

ATTACHMENT: CIGIE LEGISLATIVE PRIORITIES FOR THE 117TH CONGRESS –

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A. Enhancing the Institutional Independence of Offices of Inspectors General

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.

1) Enhance the independence of OIGs through Vacancies Act reform

Suggested legislative text:

Within the Federal Vacancies Reform Act, 5 U.S.C., Section 3345, Acting officer, make the following revisions:

- a) In General. – Section 3345 of title 5, United States Code, is amended by inserting after subsection (c) the following:

“(d)

“(1) Notwithstanding subsection (a), if an Inspector General position that requires appointment by the President by and with the advice and consent of the Senate to be filled is vacant, the first assistant of such position shall perform the functions and duties of the Inspector General temporarily in an acting capacity subject to the time limitations of section 3346.

“(2) Notwithstanding subsection (a), if for purposes of carrying out paragraph (1) of this subsection, by reason of absence, disability, or vacancy, the first assistant to the position of Inspector General is not available to perform the functions and duties of the Inspector General, an acting Inspector General shall be appointed by the President (and only the President) from among individuals serving in an office of any Inspector General, provided that—

“(A) the individual is a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; or

“(B)

“(i) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable Inspector General, the individual served in a position in an office of any Inspector General for not less than 90 days; and

“(ii) the rate of pay for the position of such individual is equal to or greater than the minimum rate of pay payable for a position at GS–15 of the General Schedule.”

Supporting Statement:

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) believes that revisions are needed to the Federal Vacancies Reform Act of 1988¹ (Vacancies Act) to protect the institutional independence of Inspectors General after an Inspector General position becomes vacant. Under the Vacancies Act, the principal deputy to the Inspector General typically becomes acting Inspector General upon the Inspector General position becoming vacant. However, the Vacancies Act provides two alternatives for the President to direct others to serve as acting Inspector General - either (1) another Presidentially appointed, Senate-confirmed appointee or (2) a senior officer or employee of the agency being overseen.

Past administrations have used the options in the Vacancies Act to direct Presidentially appointed, Senate Confirmed (PAS) appointees or senior agency officials to serve as acting IG rather than utilizing the full cadre of independent, experienced, and nonpartisan oversight professionals from within the Inspector General community. Moreover, existing law limits the President's authority to appoint an acting leader from within the Inspector General community to three dozen individuals who serve as Presidentially appointed, Senate-confirmed IGs. The Vacancies Act excludes hundreds of other leaders in the OIG community, including Inspectors General, Deputy Inspectors General, and other senior OIG officials whose experience makes them among the highest qualified and best-suited individuals to serve.

While multiple past administrations have utilized the Vacancies Act alternatives to appoint agency officials as acting IGs, CIGIE is concerned about the increasingly used practice of appointing senior administration officials or PAS appointees within the agency being overseen as acting Inspectors General. This practice is of particular concern because the return of the acting agency official to a political or senior management position comes after overseeing financial and performance audits, hotline reports, whistleblower allegations, investigations, and other sensitive and confidential agency matters. The Vacancies Act also limits the time that an individual can serve as acting IG, all but guaranteeing additional changes in the leadership of the OIG.

The appointment of an acting Inspector General from a political or senior management post in an acting capacity impacts the independence and effectiveness of the office. The U.S. Comptroller General has expressed concerns about the implications of such scenarios for an OIG's independence. GAO recently emphasized that "IGs must be independent both of mind and in appearance" in order to meet Federal auditing standards.² The requirement to be independent is no less important for individuals temporarily serving in an acting capacity, or performing the duties of, an Inspector General. Addressing independence principles for Inspectors General, the Government Accountability Office 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

¹ Pub. L. 105-277, div. C, title I, §151(b), 112 Stat. 2681-611 (Oct. 21, 1998), codified in relevant part at 5 U.S.C. § 3345. While the Vacancies Act uses the term "first assistant to the office of such officer", this explanation uses the contextually equivalent term "principal deputy to the Inspector General".

² Government Accountability Office, "Inspectors General: Independence Principles and Considerations for Reform", GAO-20-639R, page 3 (June 8, 2020) <https://www.gao.gov/assets/710/707412.pdf>.

independence requirements of generally accepted government auditing standards, other professional standards that IGs follow, and the purposes of the IG Act”.³

Amending the Federal Vacancies Reform Act by refining who is eligible to temporarily serve as acting IG to include senior OIG officials will broaden the eligible pool of qualified, independent leaders from within the IG community, enhancing the operational efficiency and independence of acting Inspectors General. Our proposal addresses independence challenges associated with acting IG appointments not only by broadening the pool of OIG personnel but by excluding agency officials. Agencies themselves and the public benefit when an acting IG is independent in both fact and appearance. That independence allows IGs to be a critical, credible source for oversight of agency spending as well as to provide answers when controversial allegations of mismanagement or wrongdoing arise. In CIGIE’s view, the institutional independence of all OIGs would be strengthened by the revisions proposed in this legislative priority.

2) Notification to Congress of Decision to Place an Inspector General on Paid or Unpaid, Non-Duty Status

Suggested Legislative Text:

Section 3 of the Inspector General Act of 1978 (5 U.S.C. app.) is amended—

1. *By inserting “administrative leave”; after “removal”; and before “political activities”; in the section title.*
2. *By striking “Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal”. at the end of subsection (b).*
3. *By renaming subsection (b) as (b)(1).*
4. *Insert after subsection (b)(1), as so designated, the following—*

(2) An Inspector General may not be placed in either a paid or unpaid, non-duty status by the President without the President’s communicating in writing to both Houses of Congress. The communication shall include the reasons for such action and must be received by the Congress not later than 48 hours after the Inspector General is placed in either a paid or unpaid, non-duty status by the President.

(3) Nothing in this subsection shall prohibit a personnel action otherwise authorized by law.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. app.) is amended—

1. *By striking “Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal”. at the end of paragraph (e)(2).*
2. *Insert after paragraph (e)(2) the following—*

(3) An Inspector General may not be placed in either a paid or unpaid, non-duty status by the head of the designated Federal entity without such head’s communicating in writing to both Houses of Congress. The communication shall

³ Government Accountability Office, “Inspectors General: Independence Principles and Considerations for Reform”, GAO-20-639R, page 5 (June 8, 2020) <https://www.gao.gov/assets/710/707412.pdf>.

include the reasons for such action and must be received by the Congress not later than 48 hours after the Inspector General is placed in either a paid or unpaid, non-duty status by the head of the designated Federal entity.

(4) Nothing in this subsection shall prohibit a personnel action otherwise authorized by law.

Supporting Statement:

Section 3(b) of the IG Act provides a specific process for removal of an IG from office or transfer to another position or location within an “establishment”. Similarly, Section 8(G)(e) provides a comparable process for IGs within designated Federal entities. These removal processes require congressional notification not later than 30 days before any such removal. Notifying Congress provides a safeguard to protect the independence of IGs to carry out any audit or investigation or issue any subpoena during the course of any audit or investigation. However, this safeguard is defeated when an IG is placed on “administrative leave” or “suspended without pay” (i.e., a paid or unpaid, non-duty status) by the President in instances involving an IG of an establishment or the head of a designated Federal entity in instances involving an IG of a designated Federal entity. CIGIE recognizes that some very limited circumstances might require placing an IG on paid or unpaid, non-duty status immediately and that prior notification may not be practical. CIGIE supports amending the IG Act to establish a congressional notification requirement for use of either paid or unpaid, non-duty personnel actions involving an IG to ensure Congress is apprised of any such action.

B. Prohibiting the Use of Appropriated Funds Government-wide to Deny Inspectors General Full and Prompt Access

Suggested Legislative Text:

Within the Financial Services and General Government Appropriations Bill title regarding General Provisions – Government-wide, at the appropriate place, insert the following:

“SEC. XXX. PROHIBITING THE USE OF APPROPRIATED FUNDS TO DENY FULL AND PROMPT ACCESS BY INSPECTORS GENERAL TO AGENCY RECORDS AND INFORMATION

- (a) No funds provided in this Act or any other Act shall be used to deny an Inspector General timely access to any records, documents, or other materials available to the department or agency over which that Inspector General has responsibilities under the Inspector General Act of 1978, or to prevent or impede that Inspector General's access to such records, documents, or other materials, under any provision of law, except a provision of law that expressly refers to the Inspector General and expressly limits the Inspector General's right of access.*
- (b) A department or agency covered by this section shall provide its Inspector General with access to all such records, documents, and other materials in a timely manner.*
- (c) Each Inspector General shall ensure compliance with statutory limitations on disclosure relevant to the information provided by the establishment over which that Inspector General has responsibilities under the Inspector General Act of 1978.*
- (d) Each Inspector General covered by this section shall report to the Committees on Appropriations of the House of Representatives and the Senate within 5 calendar days any failures to comply with this requirement”.*
- (e) Under this Section, the term “department or agency” shall be interpreted to include–*
 - i. any Establishment or designated Federal entity as those terms are defined by the Inspector General Act of 1978 (5 U.S.C. App); and*
 - ii. the Architect of the Capitol, Government Publishing Office, Government Accountability Office, Library of Congress, and United States Capitol Police”.*

Supporting Statement:

In December 2016, Congress unanimously passed the Inspector General Empowerment Act, confirming that Federal Inspectors General (IGs) are entitled to full and prompt access to agency⁴ records. The IG Empowerment Act should have eliminated all doubts about whether agencies are legally authorized to disclose sensitive information to IGs. In most cases, but not all, it has.

