



January 28, 2021

Ms. Lesley A. Field
Acting Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
Office of Management and Budget

Ms. Field,

As Chair of the Legislation Committee (the Committee) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am pleased to provide the Committee's Legislative Priorities for the 117th Congress. Presented below are proposals that CIGIE considers of high priority to strengthen oversight of Federal programs or resolve challenges that Inspectors General (IGs) face under current law.

For context, the CIGIE Legislation Committee provides timely information to the IG community about congressional initiatives; solicits the technical advice of the IG community in response to congressional initiatives; and presents views and recommendations to Congress and the Office of Management and Budget on legislative matters. Through this letter, the Committee hopes to provide technical assistance on legislative proposals that enhance the work of IGs and, more generally, improve government oversight. We welcome the opportunity to engage on legislation related to these priorities:

- A. Enhancing the Institutional Independence of OIGs
- B. Prohibiting the Use of Appropriated Funds to Deny IG Access
- C. Testimonial Subpoena Authority
- D. Improving CIGIE Transparency and Accountability through a Single Appropriation
- E. Providing Continuous Oversight During a Lapse in Appropriations
- F. Reforming the Program Fraud Civil Remedies Act
- G. Reforming OIG Semiannual Reports

Summaries of CIGIE's legislative proposals are provided below. Additional relevant information about the priorities, as well as additional recommendations for improving government oversight, are provided in the enclosure.

A. Enhancing the Institutional Independence of OIGs

To ensure the institutional independence of IGs, CIGIE recommends two changes to current law:

1. Enhance the independence of OIGs through Vacancies Act reform, and
2. Require congressional notification when an IG is placed on non-duty status.

First, 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. However, the Vacancies Act allows the President to direct a Presidentially appointed, Senate-confirmed (PAS) appointee or a senior management employee in the agency overseen by the OIG to temporarily serve as acting IG. Doing so risks both actual and apparent conflicts that affect the acting IG's ability to maintain independence, including the independence required by Generally Accepted Government Auditing Standards and other professional standards that IGs must follow. Further, it may erode whistleblowers' trust that their identities will be protected. Accordingly, CIGIE recommends that the Vacancies Act be amended to require the "first assistant" to the IG (*i.e.*, the deputy) assume leadership of an office if the IG position becomes vacant. Further, 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. Doing so would ensure that an acting IG is sufficiently independent in mind and appearance and would greatly expand the pool of professional oversight officials eligible to temporarily manage the OIG.

Second, CIGIE recommends requiring congressional notification when an IG is placed on non-duty status, whether it 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 no later than 30 days before the removal or transfer of an IG. These unparalleled safeguards were recently described by the Government Accountability Office as critical components to support IG independence. However, these safeguards are defeated when an IG is placed on "administrative leave" or "suspended without pay." CIGIE recognizes that some very limited circumstance might require placing an IG on paid or unpaid, non-duty status immediately and that prior notification may not be practical. Therefore, CIGIE recommends amending the IG Act to require congressional notification no later than 48 hours after the Inspector General is placed in either a paid or unpaid, non-duty status.

B. Prohibiting the Use of Appropriated Funds to Deny IG Access

Despite the IG Act's clear language authorizing IGs to have full and timely access to all agency information, IGs on occasion are denied the access they need to provide robust oversight. On an *ad hoc* basis, Congress has effectively resolved such denials by including, within subcommittee appropriations acts, a prohibition on an agency's use of appropriated funds to deny full and prompt IG access. Such prohibitions have had great practical effect because the consequences of denying the IG access could lead to an Antideficiency Act violation. However, the existing appropriation prohibitions apply to only those agencies funded under the particular subcommittee appropriations act. Further, the appropriations prohibitions are often enacted only after the agency, OIG, and Congress have expended considerable time and resources. CIGIE accordingly recommends a government-wide prohibition on the use of appropriated funds to deny an IG access and a requirement of congressional notification when access is denied. Consistent with current law and existing appropriation prohibitions, CIGIE believes the prohibition should recognize existing statutes that limit IG access and those that prevent the IG from further disclosing information protected by law.

