inform OIG employees of their whistleblower rights and protections, including the process for filing a complaint or disclosure with CIGIE's Integrity Committee.

Accountability of Inspectors General and Their Senior Leaders

Just as Inspectors General oversee our agencies, we are committed to accountability within our own community, which is essential to maintain the public's trust. For this purpose, Congress established within CIGIE an Integrity Committee (IC) to oversee Inspectors General and senior OIG officials and ensure that they "perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate."⁸ Service on the IC is among the most serious responsibilities asked of Inspectors General, and support for the IC and continued improvement of its processes is one of my highest priorities.

⁸ Committee on Oversight and Government Reform, Improving Government Accountability Act, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354).

The IC is composed of four IGs, selected by the CIGIE Chairperson; a senior FBI official; and the Director of the Office of Government Ethics (or the Director's designee). The IC elects one of the four IG members as IC Chairperson for a two-year term. Having served on the IC from 2012 until 2015, I can speak to the many improvements that have occurred since the IG Empowerment Act (IGEA) transferred full responsibility for the IC from the FBI to CIGIE. The IC is now more transparent, and its oversight is more rigorous. It coordinates with the Office of Special Counsel on matters of mutual interest, and its workload has increased dramatically, in large measure because of outreach conducted by the IC's leadership. We appreciate the support of Congress for the Integrity Committee's work as reflected in HR 2662 and the Peters/Portman substitute amendment and recognize the important role of Congress in oversight of the IG community.

The IC's work has increased steadily over the past 5 years. In 2020, the IC considered 81 matters, double the number that it handled in 2016. Moreover, the cases have grown increasingly complex, as the typical matter now combines multiple allegations and discrete facts. Often, new allegations come to light during an investigation, which must then be pursued. These cases demand increasing staff time and other resources. At an average cost of \$202,000 per investigation, the nine matters in progress at this time are projected to cost more than \$2 million. CIGIE currently dedicates two full-time staff members to support the IC: a senior counsel and a program manager. Given the growing caseload, we have determined that this approach is not sustainable, and we are exploring ways to alleviate it with additional support, such as adding a senior investigative attorney to the team. Overseeing these investigations requires enormous commitment from the IC's Chairperson, Inspector General Kevin Winters. To the great benefit of the public, Mr. Winters, after a lifetime of service in the Marine Corps from which he retired as a Brigadier General, now performs two full-time jobs: IG of Amtrak and Chairperson of the IC. I want to thank IG Winters for his service, and I understand that his testimony will address how the IC conducts its critical role in more depth.

Improving CIGIE Transparency and Accountability through a Single Appropriation

Acting as the collective body of IGs, CIGIE has a two-fold mission: (1) to address integrity, economy, and effectiveness issues that transcend individual Government agencies and (2) to increase the professionalism and effectiveness of IG community employees. While CIGIE has steadily increased the amount and scope of its work over its first 10 years of existence, this independent agency is still primarily funded through an inefficient and complicated process of interagency collections individually deposited into a revolving fund. This indirect appropriation mechanism was directed by Congress in the 2008 amendments to the IG Act that created CIGIE. Indeed, the President's annual proposed budget to Congress includes funding for CIGIE through requested appropriations for the 75 OIG members; using this process in FY 2021, CIGIE received through its member OIGs appropriated funds of \$11.2 million. The Peters/Portman substitute amendment codifies an authorization for an appropriation process that has been in place since 2009 and would not require additional funding from taxpayers.

Ultimately, we believe that Congress would benefit from a direct, annual appropriation for CIGIE which will streamline and make more transparent the process by which CIGIE is funded. With a direct, annual appropriation, Congress and the President can better align funding with CIGIE's responsibilities, and the work congressional stakeholders frequently ask of it.

CIGIE has leveraged to great effect the appropriations for enhancements to Oversight.gov. We appreciate the support that Congress and this Committee have provided to Oversight.gov, which was launched by CIGIE in October 2017 and provides a publicly accessible, searchable website containing the latest public reports from the IG community. Last year, Congress appropriated \$850,000 for Oversight.gov and mandated that CIGIE maintain the site and that OIGs post their reports on a timely basis to the website. This requirement is now included in Section 11 of the Inspector General Act. If authorized an appropriation for its operations, CIGIE would be equally dedicated to the efficient and effective use of those funds and providing the cross-government coordination and oversight support role that our stakeholders are seeking.

Conclusion

For over 40 years, Inspectors General have worked tirelessly to ensure the integrity, efficiency, and effectiveness of their agencies' programs and operations. The trillions of dollars invested in those agencies in response to the economic and public safety crises caused by the COVID-19 pandemic have made the work of OIGs more relevant and important than ever. Thank you for your strong bipartisan support for our community and for the seriousness with which you take our mission. I look forward to working closely with this Committee and the Administration to ensure that Inspectors General continue to be empowered to provide the independent, non-partisan oversight for which they are known, and which the taxpayers so richly deserve.