Unfortunately, agencies have occasionally failed to comply with the Inspector General Act provision guaranteeing the IG full and prompt access to agency records and information. When this occurs, additional congressional action is often needed to ensure that the agency complies with the IG Act and provides the IG the access needed for robust oversight.

The most effective congressional action has been to include a prohibition on an agency's use of appropriated funds to deny an IG full and prompt access within the subcommittee appropriation bills. Such a provision elevates the consequences of denying access. As the Office of Legal Counsel has recognized, a violation of the appropriation rider "might well violate... the Anti-Deficiency Act, 31 U.S.C. §§ 1341 *et seq.*, a statute that subjects federal officers and employees who expend or obligate funds in excess of appropriated amounts to administrative and, in the case of knowing and willful violations, criminal penalties".⁵ The prohibition is, in essence, Congress using the power of the purse to express the seriousness of any agency denial of full and prompt IG access.

While rooted in Congress's constitutional authority, the appropriation prohibition is far from academic. The suggested prohibition⁶ has appeared in substantially similar form in several appropriation acts, including those pre-dating the IG Empowerment Act, to great practical effect. For example, in 2016, Section 540 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016 effectively overrode the OLC's opinion supporting the denial of access and required the Department of Justice to disclose information it previously withheld from the IG. In a more recent example, in June 2018, a bi-partisan group of 15 Senators introduced the same appropriation rider in response to the Department of Veterans Affairs' delays in providing its IG with access and more generally not cooperating with IG requests for information. In each example, the prohibition effectively addressed the consequences of the agency's continued denial of full and prompt IG access and resulted in the IG obtaining access to the necessary information.

Conversely, OIGs overseeing agencies not subject to the appropriation prohibition have recently faced access challenges. For example, in 2020, the Corporation for National and Community Service OIG (CNCS-OIG) requested access to correspondence from the Federal Bureau of

⁴ OIGs oversee a variety of Federal agencies, commissions, bureaus, and other entities. For simplicity, this supporting statement uses the term "agency" to denote the Federal entities overseen by OIGs.

⁵ See "Authority of the Department of Justice to Disclose Statutorily Protected Materials to Its Inspector General in Light of Section 540 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016", Memorandum Opinion for the Deputy Attorney General (Apr. 27, 2016); available at <https://www.justice.gov/opinion/file/847181/download>. (internal citations omitted).

⁶ To be effective government-wide, the phrase "or any other Act" has been added to the provisions previously passed, as those provisions applied to individual Divisions of appropriation acts. In such cases, provisions referring to "this Act" under each Division of the appropriation act referred only to that Division. The addition of "or any other Act" reproduces the formulation of other government-wide prohibitions. Additionally, some appropriation acts do not break out the provision into subsections.

Investigation (FBI) to CNCS, raising substantive concerns about a proposed regulation. Specifically, CNCS informed CNCS-OIG that the FBI had expressed serious reservations concerning aspects of a proposed regulation needed to improve compliance with the statutory requirement that national service volunteers and staff undergo criminal history checks. CNCS denied CNCS-OIG access to the requested materials within its possession, hampering the CNCS-OIG's ability to provide recommendations about how best to protect the safety of national service beneficiaries, a subject of prior audits and investigations. The contrast in the above examples clearly demonstrates the effectiveness of the appropriation prohibition.

CIGIE believes that the appropriation prohibition should be enacted government wide and proactively. Appropriation prohibitions are often enacted only after an agency has denied or delayed access. Additionally, once enacted, they apply only to the small subset of agencies funded by the particular appropriation act or division in which the prohibition appears. This piecemeal approach results in unnecessary expenditure of OIG, agency, and congressional resources to resolve an issue where there should be no doubts. The appropriation prohibition can avoid the delay between when the IG reports to Congress the denied or delayed access and when the next appropriation act is passed, ensuring the timely, robust oversight that the taxpayer deserves. Thus, CIGIE recommends enacting the prohibition on an ongoing and government-wide basis.

To achieve government-wide application, the current legislative text should be amended in two ways to cover Federal entities overseen by OIGs that are not strictly considered a "department or agency." First, the definitions within the Inspector General Act that define "Establishment" and "designated Federal entities" can be incorporated to ensure coverage of most agencies that IGs oversee. Separate authorizing statues for Legislative branch IGs incorporate and therefore make applicable certain provisions of the IG Act. However, the legislative text should specifically incorporate the Legislative branch IGs to ensure there is no question as to the provision's applicability to such entities.

The suggested appropriation prohibition includes two important guardrails that mirror those in the Inspector General Act. First, each IG subject to the provision is required to comply with any statutory limitations on disclosure. This provision conforms to the identical prohibitions included in the Inspector General Act.⁷ Second, the provision similarly conforms to access provisions in the Inspector General Act by stating that it does not apply to a provision of law expressly referring to the IG and expressly limiting the IG's access.⁸ Thus, it does not modify the statutory right of IGs to full and prompt access or acts that allow an agency to deny IG access or curtail the IGs oversight but instead provides an additional, needed tool for ensuring agency compliance with existing law.

The suggested provision also includes an important congressional reporting requirement. It requires the Inspector General covered by such provision to report to relevant congressional committees within 5 days of any failure to provide full and prompt access. This ensures that Congress will be swiftly notified of an agency failure, further encouraging agency compliance.

⁷ *E.g.*, Inspector General Act of 1978, as amended, 5 U.S.C. App. § 6(b) ("Nothing in this section shall be construed as authorizing an Inspector General to publicly disclose information otherwise prohibited from disclosure by law").

⁸ Inspector General Act of 1978, as amended, 5 U.S.C. App. § 6(a)(1).

Further, the provision is clear that the Inspector General involved determines when access has not been fully provided or is not being provided promptly.

C. Testimonial Subpoena Authority

Suggested Legislative Text:

The Inspector General Act of 1978 (5 U.S.C. app.) is amended by inserting after section 6(k) the following new subsection:

“(l) An Inspector General is authorized to require by subpoena the attendance and testimony of witnesses as necessary in the performance of functions assigned to the Inspector General by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court, except that the Inspector General shall use procedures other than subpoenas to obtain attendance and testimony from current Federal employees and from non-Federal employees at designated Federal entities”.

The National Security Act of 1947 (50 U.S.C. § 3033(g)) is amended –

- 1. by redesignating subparagraph 5(C) to 5(D)*
- 2. by redesignating subparagraph 5(D) to 5(E)*
- 3. by inserting after subparagraph 5(B) a new subparagraph 5(C):*

“5(C) The Inspector General is authorized to require by subpoena the attendance and testimony of witnesses as necessary in the performance of the duties and responsibilities of the Inspector General, pursuant to subsection (e). The Inspector General shall use procedures other than subpoenas to obtain attendance and testimony from current Federal employees and from non-Federal employees at Designated Federal Entities”.

The Central Intelligence Agency Act of 1949 (50 U.S.C. §3517(e)) is amended—

- 1. by redesignating subparagraph 5(C) to 5(D)*
- 2. by redesignating subparagraph 5(D) to 5(E)*
- 3. by inserting after subparagraph 5(B) a new subparagraph 5(C):*

“5(C) The Inspector General is authorized to require by subpoena the attendance and testimony of witnesses as necessary in the performance of the duties and responsibilities of the Inspector General, pursuant to subsection (c). The Inspector General shall use procedures other than subpoenas to obtain attendance and testimony from current Federal employees and from non-Federal employees at Designated Federal Entities”.

Supporting Statement:

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. The amendment would authorize Inspectors General (IGs) to subpoena the attendance and testimony of certain witnesses as necessary in the performance of the functions of the IG Act, the National Security Act, and the Central Intelligence Agency Act. For example, in cases involving a Federal employee, that

employee's resignation can substantially hamper an audit, investigation, or other review into matters within the scope of that individual's former responsibilities.

Congress has already granted some IGs testimonial subpoena authority (TSA) under the IG Act or through other laws. The Department of Defense Office of Inspector General (DoD OIG) was provided TSA under Section 1042 of the National Defense Authorization Act of 2010, codified at Section 8(i) of the IG Act. As noted in the Congressional record, DoD OIG has used this authority judiciously and sparingly.⁹ The HHS OIG also has testimonial subpoena power in certain circumstances.¹⁰ Moreover, IGs overseeing appropriations under the American Recovery and Reinvestment Act of 2009 received TSA to be exercised through the now-sunsetted Recovery Accountability and Transparency Board.¹¹ Most recently, the Pandemic Response Accountability Committee of CIGIE received TSA in furtherance of its oversight of COVID-19 pandemic response funding and to support its member IGs.

