



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

STATEMENT FOR THE RECORD OF

PEGGY E. GUSTAFSON
INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION
CHAIR, LEGISLATION COMMITTEE, COUNCIL OF THE INSPECTORS GENERAL FOR
INTEGRITY AND EFFICIENCY

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT REFORM
SUBCOMMITTEE ON FINANCIAL AND CONTRACTING OVERSIGHT
U.S. SENATE

“OVERSIGHT OF SMALL AGENCIES”

APRIL 10, 2014

Good morning, Chairman McCaskill, Ranking Member Johnson, and Members of the Subcommittee. On behalf of the Chair of the Council of the Inspectors General on Integrity and Efficiency’s (CIGIE), I am honored to represent the Federal Inspector General (IG) community this morning and to discuss opportunities to strengthen agency oversight through the community of Inspectors General. I currently serve as the Chair of the CIGIE’s Legislation Committee.

Let me begin by thanking this Subcommittee, on behalf of the IG community, for your continuing support of our mission and your interest in our work. This support is longstanding and bipartisan, and we are truly grateful.

I am pleased to report to this Subcommittee that the Inspector General Reform Act of 2008 (or IG Reform Act) is working as intended. The CIGIE serves a leadership role and is the core of the IG community. Together, the work of the IG community resulted in significant improvements to the economy and efficiency of programs Government-wide, with potential savings totaling approximately \$46.3 billion. With the IG community’s aggregate FY 2012 budget of approximately \$2.7 billion, these potential savings represent about a \$17 return on every dollar invested in the OIGs.

Notwithstanding these results, OIGs do face certain challenges as they work to improve the efficiency and effectiveness of government programs. Our principal challenges pertain to independence concerns and to timely access to information. In recent years, the CIGIE has been advocating for additional tools to alleviate these challenges and enhance our ability to do our

jobs for the taxpayers. The IG Community is grateful for the introduction of S.1953, *Oversight Workforce Improvement Act*, by Senators Tester and McCaskill and for the support of the bill by its cosponsors. This bill recognizes certain challenges faced by the IG Community and addresses most concerns offered by the CIGIE in its March 19, 2013 letter to the Office of Management and Budget, which outlines the CIGIE's current legislative initiatives:

Paperwork Reduction Act

The CIGIE has recommended that the Paperwork Reduction Act (PRA) be amended to exempt Federal IG offices from its requirements. The PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. While the 1995 PRA Amendments specifically exempted independent regulatory agencies from these requirements, and continues to exempt the Government Accountability Office [44 USC 3502(1)(A)], they were silent on the question of application to IGs. These exemptions would enhance the independence of IGs and remove lengthy processes that are better aligned with the role of Government interactions with the public, than oversight of the Government entity by the OIG.

The PRA requires a lengthy and burdensome approval process for the collection of information by a Federal agency. The IG Community has advocated for a change to the Paperwork Reduction Act in order to facilitate the independent reviews of IGs at least since 2000. In July 2000, the Honorable Gaston L. Gianni, Jr., who was then-Vice Chair, President's Council on Integrity and Efficiency, testified before the then-U.S. Senate's Committee on Government Affairs. IG Gianni testified that many IGs believe that being subject to the review process requirements of the PRA conflicts with their statutory mission to be independent and nonpartisan. He asserted that these requirements affect IG's ability to carry out audits and evaluations required by members of Congress, through law or by requests, in a timely and effective manner. The CIGIE continues to share the perspective of its predecessor organization—the PCIE.

While agency heads may generally supervise IGs, they are not to "prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation." Yet the PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. We recognize OMB's wealth of knowledge in the formulation and conduct of surveys. Indeed, our community may wish to informally seek its advice in the areas of survey formats, techniques, and methodologies. However, application of the PRA to OIGs has both process and substance implications.