C. Testimonial Subpoena Authority

OIG 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. For example, this authority is especially important in cases where a Federal employee resigns. Without testimonial subpoena authority, that employee's resignation can limit an IG audit, investigation, or other review into matters pertaining to that individual's former responsibilities. IGs also face difficulty accessing key information during an inquiry into other individuals or entities with whom the Federal government does business. Examples include subcontractors or subgrantees that have no direct contractual relationship with the Federal government but are suspected of defrauding a federally funded program; in these cases, IGs have limited recourse if employees of contractors refuse to provide information to the IG during an audit or investigation. To address these issues, CIGIE recommends the authority mirror the IGs' current documentary subpoena authority, similar to the testimonial subpoena authority recently granted to the Pandemic Response Accountability Committee of CIGIE and the IGs it supports. In doing so, Congress would enhance IG access to the testimonial evidence that is so often a critical component of IG oversight.

D. Improve CIGIE Transparency and Accountability through a Single Appropriation

Acting as the collective body of IGs, CIGIE fulfills its twin mission to (1) address integrity, economy, and effectiveness issues that transcend individual Government agencies and (2) increase the professionalism and effectiveness of IG community employees. While CIGIE has steadily increased the amount and scope of its work over its 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. OIGs make these individual deposits without clear congressional direction regarding how much funding CIGIE should receive or how much any individual OIG should provide. In contrast, CIGIE has leveraged to great effect limited, one-time appropriations for enhancements to Oversight.gov. In addition, Congress recently authorized a partial appropriation for CIGIE. A direct, annual appropriation will streamline and make more transparent the process by which CIGIE is funded. Moreover, 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.

E. Authority for IGs to Provide Continuous Oversight During a Lapse in Appropriations

CIGIE proposes giving IGs specific authority to continue oversight of agency operations during lapses in appropriations. Lapses in appropriations generally require government agencies, including OIGs, to shut down and furlough employees. However, many agencies, contractors, grantees, and other program participants continue certain operations even during such lapses. As a result, critical government activities, such as law enforcement operations and awards of billions of dollars in contracts and grants, continue to operate under limited oversight. CIGIE recommends authorizing OIGs to continue operations during a lapse in appropriations as if they were operating under a continuing resolution to the extent necessary to oversee the programs and operations of their agency that also continue during a lapse in appropriations.

F. Reforming the Program Fraud Civil Remedies Act

The Program Fraud Civil Remedies Act (PFCRA), often referred to as the "mini-False Claims Act," is an underutilized tool to provide administrative civil remedies for false claims of \$150,000 or less and for false statements. According to a 2012 GAO report, many agencies were not using the PFCRA for reasons that include: a lack of familiarity with the statute, insufficient resources, cumbersome and time-consuming procedures, availability of alternate remedies, and, in many agencies, the absence of administrative law judges to adjudicate PFCRA cases.

Eight years after GAO's findings, these problems persist. CIGIE recommends related statutory changes to improve and enhance the use and effectiveness of PFCRA. CIGIE's recommendations include updating the decades-old dollar threshold for claims subject to PFCRA, allowing PFCRA decisions to be delegated within the Department of Justice, allowing agencies to be made whole from PFCRA recoveries, better aligning PFCRA with the False Claims Act, and expanding who can serve as a hearing official. Collectively implementing CIGIE's recommendations could transform PFCRA into a significant tool to recover fraudulent expenditures for the benefit of taxpayers as well as deter individuals from committing small-dollar fraud.

G. Reforming 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. While the speed and methods by which information is shared has evolved in the intervening decades, the semiannual reporting requirements have not kept pace; to the contrary, over the years, more requirements have been incorporated into the relevant legislation, and substantial resources that could be applied elsewhere 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.

Additional Recommendations for Improving Government Oversight

The CIGIE Legislative Priorities described above are not an exhaustive list of legislative reforms that would assist government oversight or help resolve challenges IGs face under current law. While issues arise during the course of a Congress that may result in additional proposals, below are recommended reforms that, although not among the highest priorities described above, are worthy of consideration. You will find included in the enclosure information related to these additional recommendations for improving government oversight:

- Protecting Cybersecurity Vulnerability Information;
- Statutory Exclusion for Felony Fraud Convicts to Protect Federal Funds; and
- Enhancing CIGIE's Role in Recommending IG Candidates.

The Committee appreciates the opportunity to present this summary of important legislative initiatives. We look forward to working with you to advance legislation that will improve oversight and accountability of Federal programs and operations. Should you have any questions or need more information, please do not hesitate to contact me directly at 202-692-2900.

Sincerely,

A handwritten signature in blue ink that reads "Kathy A. Buller". The signature is written in a cursive style with a large initial "K".

Kathy A. Buller
Chair
CIGIE Legislation Committee

CC: CIGIE Executive Council
CIGIE Members and liaisons