The new authority would be most effective in assisting IG work if it does not limit the allowable recipients of a subpoena. Requiring that the testimonial subpoena be necessary for performance of the functions assigned by the IG Act, the National Security Act, and the Central Intelligence Agency Act provides the same limitation found in the IGs' existing authority to subpoena documents. That authority, set forth in section 6(a)(4) of the IG Act, 50 U.S.C. § 3033 (g)(5)(A), and 50 U.S.C. §3517(e)(5)(A), does not specify the recipients to whom IGs may issue subpoenas; rather, it only requires that a subpoena must be necessary in the performance of IG work. However, the testimonial subpoena authority should not include within an IG's subpoena purview current Federal employees or non-Federal employees employed by designated Federal entities.¹² Such employees should not be subpoenaed because they are already obligated to provide testimony and cooperate with the IG.

⁹ In a 2015 case study, it was reported that, since 2010, a total of six testimonial subpoenas were authorized by the DoD IG and four of those testimonial subpoenas were never served because the interviewees voluntarily cooperated with the interview. See "A Case Study: DoD IG's Use of Testimonial Subpoena Authority", introduced by Chairman Grassley, Cong. Rec. for Dec. 15, 2015, p. S 8670.

¹⁰ HHS OIG was provided this authority through delegation by the Secretary of HHS under 42 U.S.C. Section 1320a7a(j).

¹¹ Section 1524(c)(1) Pub. L. No. 111-5, 123 Stat. 115, 291 (Feb. 17, 2009). The authority was further extended over later, additional supplemental appropriation bills.

¹² For example, the Smithsonian Institution considers employees of its trust to be non-Federal employees, though those employees are already under Smithsonian OIG's purview.

D. Improving CIGIE Transparency and Accountability through a Single Appropriation

Suggested Legislative Text:

After Section 11(c)(3)(C) of the Inspector General Act of 1978, insert:

(D) Authorization of appropriations-

- (i) In addition to any funds that may be available through the Inspectors General Council Fund established pursuant to Subsection (c)(3)(B) there are authorized to be appropriated such sums as necessary to carry out the functions and duties of the Council under this subsection.*
- (ii) Amounts authorized to be appropriated under subparagraph (i) for a fiscal year are authorized to remain available for that fiscal year and the subsequent fiscal year.*

Appropriation:

*“For an additional amount to be used for the purposes of the Inspectors General Council Fund established pursuant to Section 11(c)(3)(B) of the Inspector General Act of 1978 (5 U.S.C. App.), as amended, \$X,000,000 which shall remain available until September 30, 2023”.*¹³

Individual Inspector General Budgets & Enactment:

Sec. 1 – Removing Council Funding from Individual Inspector General Budget Requests. —

Section 6(g) of the Inspector General Act of 1978 is amended by:

- (a) In paragraph (1), striking “, and any resources necessary to support the Council of the Inspectors General on Integrity and Efficiency. Resources necessary to support the Council of the Inspectors General on Integrity and Efficiency shall be specifically identified and justified in the budget request;”
- (b) In subparagraph (2)(B) adding “and” after the semicolon;
- (c) Striking subparagraph (2)(C); and
- (d) Renumbering subparagraph “(2)(D)” as “(2)(C).”

Sec. 2 - Effective Date—

The amendments made by Section 1 shall take effect on the date that is 30 days after the date of receipt by the Council of the Inspectors General on Integrity and Efficiency of an

¹³ The suggested availability date and amount are time sensitive. The suggested appropriation text regarding expiration of availability and amount have been provided assuming enactment for the Fiscal Year 2022. CIGIE encourages an ongoing discussion regarding availability date and amounts needed.

appropriation for the Council to carry out the functions and duties of the Council under Section 11 of the Inspector General Act (5 U.S.C. App §11).

Supporting Statement:

CIGIE is composed of 75 Inspectors General from across the Federal government. Acting as the collective body of these 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, the organization is still primarily funded through an inefficient and complicated process of interagency collections individually deposited into a revolving fund.¹⁴

Although the IG Reform Act authorized CIGIE’s revolving fund as a separate appropriation account and Congress recently authorized partial funding for CIGIE operations, the Council has never received a full appropriation for its operations. The absence of an appropriation has led to an inefficient and unreliable CIGIE funding process. Typically, in any given fiscal year, the Council is funded through pro rata voluntary contributions from member OIGs. However, in FYs 2011-2015, OMB provided additional money to 17 OIGs as part of the President’s annual budget, with the expectation that the 17 OIGs would subsequently “pass through” the additional funds to CIGIE. During this period less than 40 percent of CIGIE operating funds were received through this process. Consequently, funding amounts were insufficient, and voluntary contributions from member OIGs were required to fund the shortfall. Additionally, in some instances, the proposed pass-through funds were removed by an OIG’s parent agency before submission of the request or simply not provided by appropriators. Finally, some OIGs simply received less (in some cases considerably less) than their budget request without specific explanation, leaving it unclear whether the OIGs received funding for their share of CIGIE expenses.

A direct, annual appropriation will streamline and make more transparent the process by which CIGIE is funded, providing Congress and the taxpayers better insight into the use of appropriated dollars. Instead of CIGIE’s funding being distributed across multiple appropriations (with IGs individually requesting funds for CIGIE based on an annual percentage of the IG’s budget determined by CIGIE), Congress will be able to better assess and control CIGIE’s funding. This change will enable Congress to directly tie CIGIE’s funding to specific work that it believes appropriate and thus will better position Congress to strengthen CIGIE’s focus on addressing issues that transcend individual IG offices and providing professional training to the IG community.

An appropriation more directly linked to CIGIE’s mandates would also allow CIGIE to request and Congress to establish adequate funding levels for CIGIE through the regular appropriation process. Over the years, internal and external demands on CIGIE have increased. CIGIE provides required and specialized training to OIG staff and new IGs, has taken over operation of the Integrity Committee from the Federal Bureau of Investigation, supports the President and

¹⁴ The current authorizing language of the revolving fund states that, upon the authorization of the Executive Chairperson, the members of CIGIE may provide interagency funding to a revolving fund managed and used by CIGIE. Once transferred to the revolving fund from IG offices, the funds remain available to CIGIE without fiscal year limitation.

agency heads seeking to fill vacant IG positions, and coordinates oversight and anti-fraud activities that affect multiple agencies. The public facing CIGIE website Oversight.gov consolidates and shares OIG information and resources with external stakeholders and customers.¹⁵ Dedicated funding for CIGIE will allow Congress to recognize and prioritize funding for these and other additional responsibilities, which will, in turn, make it easier for CIGIE to undertake work congressional stakeholders frequently request, such as the further development of shared services. CIGIE will also be able to seek funding to invest in new professional development technology and opportunities that help ensure the OIG workforce has the necessary skills and competencies to work at peak efficiency in a rapidly changing environment. An appropriation will also enable the Council to more effectively justify strategic hiring initiatives that will benefit the OIG community by saving money and optimizing work.

We are aware that there are complications with shifting to a direct appropriation from the current pro-rata model. We look forward to further engagement with Congress and remain open to continued dialogue in the hope of finding common ground on this proposal.

¹⁵ Starting in FY 2019, CIGIE has received three, one-time appropriations for enhancements to Oversight.gov. *E.g.*, Pub. L. No. 116-6, § 633.

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

Suggested Legislative Text:

In Section 6(g) of the Inspector General Act of 1978 (5 U.S.C. app.), insert the following:

“(4) Notwithstanding any other provision of law, and in addition to any other authority, during a covered lapse in appropriations specified in 31 U.S.C. § 1341(c), an Inspector General may incur obligations in advance of appropriations for such amounts as may be necessary, at a rate for operations as provided in the most recently enacted appropriations Acts and under the authority and conditions provided in such acts, to perform the duties of the office with respect to programs and operations of the establishment which continue during the covered lapse in appropriations”.

Supporting Statement:

CIGIE proposes giving Inspectors General specific authority to continue oversight of agency operations during lapses in appropriations (also known as government shutdowns). Lapses in appropriations generally require government agencies, including OIGs, to shut down and furlough employees. However, many agencies are authorized to continue certain operations despite lapses in appropriations, either due to the continuing availability of multi-year or no-year appropriations or due to emergency exceptions for protection of life and property. The result, as seen in recent government shutdowns, is that critical government activities, such as law enforcement operations and award of billions of dollars in contracts and grants, continue to operate without oversight, while OIGs are required to shut down.

For example, agencies such as the Federal Deposit Insurance Corporation and the U.S. Postal Service are funded independently of the appropriations process and continue to operate during government shutdowns, while their OIGs are funded by annual appropriations and subject to shutdown. Other agencies such as the Department of Homeland Security and Department of Justice continue a large proportion of their activities during government shutdowns pursuant to emergency exceptions for public safety and law enforcement operations, but such exceptions are not necessarily available for the OIGs to oversee those activities. Agencies such as the Social Security Administration and Internal Revenue Service continue to make mandatory payments which are not subject to appropriations, while their OIGs are limited by the absence of appropriations.

The proposal would amend the section of the IG Act designed to ensure that OIGs have sufficient budgetary resources to perform their duties. It would add language that authorizes OIGs to continue operations as if they were operating under a continuing resolution during a lapse in appropriations, to the extent necessary to oversee operations of their agency that continue during a lapse in appropriations. This authority would be in addition to any existing funding authority, so OIGs could also use available multi-year appropriations or emergency exceptions for protection of life and property, if applicable, to continue operations during a government shutdown.