Congress increasingly requires IGs, through law or by formal request, to conduct specific audits of agency programs in a very short time. Part of the audit process may involve gathering information or other data from surveys of agency contractors, grantees, those entities subject to agency regulation, or the public. Subjecting such surveys to the review and approval process could impact our ability to provide an accurate and professional product under the tight deadlines required by Congress. The substantive issue is whether Congress intended that either departmental officials or OMB have authority over OIG information collection efforts that are key to the performance of a successful audit. We believe the statutory independence, mission,

and dual reporting responsibility of IGs warrants similar relief for our Community as afforded to the Government Accountability Office (GAO).

5 USC § 552(b)(3) Exemption to Protect Sensitive Information Security Data

Since the Supreme Court's 2011 decision in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), OIGs across the Federal government have raised serious concerns that information related to Federal agencies' information security may be unprotected from disclosure under the Freedom of Information Act (FOIA). Prior to *Milner*, a number of Federal agencies, including OIGs, used the "high 2" form of FOIA's Exemption 2 to protect this sensitive information, including audit workpapers and agency records related to agency information security vulnerabilities. After *Milner*, this exemption is no longer available. Although other FOIA exemptions apply to classified information and documents compiled for law enforcement purposes, no single exemption currently covers the extremely large area of documents that analyze, audit, and discuss in detail the information security vulnerabilities of the Federal government.

The CIGIE is proposing a narrow exemption covering information that "could reasonably be expected to lead to or result in unauthorized access, use, disclosure, disruption, modification, or destruction of an agency's information system or the information that system controls, processes, stores, or transmits." This language tracks with existing Federal Information Security Management Act language found in 44 USC § 354(a)(2)(A), and it is suggested that this intention be included in any legislative history that may be developed.

Technical Amendments to the Inspector General Reform Act of 2008

The CIGIE also has proposed certain amendments to the IG Reform Act. The proposed amendments seek to accomplish the following:

- Codify the following provisions from the IG Reform Act in the Inspector General Act of 1978: (a) the designated Federal entity inspector general pay provisions set forth in section 4(b) of the Reform Act; (b) pay provisions for career Senior Executive Service personnel that become inspectors general set forth in section 4(c) of the Reform Act; and (c) the authority of the Integrity Committee to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel provided in section 7(b) of the Reform Act.
- Authorize all executive OIGs to fund or participate in CIGIE activities (the current language "department, agency, or entity of the executive branch" does not include certain designated Federal entities).
- Replace "agency" with "Federal agency, establishment or designated Federal entity" so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints.

- Clarify that reports that OIGs must post on their web-sites includes audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements.
- Repeal parts of the 2009 Omnibus Appropriations Act that conflict with codified Reform Act language regarding OIG websites.
- Amend Section 11(d) of the IG Act to designate the Special Counsel and the Director of the Office of Government Ethics, or their designees, as members of the Integrity Committee.
- Correct various typographical errors.

In addition to the legislative changes championed by S.1953, *Oversight Workforce Improvement Act*, the CIGIE feels strongly that OIGs should be exempted from the Computer Matching and Privacy Protection Act relative to using electronic means to identify those who improperly receive Federal assistance and/or payments and subsequently, seek removal from the program and/or recoveries after verification and applicable due process. This would improve program efficiency and enables the Government to focus resources on eligible applicants.

The Computer Matching and Privacy Protection Act requires a protracted review and approval process before computer matching can be performed to identify improper or fraudulent disaster or other assistance payments. This approval process involves concurrence by program officials within the agency subject of the review, presenting significant independence concerns for the Office of Inspector General. The timely use of computer matching to identify those who improperly received Federal assistance, and subsequently removing them from the program after verification, improves program efficiency and enables the government to focus resources on eligible applicants. Moreover, timely computer matching can under optimum conditions prevent improper payments from occurring in the first instance and, even following payments, usually leads to enhanced recovery of improper payments.