F. Reforming the Program Fraud Civil Remedies Act (PFCRA)

Like the False Claims Act (FCA), PFCRA is a statutory remedy for combating fraud. PFCRA permits Federal agencies to recover taxpayer funds and seek damages when a person knowingly presents to the government a false, fictitious, or fraudulent claim for payment, as well as false statements. Unlike the FCA, PFCRA is an administrative remedy.

To promote the use of PFCRA, a CIGIE working group of experts developed a comprehensive package of reforms designed to update and streamline this remedy. These reforms provide agencies with the ability to fairly and effectively recover smaller-dollar fraudulent claims.

CIGIE proposes to:

1. Increase the dollar amount of claims subject to the PFCRA.
2. Increase the efficiency of DOJ processing PFCRA requests for authorization by allowing delegation of PFCRA approval authority at a lower level than the Assistant Attorney General.
3. Add a provision to the Act to revise the statute of limitations language in the PFCRA to be consistent with the False Claims Act.
4. Allow PFCRA recovery for “reverse false claims” cases in which a party withholds information material to that party’s obligation to pay the Government.
5. Add a definition of “material” to the PFCRA that is similar to the False Claims Act.
6. Revise the definition of Hearing Officials.
7. Allow agencies to retain PFCRA recoveries to the extent needed to make them whole.
8. Amend the statute to encourage the PFCRA as an alternative for low-dollar False Claims Act claims by specifying that a PFCRA case is an alternate remedy.

1. Increase the dollar amount of claims subject to the PFCRA.

CIGIE proposes to amend of 31 U.S.C. § 3803(c)(1) to read:

(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that--

(A) an amount of money in excess of ~~\$150,000~~500,000; or

(B) property or services with a value in excess of ~~\$150,000~~500,000,

is requested or demanded in violation of section 3802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

Supporting Statement:

Dollar values set in the PFCRA have not changed since 1986. The statute contains, for example, a jurisdictional cap that prohibits the Government from referring claims in excess of \$150,000 to a presiding official. 31 U.S.C. § 3803(c)(1). According to the U.S. Bureau of Labor Statistics, \$150,000 in 1986 dollars now has purchasing power in excess of \$300,000.

A simple adjustment for inflation, however, may not be enough. In 1991, GAO documented widespread concern that the cost of processing a PFCRA claim might exceed the recovery. Today, surveys indicate Federal agencies have not embraced PFCRA to the degree Congress expected. The reluctance of some Federal agencies to make widespread use of PFCRA has resulted in an enforcement gap in which many cases are not prosecuted because the Department of Justice often lacks the resources to be able to accept low-dollar cases - it is the experience of IGs that a number of DOJ offices decline prosecution of many cases under \$500,000. In cases that are declined by DOJ due to financial thresholds and are not pursued by Federal agencies due to the challenges and factors identified above, illegally obtained funds remain in the hands of those who defrauded the Government. Increasing the dollar limits will likely make PFCRA more attractive to agencies, result in additional PFCRA recoveries, and better deter fraud.

2. Increase the efficiency of DOJ processing PFCRA requests for authorization by allowing delegation of PFCRA approval authority at a lower level than the Assistant Attorney General.

Amend 31 U.S.C. § 3812 so it reads as follows:

Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General, ~~shall not~~ may be delegated to, ~~or carried out by,~~ any other officer or employee of the Department of Justice.

Supporting Statement:

Experience has shown that requiring involvement of the highest-ranking Department of Justice officials may contribute to PFCRA delays. The proposed revision would change the PFCRA authority delegation limits so that this authority could be delegated similar to claims under the False Claims Act.

3. Add a provision to the Act to revise the statute of limitations language in the PFCRA to be consistent with the False Claims Act.

Subsection (a) of 31 U.S.C. § 3808 is amended to read as follows:

(a) ~~An action hearing~~ under section ~~3802~~ ~~3803(d)(2)~~ of this title with respect to a claim or statement shall be commenced by sending the notice identified in section 3803(d)(1) within:

(1) 6 years after the date on which such claim or statement is made, presented, or submitted, or

(2) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

Supporting Statement:

CIGIE proposes amending the PFCRA to provide a statute of limitations (SOL) that is not unduly restrictive and that is more consistent with the SOL in the False Claims Act. The SOL in the PFCRA provides that a hearing “shall be commenced within six years after the date on which” an allegedly false claim or statement is made. If the presiding officer does not commence a hearing within this deadline, the claim is barred.

This language is problematic for several reasons: (1) it gives the Government less time to file a fraud claim than is available under the False Claims Act; and (2) unlike the False Claims Act, there is no provision tolling the SOL when the Government has not learned of the fraudulent act. The False Claims Act requires the Government to file a complaint within six years of the fraudulent act, a structure similar to most civil actions, which provide that the party must file a complaint within the allotted SOL. The PFCRA, however, requires the presiding official to commence a hearing within six years, which can only take place after an agency has (1) obtained DOJ approval to proceed; (2) notified the defendant of the proposed action; (3) received a response from the defendant requesting a hearing; (4) notified the presiding official of the defendant’s response; and (5) received notice from the presiding official that a hearing has been commenced.¹⁶

As a result, the Government has less time to bring a case under the PFCRA than it does under the False Claims Act. The defendant, however, is fully aware of the Government’s intent to proceed with a PFCRA case upon receiving the Government’s notice or complaint. Consequently, requiring additional steps before ending the period in which the statute of limitations can run does not further any significant policy goals.

Additionally, unlike the False Claims Act, the PFCRA contains no provision allowing for the tolling of the SOL if the Government is unaware of the false claim or statement. CIGIE’s proposal would amend the PFCRA to provide that the agency must notify the defendant of the intent to refer the matter to a presiding officer within six years of the fraudulent act. It would also include a “discovery” provision with wording that is similar to text in the False Claims Act.

4. Allow PFCRA recovery for “reverse false claims” cases in which a party withholds information material to that party’s obligation to pay the Government.

Paragraph 3801(a)(3) is amended to read as follows, which would provide that a claim includes a submission:

(3) “claim” means any request, demand or submission—

** * **

¹⁶ This phrasing has been interpreted as the date that the presiding official issues a scheduling order, not the date when a trial actually commences.

(C) made to an authority which has the effect of concealing or improperly avoiding or decreasing an obligation to pay or ~~account for~~ transmit property, services, or money to the authority.

Paragraph 3802(a)(3) is amended to read as follows,

*(3) (A) Except as set forth in subparagraph (B), An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.*¹⁷

(B) In the case of a claim as defined in section 3801(a)(3)(C), an assessment shall not be made under the second sentence of paragraph (1) in an amount more than double the value of property, services or money that was wrongfully withheld from the authority.

Supporting Statement:

Unlike the False Claims Act, the PFCRA does not clearly allow for the recovery of damages if a person withholds information or submits a false record or statement to understate how much money is owed to the Government (commonly referred to as a “reverse false claim”).

It is possible that this is due to a drafting error. The definition of “claim” in section 3801(a) includes a “submission ... made to an authority [i.e., a Federal agency] which has the effect of decreasing an obligation to pay or account for property, services or money”. This language suggests that submitting a false statement to reduce the amount purportedly owed to the Government would be actionable. However, paragraph (a)(3) in section 3802 prohibits recovery of an “assessment”, i.e., the double recovery of any false claim made to the Government, “if payment by the Government has not been made on such claim”. As a result, if a person falsely understates how much he or she owes to the Government, there is no governmental payment, and the double recovery assessment is unavailable.

To address this discrepancy, CIGIE proposes amending the PFCRA to include language that is substantially similar to the reverse false claims language in the False Claims Act and to clarify that an assessment can be recovered for such claims.

5. Add a definition of “material” to the PFCRA that is similar to the False Claims Act.

CIGIE proposes including a new subparagraph (10) in section 3801(a) to incorporate the False Claims Act’s definition of “material”:

“(10) the term “material”, when used as an adjective, means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property”.

¹⁷ The referenced sentence states: “Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence”.

Supporting Statement:

PFCRA does not define the term “material”, which is a term used throughout the statute. Moreover, the word is used both as an adjective (to mean important) and as a noun (to mean information). The statute of limitations proposal, discussed above, also includes the word “material”. CIGIE proposes amending PFCRA to incorporate the definition of material from the False Claims Act when the term is used as an adjective.

6. Revise the definition of Hearing Officials.

A. *Subsection (a) of 31 U.S.C. § 3801, is amended to read as follows:*

(7) “presiding officer” means—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; ~~or~~

(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

(ii) is appointed by the authority head to conduct hearings under section 3803 of this title;

(iii) is assigned to cases in rotation so far as practicable;

(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board; or

(C) a member of a board of contract appeals pursuant to 41 U.S.C. § 7105, if the authority does not employ an available presiding officer under subsection (A).

B. *Subsection (d) of 31 U.S.C. § 3803, is amended to read as follows:*

(d)(1) On or after the date on which a reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section, the reviewing

official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 3802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice (A) the reviewing official shall refer such allegations to a presiding officer for the commencement of such hearing; and

(B) (1) In the case of a referral to a presiding officer as defined in subparagraphs (a)(7)(A) or (a)(7)(B) of section 3801, the presiding officer shall commence such hearing by mailing by registered or certified mail, or by delivery of, a notice which complies with paragraphs (2)(A) and (3)(B)(i) of subsection (g) to such person-; or

(2) In the case of a referral to a presiding officer as defined in paragraph (a)(7)(C) of section 3801, the reviewing official shall submit a copy of the notice required by paragraph (d)(1) and of the response of the person receiving such notice requesting a hearing (i) to the board of contract appeal[s] which has jurisdiction over matters arising from the reviewing official's agency pursuant to 41 U.S.C. § 7105(e)(1) or (ii) if the Chairman of such board declines to accept the referral, to any other board of contract appeals. The reviewing official shall simultaneously mail, by registered or certified mail, or shall deliver, notice to the person alleged to be liable under section 3802 of this title that the referral has been made to a board of contract appeals with an explanation as to where such person can obtain the relevant rules of procedure promulgated by the board.

* * *

(g)(1) Each hearing under subsection (f) of this section shall be conducted--

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, in accordance with--

(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; ~~or~~

(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection-; or

(C) in the case of a hearing conducted by a presiding officer as defined in paragraph (a)(7)(C) of section 3801, according to the rules of procedure promulgated by such board. Any such hearing will not be subject to the provisions in paragraph (g)(2) or subsections (h) or (i).

C. Subsection (e) of 41 U.S.C. § 7105 is amended to read as follows:

(e) Jurisdiction.—

(1) In general.—

(A) Armed Services Board.--The Armed Services Board has jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency.

(B) Civilian Board.--The Civilian Board has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency.

(C) Postal Service Board.--The Postal Service Board of Contract Appeals has jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency.

(D) Other agency boards. --Each other agency board has jurisdiction to decide any appeal from a decision of a contracting officer relative to a contract made by its agency.

(E) The Civilian Board, the Postal Service Board, and other agency boards also have jurisdiction to hear any Program Fraud Civil Remedies Act case referred to such board of contract appeals under subsection (d) of 31 U.S.C. § 3803. If the Chairman of a board determines that accepting a PFCRA referral would prevent adequate consideration of other cases currently being handled by such board, the Chairman may decline to accept the referral.

(2) Relief.--In exercising this jurisdiction, an agency board may grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims or, in the event that a Program Fraud Civil Remedies Act case is filed under chapter 38 in title 31, any relief that would be available to a litigant under that Act.

D. The authorizing legislation should also include the following language:

Within 180 days after the date of enactment of this amendment, each authority head shall promulgate rules and regulations necessary to implement the provisions of this amendment, and each Board of Contract Appeal shall revise their procedures as necessary to implement the provisions of this amendment.

Supporting Statement:

CIGIE proposes amending 31 U.S.C. § 3801(a)(7) to provide that the definition of a “presiding officer” in PFCRA includes “a member of an agency board of contract appeals (BCA) with jurisdiction under 41 U.S.C. § 7105”, to revise PFCRA to clarify that BCA rules of procedures would govern their cases and that agency heads cannot overturn BCA decisions, and to revise section 7105 to amend BCA jurisdiction to include PFCRA cases.

7. Allow agencies to retain PFCRA recoveries to the extent needed to make them whole.

Amend 31 U.S.C. § 3806(g)(1) to read as follows:

(g)(1) Except as provided in paragraph (2) of this subsection, any amount collected under this chapter shall be credited, first to reimburse the appropriation(s) that suffered the damages; and then, pro rata, to reimburse the appropriation(s) that suffered the administrative costs of the proceedings (including the cost of any investigation, litigation or other costs associated with the proceeding). If the appropriation(s) that suffered the damages or expended funds for administrative costs are no longer available for obligation, then to an appropriation(s) for similar purposes currently available for obligation. Any amount collected under this chapter and subsequently credited to appropriations in accordance with the preceding sentence shall be available for obligation until expended. Any amount remaining after reimbursement of the appropriations described above shall be deposited as miscellaneous receipts in the Treasury of the United States.

Supporting Statement:

One obstacle for agencies in PFCRA actions is the non-reimbursable costs associated with pursuing a PFCRA action, including investigative expenses, and costs of discovery and litigation. Allowing agencies to retain some or all of the funds collected under PFCRA would be a logical way to address this problem, but such an arrangement may be illegal under current fiscal law. PFCRA specifies that all but two agencies must deposit any PFCRA recoveries into the Treasury Miscellaneous Receipts account. This is a disincentive to investing significant time or effort into pursuing PFCRA claims. In fact, PFCRA not only disallows agency reimbursement, but pursuing a PFCRA claim requires the agency to spend money beyond what it has already lost, without any anticipated compensation.

Allowing agencies to be made whole for damages suffered and administrative costs expended would provide an incentive for agencies to pursue PFCRA claims, and it would better fulfill one of the key reasons Congress enacted PFCRA: “to provide Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements with an administrative remedy to recompense such agencies for losses resulting from such claims and statements”. The proposed statute is analogous to the existing HHS Fraud Abuse Control Program. 42 U.S.C. § 1320A–7C. This program has proven highly successful and is often cited as a best practice for ensuring program integrity.

Under the proposed statute, the funds credited to an appropriation would remain available until expended. This is appropriate because the administrative burdens arising from time limitations

on what may be multiple recoveries to several separate appropriations are inconsistent with the remunerative nature of the provision. The amount credited would be limited to making the Government whole for both the damages suffered and administrative costs of the PFCRA proceedings, with any remainder credited back to the Treasury.

8. Amend the statute to encourage the PFCRA as an alternative for low-dollar False Claims Act claims by specifying that a PFCRA case is an alternate remedy.

CIGIE proposes amending the PFCRA to clarify that certain actions are not required when the Government has already investigated a *qui tam* suit. The proposal would add the following new provision in the PFCRA:

31 U.S.C. § 3813 – Alternate Remedy to Resolve Actions by Private Persons

With the written consent of the Attorney General or designee, an authority may elect to use this chapter as an alternate remedy under paragraph (c)(5) of section 3730 of this title for any claim that could be brought under sections 3802 and 3803. In the event of such an election, the Attorney General may move to dismiss an action by a private party under 3730(c)(2)(A), and the reviewing official may provide notice to the person alleged to be liable and refer the matter to a presiding official pursuant to subsection (d) of section 3803 of this title, without the need to fulfill the requirements of subsections (a) and (b). In such event, the reviewing official will be deemed authorized to compromise or settle the allegations of liability under subsection (j).

Supporting Statement:

The False Claims Act allows private parties (known as “relators”) to file *qui tam* actions alleging submission of false statements by another party to obtain a governmental payment. The Government has a period of time to investigate and decide whether to take over the case or allow the relator to litigate the case. The relator is entitled to a portion of any recovery, earning a greater share if he or she litigates the case.

The False Claims Act also provides that the Government can dismiss a *qui tam* suit, and that, notwithstanding a relator’s rights under the Act, the Government can “elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty” per 31 U.S.C. § 3730(c)(5). This could include a PFCRA action; however, it is unclear whether the PFCRA would still require the Investigating Official to refer the matter to the Reviewing Official and the Reviewing Official to then seek DOJ authorization to proceed, even though all three parties had already investigated the case in connection with the *qui tam* suit.

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 office. While the speed and methods by which information is shared has evolved in the intervening decades, the semiannual reporting requirements have not kept pace.

The CIGIE Legislation Committee recently convened a working group to respond to a congressional initiative to streamline and modernize the semiannual reporting requirement. The working group included a cross-section of senior officials, professional staff, and communications specialists from across the IG community. As a result, the Committee developed a legislative proposal to streamline the semiannual reporting requirements, increase transparency, provide flexibility to IGs to use the semiannual report as a conduit for already public information, and to leverage existing resources like Oversight.gov. CIGIE believes reforming OIG semiannual reports in the ways discussed below will allow OIGs to better focus semiannual reports on their most significant activities and the most critical issues facing the agencies they oversee.

For ease of presentation, the specifics regarding CIGIE’s proposal for amending the semiannual reporting requirement in Sections 4 and 5 of the Inspector General Act have been broken into eleven parts. Each part contains an explanation of what changes should be made to the IG Act and why, using redline or abbreviated redline text. Unless otherwise stated, all statutory references are to sections of the IG Act.

Part 1

Amend IG Act Section 4(a)(2) to read:

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

.....

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) *or otherwise* concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

Supporting Statement

CIGIE recommends amending Section 4(a)(2) to add “or otherwise” to reflect the current reality that the information is often also reported elsewhere in a timelier fashion.