CIGIE's Role within the IG Community

As an IG, I am grateful that IGs across the Government have a voice through CIGIE and have access to training and other resources that did not exist prior to the IG Reform Act. The IG Reform Act established CIGIE to serve as a unified council of statutory Federal IGs, to carry out two key missions:

- address integrity, economy, and effectiveness issues that transcend individual Government agencies; and
- increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

CIGIE's evolution into an important supporting institution for its members is strengthened by the efforts of leaders in the IG community; Congress; colleagues in the OMB and the GAO; other

Federal agencies, law enforcement, and professional organizations; and private-sector supporters who share a commitment to improve Government programs. CIGIE's members currently include 72 IGs from the executive and legislative branches of Government, as well as 6 senior administration officials with related portfolios and responsibilities. The CIGIE currently lacks a direct appropriation, with funding provided through an OMB budget mechanism and through voluntary funds provided by the CIGIE members. The budget mechanism utilized by OMB for the CIGIE involves 17 specific OIGs including a certain CIGIE allotment in their respective budget requests, which if fully appropriated, their sum would total the complete CIGIE budget request. This mechanism has proved challenging to manage as there never has been a funding cycle during which all 17 OIGs received the CIGIE allotment in their respective appropriations. Without voluntary CIGIE member contributions, which strain their individual operating budgets, the CIGIE would experience significant challenges in carrying out its missions.

In accordance with CIGIE's primary mission, over the past several years the IG community has identified and addressed a number of issues that transcend individual agencies. CIGIE has issued reports on such topics as cybersecurity, suspension and debarment, the use of new media, the effectiveness of the Chief Financial Officers Act of 1990, disaster preparedness programs, international trade and competitiveness, IG hotline operations and whistleblower protections, the Federal Audit Clearinghouse, and IG oversight of the American Recovery and Reinvestment Act of 2009. These reports and others are available on CIGIE's website at www.ignet.gov.

CIGIE's training and professional development mission is addressed through our Training Institute, which offers training to OIG audit, investigative, inspection and evaluation, leadership, and mission support personnel. Though the institute is still in a developmental phase, in FY 2012, the institute delivered 55 specialized training courses to 1,677 students, representing a 17 percent increase of students from the previous year.

CIGIE's standing committees are active bodies that are responsible for, among other things, developing professional standards that apply to overall OIG operations, as well as OIG audits, investigations, inspections, and evaluations. CIGIE, through its committees, also manages a peer review program of IG audit and investigation operations that evaluates OIG adherence to the professional standards. In FY 2012, CIGIE initiated a pilot program to peer review OIG inspection and evaluation activities on a voluntary basis. These programs play a critical role in advancing the professionalism of OIG operations and enhancing confidence in the quality of OIG products.

Importance of Agency Oversight by an Inspector General

Federal (or statutory) OIGs promote economy, efficiency, and effectiveness in Government operations and help detect and deter fraud, waste, abuse, and mismanagement. The stated purpose of the Inspector General Act of 1978, as amended (IG Act), is to create an independent and objective unit within specified agencies whose duty it is to combat fraud and abuse in the programs of that agency. To this end, each IG is responsible for conducting audits and investigations of the programs and operations of its agency, and undertaking other activities, such as inspections and evaluations, to "promote economy, efficiency and effectiveness" in those programs. Importantly, each IG also is to keep the agency head and the Congress "fully and

currently informed” about problems and deficiencies in the agency. The IG Act contains a variety of statutory guarantees of OIG independence, designed to ensure the objectivity of OIG work and to safeguard against efforts to compromise that objectivity or hinder OIG operations. It is these guarantees of independence that make statutory IGs unique.

It is important to note that there are two distinct types of IGs under the IG Act; those in “establishment” agencies and those in “designated Federal entities” (DFE). Federal establishment IGs are appointed by the President with Senate confirmation, whereas DFE IGs are appointed by the agency head, which may be an individual, a board, or a commission. With few exceptions, both types of IGs share the same authorities and responsibilities.

Congress and the taxpayers believe that an independent IG is a “strong right arm” to any agency head who seeks to identify and eliminate fraud, waste, and abuse in agency programs and manage those programs effectively. As such, the IG Act established IGs within specified agencies, with limited supervision by the agency head, and authority to exercise unprecedented independence. The IG Act specifically prohibits agency management officials from supervising the Inspector General. This important organizational independence removes the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.