Part 2

Amend Section 5 of the Inspector General Act by striking (a)(2) and (a)(7), and making the following changes to Section 5(a)(1):

§5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems; disclosure of information; definitions

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to-

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment ~~*disclosed by such activities during the reporting period and associated reports and recommendations for corrective action made by the Office;*~~

Supporting Statement

By including “and associated reports” in IG Act Section 5(a)(1), CIGIE believes this amendment incorporates the requirement under (a)(7), “a summary of each particularly significant report”, reducing redundancy and better linking significant issues found and reported on by IGs. Likewise, by including “and associated ... recommendations for corrective action made by the Office” in Section 5(a)(1), this amendment consolidates the current (a)(2), “a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1)”, into (a)(1). By striking the phrase “disclosed by such activities during the reporting period”, this amendment reduces repetition as Section 5(a) already includes the requirement for each OIG to report in the SAR on “the activities of the Office during the immediately preceding six-month periods...”.

Part 3

Amend Section 5(a)(3) and strike 5(a)(10):

~~(32) an identification of *each significant recommendations made prior to the reporting period, for which corrective action has not been completed, including the potential costs savings associated with such recommendations; described in previous semiannual reports on which corrective action has not been completed;*~~

~~(43) a summary of *significant investigations closed during the reporting period; matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;*~~

~~(54) an identification of the total number of convictions during the reporting period resulting from investigations; a summary of each report made to the head of the establishment under section 6(e)(2) during the reporting period;~~

....

~~(10) a summary of each audit report issued before the commencement of the reporting period--~~

Supporting Statement

CIGIE identified changes to combine and simplify the current Section 5(a)(3) and 5(a)(10) requirements regarding recommendations. Although all open and unimplemented recommendations are required to be included in the SAR, other proposed amendments would give IGs flexibility to omit information regarding recommendations in the SAR if the OIG lists them on Oversight.gov or its website. Further, although the proposed (a)(2) requires reporting on “potential cost savings”, many impactful IG recommendations do not have potential cost savings. In such scenarios, the IG would not report on cost savings for that recommendation.

CIGIE also recommends consolidating reporting requirements by amending Section 5(a)(4) of the Inspector General Act to include the concept from (a)(22)(B) that there may be significant investigations that were closed but were not disclosed to the public (e.g., unsubstantiated investigations into senior Government officials). That concept was a significant equity for congressional stakeholders, and legislative history could be developed to ensure that concept is maintained in a new Section 5(a)(3). However, many IGs noted that they are very limited in what details they can provide of unsubstantiated investigations, given that such information is often protected from disclosure by law

CIGIE also recommends deleting the current Section 5(a)(5)’s requirement to provide summaries of reports made pursuant to Section 6(c)(2) [reports to head of establishment upon unreasonable refusal of information or assistance by agency or others] because the requirement is redundant, given that the proposed Section 5(a)(1) already incorporates this requirement.

Part 4

Strike Section 5(a)(6), (8), (9), and (22)(A) and insert:

- (5) information regarding each audit, inspection, or evaluation report issued during the reporting period, including -
- (A) a list of each audit, inspection, or evaluation; and
 - (B) where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use, including whether or not a management decision had been made by the end of the reporting period;
- (6) information regarding management decisions made during the reporting period with respect to audits, inspections, and evaluations issued during a prior reporting period.

Supporting Statement

CIGIE believes the current requirements for information, including statistical tables, can be consolidated and simplified. The current reporting requirements under Section 5(a)(6), (8), (9), and (22)(A) focus on audits, inspections, and evaluations issued or closed (including those not released to the public), whether management has made a management decision for associated recommendations, and the value or potential value of resulting action by the agency in response to those recommendations. They also seek information about reports that were issued during prior reporting periods, issued during the current reporting period, and those matters that were closed and not disclosed to the public.

CIGIE offers new text in Section 5(a)(5), which should be read to include the concept from (a)(22)(A) that there may be reviews that were completed and closed but were not disclosed to the public. That concept was a significant equity for congressional stakeholders, and legislative history could be developed to ensure that concept is maintained in the new (a)(5).

Part 5

Strike Section 5(a)(10).

~~(10) a summary of each audit report, inspection reports,[±] and evaluation reports[±] issued before the commencement of the reporting period—
(A) for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;
(B) for which no establishment comment was returned within 60 days of providing the report to the establishment; and
(C) for which there are any outstanding unimplemented recommendations, including the aggregate potential cost savings of those recommendations.~~

Supporting Statement

As noted above in Part 3, CIGIE recommends combining the following into the proposed 5(a)(2):

- current (a)(10)(C),
- (a)(10)(A)'s requirement to provide a summary of each report where a management decision has not been made by the end of the reporting period, and
- (5)(a)(3), “an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed”

CIGIE also proposes deleting (a)(10)(A)'s requirement to explain why a management decision has not been made and the timetable for a management decision because the agency, not the IG, is ultimately responsible for making these decisions. Since the agency must report on these decisions, pursuant to Section 5(b), CIGIE recommends deleting these requirements from (a)(10)(A).

With respect to (a)(10)(B), CIGIE has found that IGs do not typically face obstacles in obtaining establishment comment within 60 days, and CIGIE has not identified a significant value on reporting this metric.

Part 6

Strike Section 5(a)(11) and (12).

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period;

(12) information concerning any significant management decision with which the Inspector General is in disagreement;

Supporting Statement

CIGIE proposes striking Sections 5(a)(11) and (12) because they are duplicative of (a)(1)'s requirement to report on "significant problems, abuses, and deficiencies...". Furthermore, IGs rarely have reported on "significant revised management decisions" pursuant to (a)(11). To the extent congressional stakeholders were still interested in why the agency revised management decisions, the agency is in a better position to report on its rationale.

Part 7

Strike Section 5(a)(17) and (18).

(17) statistical tables showing-

(A) the total number of investigative reports issued during the reporting period;

(B) the total number of persons referred to the Department of Justice for criminal prosecution during the reporting period;

(C) the total number of persons referred to State and local prosecuting authorities for criminal prosecution during the reporting period; and

(D) the total number of indictments and criminal information during the reporting period that resulted from any prior referral to prosecuting authorities;

(18) a description of the metrics used for developing the data for the statistical tables under paragraph (17);

Supporting Statement

CIGIE believes the requirements in Section 5(a)(17) can be removed given their narrow scope, low interest from current congressional stakeholders, and the potential for lack of consistency among reporting OIGs. The requirements were added in 2016, mainly due to a particular member's interest in the number of OIG investigations being declined by prosecutors. However, current congressional stakeholders with a strong equity in this information have not been identified. Further, as Congress was aware when drafting these provisions, OIGs do not track or report on this information consistently (e.g., tracking each individual as a separate referral or multiple individuals involved in the same criminal conduct as one referral). This means that Congress and the public have a limited ability to make useful comparisons between an OIG and other OIGs or law enforcement agencies.

Part 8

Make the following changes at Section 5(a)(19):

(A) a report on each investigation conducted by the Office where allegations of misconduct were substantiated *involving a senior Government employee or senior official (as defined by the Office) if the establishment does not have senior Government employees*; and

(B) the report required in (A) shall include the name of the senior *Government employee or senior official*, ~~government official (as defined by the department or agency)~~ if already made public by the Office, and a detailed description of-

~~(A)~~(i) the facts and circumstances of the investigation; and

~~(B)~~(ii) the status and disposition of the matter, including-

~~(i)~~(a) if the matter was referred to the Department of Justice, the date of the referral; and

~~(ii)~~(b) if the Department of Justice declined the referral, the date of the declination;

~~(20)~~ 12)

(A) a detailed description of any instance of whistleblower retaliation, including information about the official found to have engaged in retaliation; and

(B) what, if any, consequences the establishment actually imposed to hold the official described in subparagraph (A) accountable;

~~(21-13)~~ a detailed description of any attempt by the establishment to interfere with the independence of the Office, including-

(A) any attempt by the establishment to interfere with the independence of the Office, including-

(i) with budget constraints designed to limit the capabilities of the Office; and

(ii) incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information, including the justification of the establishment for such action; and

(B) a summary of each report made to the head of the establishment under section 6(c)(2) during the reporting period.

...

Supporting Statement

These requirements have been important to OIGs, key congressional stakeholders, and the public. CIGIE, however, recommends a technical correction to the current (a)(19) to use the term describing senior officials already defined within Section 5 and tracked by OIGs. This technical correction would also avoid the suggestion that the agency defines the reporting requirement. Note that the cross-reference in the agency reporting requirement under Section 5(b)(4) would also need to be amended. Where an agency does not have a 'senior government employee', the text will refer to 'senior officials'.

Part 9

Remove Section 5(a)(22)(A) and (B) of the Inspector General Act.

~~(22) detailed descriptions of the particular circumstances of each-~~

~~(A) inspection, evaluation, and audit conducted by the Office that is closed and was not disclosed to the public; and~~

~~(B) investigation conducted by the Office involving a senior Government employee that is closed and was not disclosed to the public.~~

Supporting Statement

CIGIE recognizes that this requirement seeks to provide transparency in matters where an OIG performed oversight work but the results of that work were not made public. This goal can be consolidated into the reporting requirements elsewhere describing significant closed investigations [the new (a)(3)] or closed audits, inspections, or evaluations [the new (a)(5)(A)]. Those new requirements requiring reporting on matters that are “closed” should be read to include matters regardless of whether they were reported to the public. Just as was the case with the current (a)(22), the new requirements would be subject to laws governing the disclosure of information (such as the Privacy Act).

Part 10

Strike Section 5(b)(2), (3), and (5). Insert new Section 5(b)(2). Renumber Section 5(b)(4) as Section 5(b)(3) and add new Section 5(b)(4).

b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing-

(1) any comments such head determines appropriate;

(2) where final action on audit, inspection, and evaluation reports had not been taken before the commencement of the reporting period, tables showing:

(A) with respect to management decisions-

(i) for each report, whether a management decision was made during the reporting period;

(ii) if a management decision was made during the reporting period, the dollar value of disallowed costs, costs not disallowed, and funds to be put to better use as agreed to in the management decision; and

(iii) total number of reports where a management decision was made during the reporting period and the total corresponding dollar value of disallowed costs and funds to be put to better use as agreed to in the management decision;

(B) with respect to final actions-

(i) whether, if a management decision was made prior to the end of the reporting period, final action was taken during the reporting period;

(ii) if final action was taken, the dollar value of-

(a) disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise;

(b) disallowed costs that were written off by management;
(c) disallowed costs and funds to be put to better use not yet recovered or written off by management;
(d) recommendations that were actually completed; and
(e) recommendations that management has subsequently concluded should not or could not be implemented or completed; and
(iii) Total number of reports where final action was not taken and total number of reports where final action was taken, including the total corresponding dollar value of disallowed costs and funds to be put to better use as agreed to in the management decision;

(3) Whether the establishment entered into a settlement agreement with the official described in subsection (a)(12)(A), which shall be reported regardless of any confidentiality agreement relating to the settlement agreement; and

(45) A statement explaining why final action has not been taken with respect to each audit, inspection, and evaluation report in which a management decision has been made but final action has not yet been taken, except that such statement may exclude reports if:

(A) a management decision was made within the preceding year; or

(B) the report is under formal administrative or judicial appeal or management of an establishment has agreed to pursue a legislative solution, but the statement shall identify the number of reports in each category so excluded.

Supporting Statement

It is the agency's responsibility to undertake IG Act Section 5(b)'s reporting requirements, and they have a strong equity in reporting the results of their efforts to respond to OIG reports. The suggested edits do not seek to change the agency's reporting requirements but rather to simplify them to more closely mirror the draft reporting requirements for IGs in (a). Agencies should be consulted on what is important for them to report in the semiannual report prior to any suggested reform; moreover, agency management decisions regarding costs disallowed and not disallowed is best reported by the agency rather than by the IG. As a result, the requirement has been removed from 5(a)(5) and 5(a)(6) and placed in 5(b)(2)(A)(ii). We note that some of this information is also required as a part of the GAO-IG Act.

Part 11

After Section 5(f) of the Inspector General Act, insert:

(g) If an Office has published any portion of the report or information required under subsection

(a) to the website of the Office or on Oversight.gov, the Office may elect to provide links to the relevant webpage or website in the report of the Office under subsection (a) in lieu of including such information in that report.

Supporting Statement

CIGIE recommends giving OIGs the flexibility of using the SAR as a conduit to information that is otherwise publicly posted by OIGs, saving space and citing source information available elsewhere.

ADDITIONAL REFORMS TO ENHANCE GOVERNMENT OVERSIGHT

In addition to the above CIGIE Legislative Priorities for the 117th Congress, the Committee believes that government oversight and the IG community would benefit from the following additional reforms:

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

A. PROTECTING CYBERSECURITY VULNERABILITY INFORMATION

Section _____.

(a) Information related to a Federal agency's information security program or practices shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code, if disclosure could reasonably be expected to lead to or result in unauthorized—

- (1) access,*
- (2) use,*
- (3) disclosure,*
- (4) disruption,*
- (5) modification, or*
- (6) destruction*

of a Federal agency's information system or the information that system controls, processes, stores, or transmits.

(b) Federal agencies' use of this section shall be conducted in accordance with an agency's obligation to reasonably segregate non-exempt information under section 552(b) of title 5, United States Code.

Supporting Statement:

For years, Offices of Inspector General (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). Although other FOIA exemptions apply to classified information and documents compiled for law enforcement purposes, no single exemption covers the varied area of documents that analyze, audit, and discuss in detail the information security vulnerabilities of the Federal Government. Previously, 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 the Supreme Court's decision in Milner v. Department of the Navy, 562 U.S. 562 (2011), this exemption is no longer available. Protecting this information, whether found in records controlled by OIGs or agencies, will help prevent hackers and others from using these vulnerability reports as roadmaps to exploit gaps in Government information systems. Accordingly, CIGIE believes that FOIA's Exemption 3

(which incorporates other statutes prohibiting disclosure) would be an appropriate vehicle to address CIGIE's concerns.

CIGIE is aware of the requirements under the FOIA to take reasonable steps necessary to segregate and release nonexempt information. Here, CIGIE is proposing a narrow protection 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 emulates existing FISMA language found in 44 USC § 3552(b)(3), and CIGIE suggests that this intention be included in any legislative history that may be developed.

B. STATUTORY EXCLUSION FOR FELONY FRAUD CONVICTS TO PROTECT FEDERAL FUNDS

Suggested Legislative Text:

(a) PROCUREMENT INTEGRITY. –

(1) IN GENERAL. – Chapter 47 of title 41, United States Code, is amended by adding at the end the following new section:

"§ 4713. Protecting Federal contract, grant, cooperative agreement, loan and other financial assistance funds from individuals convicted of certain Federal felonies implicating Federal programs

"(a) PROHIBITION. -

"(1) An individual who is convicted of a Covered Felony arising out of any Agency contract, grant, cooperative agreement, loan, or other financial assistance shall be identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations.

"(2) Except as provided in subsection (b), the identification as an excluded source described in paragraph (1) shall apply for three years after the date of the conviction.

"(3) For each individual convicted of a Covered Felony, the Attorney General shall ensure that the Administrator of the General Services Administration receives notification of such conviction so that the Administrator may take appropriate steps to ensure that the three-year exclusions are promptly entered into the System for Award Management, or any successor system.

"(b) WAIVER. –

"(1) The head of an Agency may exempt an individual described in subsection (a)(1) from the prohibition in that subsection whenever the Agency head determines, in

writing, that such an exemption is warranted. The Agency head shall transmit a copy of each such written exemption to Congress immediately after making such determination.

“(c) *DEFINITIONS.* – For the purposes of this section –

“(1) The term “Agency” means any Executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

“(2) The term “Convicted” means –

“(A) when a judgment of conviction has been entered against the individual by a Federal court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

“(B) when there has been a finding of guilt against the individual by a Federal court;

“(C) when a plea of guilty or nolo contendere by the individual has been accepted by a Federal court; or

“(D) when the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

“(3) The term “Covered Felony” means a felony described at sections 286, 287, 641, 666, and 1001 of title 18 of the United States Code.

“(d) *RULES OF CONSTRUCTION*

“(1) Nothing in this section shall be construed to prohibit an agency from seeking or taking any other available criminal, civil, or administrative action to protect Federal government interests, to include proposing and implementing suspension or debarment actions of affiliated or imputed parties pursuant to 48 C.F.R. Subpart 9.4 and 2 C.F.R. Part 180.

“(2) Nothing in paragraph (b) shall be construed to affect any other statute, or the requirements therein, that provides an authority to issue a waiver of the requirement that an agency not engage in business with a contractor or other recipient of funds listed as an excluded party in the System for Award Management”.

(b) *ENACTMENT.* – Not later than one year after the date of the enactment of this Act, the Attorney General, in consultation with the Administrator of the General Services Administration, shall issue guidance for the implementation of, and compliance with, the requirements of this Act.

Supporting Statement:

CIGIE proposes enhancing existing law by making exclusion actions automatic for those convicted of violating certain felony fraud statutes involving any agency contract, grant, cooperative agreement, loan, or other financial assistance. Under current law, there is no mandatory exclusion for individuals convicted of, or who plead guilty to felony fraud against the government. Instead, both the Federal Acquisition Regulation and the Non-Procurement Common Rule allow agencies to take discretionary, time-limited actions to exclude felony fraud convicts from receiving Federal grants and contracts through government-wide suspensions or debarments.

Many felony fraud convictions involving Federal program funds do not result in suspension or debarment action against the felon. An analysis of 250 felony fraud convictions involving Federal program funds over a 4-year period found that over 70% of those convicted were not suspended or debarred from doing business with the government. While a lack of resources or information may also be to blame, the current law has allowed many felony fraud convicts to remain eligible to receive Federal funds after their criminal activities involving Federal funds.

CIGIE proposes to establish a floor by which such individuals are automatically prohibited from receiving additional Federal program funds for 3 years. Further, applying the mandatory exclusion to a limited number of felony convictions involving government programs ensures that the individual has already been provided due process for the underlying misconduct in the Federal criminal justice system and that the misconduct involved a question of integrity with respect to Federal programs.