The IG Act affords OIGs the authority to mount a multi-disciplinary approach to agency oversight. Each OIG has a broad statutory mandate to conduct audits and investigations relating to the programs and operations of the agency and to conduct other activities for the purpose of promoting economy and efficiency in the administration of the agency. Within this broad mandate, the IG is given full discretion to undertake those investigations that are, in the judgment of the IG, “necessary or desirable.” Though the IG reports to the agency head, even that official may not compromise the initiation or conduct of an OIG audit or investigation.

OIG audits are conducted in accordance with federal audit standards established by the Comptroller General. In addition, OIGs coordinate with the GAO to avoid duplication in federal audits. OIGs also establish criteria for using non-federal auditors (typically, CPA firms) and to ensure that such auditors comply with federal audit standards.

OIGs are charged with not only investigating or auditing fraud, waste, and abuse after they have occurred, but also identifying vulnerabilities and recommending programmatic controls that would, when enacted or implemented, strengthen controls or mitigate risk. To this end, some OIGs, but not all, have separate offices devoted to conducting program evaluations. Others fulfill this responsibility through their audit offices. Where an OIG does conduct program evaluations and inspections, the IG is charged with tracking and reporting these recommendations in its Semiannual Report to the Congress, just as it reports its audit findings and recommendations.

The objectivity of these fact-finding efforts is enhanced by the considerable independence given the IGs. This independence enables IGs to fulfill a fundamental responsibility to keep the agency head and the Congress informed about problems and deficiencies in agency programs

and operations. However, the statutory requirement for operational independence with respect to IG audits, investigations, and evaluations does not foreclose coordination and cooperation between the IG and agency management. For example, OIGs generally invite agency management to comment on the IG's annual work plan; in this way, managers can offer suggestions on risk areas they perceive in their day-to-day operations of agency programs. Consultation with subject matter experts in the agency's program offices also can enhance OIG work products.

OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations and Federal law. In conducting investigations, whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report that evidence to the Department of Justice. These reports are to be made directly to the Department of Justice, without prior clearance by agency officials outside OIG.

Law Enforcement Authorities: All statutory Inspectors General are authorized to administer oaths when necessary in performing their duties. In addition, the IG Act authorizes criminal investigators in the offices of 23 Presidentially-appointed Inspectors General to exercise law enforcement powers—namely arrest, firearms, and warrant authorities—while conducting official duties.¹ The Act also provides a mechanism whereby the Attorney General may, after an initial determination of need, confer law enforcement powers on investigative personnel of other OIGs, including those in DFEs. Whether conferred directly by statute or by Attorney General designation, OIGs receiving law enforcement authorities under the IG Act must exercise those law enforcement powers in accordance with guidelines promulgated by the Attorney General. Each OIG also undergoes periodic peer review of its exercise of law enforcement powers.

In the past, the CIGIE has played an important role in facilitating requests for assistance to ensure effective agency oversight by an OIG. Such requests have included needs for audit, investigative and complaint handling services. Though CIGIE cannot provide these services itself, CIGIE works to match these needs with OIGs that may be able to enter into reimbursable agreements to provide the service. However, as resource constraints persist, OIGs may be less able to enter into such arrangements. Where OIGs that lack law enforcement powers (as conferred by statute or by the Attorney General), CIGIE has served as a quick and efficient means to communicate requests for such support from its Members. Similarly, through its Integrity Committee, the CIGIE coordinates with its Members for investigative manpower and thereby provides for independent investigations of allegations of wrongdoing by IGs and those that directly report to them. CIGIE also has been called upon for other varied ad hoc requests for assistance by its Members to ensure effective oversight of the agency(ies) under the particular OIG's jurisdiction. CIGIE will continue its facilitation role and its support of requests to promote efficiency and effective oversight.

This concludes my testimony. Thank you again for inviting me to testify today before the Subcommittee about the role of CIGIE and opportunities to strengthen agency oversight through

¹ In addition to these IGs, four additional OIGs – Department of Agriculture, Department of Defense, U.S. Postal Services, and Treasury IG for Tax Administration – derive law enforcement authority from legislation other than the IG Act of 1978, as amended.

the community of Inspectors General. I would be pleased to address any questions you may have.