Similar mandatory actions are already required in other contexts, though they are typically focused on fraud or misconduct relating to particular operations or programs or may be limited in the scope of the exclusion.¹⁸ CIGIE recommends that this authority not diminish those other authorities or the authorities held by both the agency heads and agency suspension and debarment officials. CIGIE also recommends that this authority expressly protect the authorities and requirements in other exclusion authorities which, for example, may allow the head of an Agency to exempt an individual from exclusion under those authorities or require notifications when an exemption is granted. Further, while CIGIE believes this particular authority can be limited to individuals, it would not restrict or interfere with the authority of agencies to take discretionary actions against companies and to address affiliated individuals or businesses.

With respect to due process concerns, this proposal could be limited to individuals who are convicted of certain covered criminal felonies pertaining specifically to the use of Federal funds in Federal Court under Title 18 of the United States Code. By doing, it can be assured that individuals subject to the authority have already been provided due process during the criminal proceedings before Article III courts. The FAR already recognizes this fact in the current discretionary authority and, pursuant to 48 C.F.R. 9.406-3(b)-(c), specifically provides that additional due process procedures do not apply in administrative proceedings when the debarment is based upon convictions, or even civil, judgments. This specific issue was discussed

¹⁸ E.g., 10 U.S.C. § 2408 (providing for limited 5-year exclusion of individuals who are convicted of fraud or any other felony arising out of a defense contract); 15 U.S.C. § 645 (Misrepresentation of size or status in order to obtain small business preferences); 38 U.S.C. § 8127 (Misrepresentation of small business owned and controlled by veteran/service-disabled veteran).

on page 16, note 90 of the Congressional Research Service, “Procurement Debarment and Suspension of Government Contractors: Legal Overview”, stating that general procedures of notice and opportunity for a hearing before being debarred do not apply where the debarment is based upon convictions or civil judgments. “In such cases, the process that the contractors received in their criminal or civil trial is deemed to constitute due process for purposes of debarment”. Similarly, 2 C.F.R. 180.830 does not permit the respondent to challenge underlying facts when the debarment is based upon a conviction or civil judgment. Ultimately, by applying the mandatory exclusion to a limited number of felony convictions involving government programs, the proposal ensures that the individual has already been provided due process for the underlying misconduct in the Federal criminal justice system and that the misconduct involved a question of integrity with respect to Federal programs.

Finally, to address resource challenges and improve efficiencies, CIGIE proposes placing responsibility for administering the new authority on the Administrator of the General Services Administration, which oversees the national database of excluded parties, and the Attorney General.

C. Enhancing CIGIE’s Role in Recommending Inspector General Candidates

Legislative Proposal:

Sec. 000

- a) Strike subparagraph (c)(1)(F) of Section 11, Inspector General Act of 1978 (5 U.S.C. App), and renumber subparagraphs “(G)”, “(H)”, and “(I)” of paragraph (c)(1) as “(F)”, “(G)”, and “(H)”, respectively.
- b) Following subsection (d), add the following:

“(e) Inspector General Candidate Panel--

(1) Establishment. — The Council shall maintain an Inspector General Candidate Panel, which shall—

- (A) interview individuals being considered for any appointment to an office of Inspector General described under subsection (b)(1)(A)(i) or (B);*
- (B) submit recommendations of individuals to the appropriate appointing authority for any appointment to an office of Inspector General described under subsection (b)(1)(A)(i) or (B); and*
- (C) provide support to any appointing authority making an appointment to an office of Inspector General described under (b)(1)(A)(ii).*

(2) Membership —

- (A) In general. — The Inspector General Candidate Panel shall consist of five Inspectors General, including -*
 - (i) four Inspectors General described in subparagraph (A) or (B) of subsection (b)(1) appointed by the Chairperson of the Council, representing both establishments and designated Federal entities (as that term is defined in section 8G(a)); and*
 - (ii) the Vice Chairperson, appointed pursuant to subsection (b)(3)(B)(iii), who will lead the Panel.*

(3) Recommendations and Consultation.—

- (A) Recommendation requirement.— Whenever a vacancy in the position of Inspector General occurs, the Inspector General Candidate Panel shall, within 30 days of such vacancy, recommend at least 2 individuals who meet the requirements of Section 3(a) or of this Act, or Sections 3033(c)(2) or 3517(b)(1) of Title 50 U.S.C., as applicable, to the appropriate appointing authority for any appointment to an office of Inspector General described under subsection (b)(1)(A)(i) or (B);*
- (B) Consultation requirement.-- In addition to any support provided pursuant to subparagraph (C) of subsection (e)(1), whenever a vacancy occurs in the position of Inspector General of an Office of Inspector General described under subsection (b)(1)(A)(ii), the appropriate appointing authority shall consult with*

the Panel on best practices and other advice for seeking and identifying candidates that meet the requirements of Section 8G(e) of this Act.

(C) Interviews.—

- (i) the Inspector General Candidate Panel shall establish a process for identifying qualified individuals to be interviewed for the position of Inspector General;*
- (ii) Any recommendation of an individual for an Inspector General position that is submitted to an appointing authority by the Inspector General Candidate Panel shall be based on an interview of that individual to assess the individual's qualifications under section 3(a) of this Act.*

(4) Congressional Notification.—

(A) Requirement.-- If the appropriate appointing authority nominates an individual to be the Inspector General in an office of Inspector General described under subsection (b)(1)(A)(i) or (B) and that individual has not been interviewed by the Inspector General Candidate Panel, or if the appropriate appointing authority fails to consult with the Panel pursuant to subparagraph (B) of subsection (e)(3), the Council shall notify in writing—

- (i) the appropriate committees of jurisdiction of the Senate and the House of Representatives;*
- (ii) the Committee on Homeland Security and Governmental Affairs of the Senate; and*
- (iii) the Committee on Oversight and Reform of the House of Representatives.*

(B) Content. – Any notification made under subparagraph (A) shall include —

- (i) notice that such nomination or appointment has been made without the individual having been interviewed by the Inspector General Candidate Panel; and*
- (ii) any other information about the appointment or nomination that the Council believes is appropriate to provide.*

(C) Timing. – Any notification made under subparagraph (A) shall be made within 30 days of the nomination or appointment.

Supporting Statement:

Over a decade ago, the Inspector General Reform Act of 2008 required the then newly created Council of the Inspectors General on Integrity and Efficiency (CIGIE) to “submit recommendations of individuals to the appropriate appointing authority for any appointment to an office of Inspector General”. In January 2009, CIGIE established the Inspector General Candidate Recommendations Panel, which began considering and recommending candidates for both Inspectors General that are appointed by the President and confirmed by the Senate and those who are appointed by the head of their respective agency. After a decade of experience, CIGIE recommends further statutory enhancements to better help those who appoint IGs, and those who confirm them, to quickly identify and consider IG candidates “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting,

auditing, financial analysis, law, management analysis, public administration, or investigations”.¹⁹

First, CIGIE recommends codifying the best-practices the Panel has identified or developed. The Panel has worked with Presidential administrations and agency heads since its inception, including meeting with senior officials in recent administrations to discuss IG vacancies. However, the process by which CIGIE’s input is given has been dependent upon particular individuals within the various administrations with whom CIGIE has worked. This can cause confusion for the appointing authority, Senators who expect CIGIE’s involvement, the Panel, and the IG candidates themselves. To clarify CIGIE’s role for all involved, CIGIE recommends codifying the CIGIE-identified best practice of interviewing potential IG candidates for Establishment and Title 50 OIGs.²⁰ CIGIE also recommends that designated Federal Entities be required to consult with the Panel so that it can effectively assist the appointing authority to select a qualified candidate without restricting the appointing authority’s discretion. Additionally, designated Federal entities, which ordinarily fill vacant IG positions through a competitive process, have often sought CIGIE’s expertise or participation in deciding which candidate is right for its designated Federal entity. In the past, the Panel has supported such hiring actions by reviewing and sharing feedback on applications, providing questions to be used in applications or interviews, and serving on interview panels. Accordingly, CIGIE recommends providing additional flexibility for the Panel to “provide support” to designated Federal entities. Finally, to ensure transparency CIGIE recommends that Congress require that it be informed when an IG nomination or appointment is made without the Panel having interviewed the candidate to assess the individual’s ability to meet the statutory basis upon which such nomination or must be made or been consulted by the appointing authority prior to the initiation of a hiring action to fill a vacant IG position.

Second, CIGIE recommends that the composition of the Panel be statutorily defined. The Panel, currently led by CIGIE’s Vice Chair, includes both Presidentially appointed and agency head-appointed IGs. Codifying the composition of the Panel will ensure the Panel includes members with backgrounds that equip them to consider both the qualifications of the candidate and the context of the OIG and agency in which the candidate would serve. Further, designating the CIGIE Vice Chair as the leader of the Panel ensures a proper flow of communication between the Panel and the appointing authorities. Through the proposed statutory enhancements, CIGIE will be able to better fulfill its mandate to find qualified IG candidates and support the President or other appointing authority.

¹⁹ *E.g.*, 5 U.S.C. App. 3, §§ 3(a), 8G(c).

²⁰ From time to time, Congress creates a “Special Inspector General” to oversee discreet matters (*e.g.* Pandemic response) that are not limited to the programs and operations of a particular agency. While CIGIE has not identified a need to address Special Inspectors General in this legislative proposal Congress is encouraged to consider this resource when drafting legislation creating a Special Inspector General.