



November 26, 2019

Questions for the Record – Kathy A. Buller
Chair, Legislation Committee of the Council of the
Inspectors General on Integrity and Efficiency
Inspector General, Peace Corps

Following

U.S. House of Representatives
Committee on Oversight and Reform
Subcommittee on Government Operations

September 18, 2019 hearing concerning:

“Overseeing the Overseers: The Council of the Inspectors General @ 10 Years”

Questions from Chairman Gerald E. Connolly, Subcommittee on Government Operations

1. Inspector General (IG) offices vary widely in size and budget. Per the fiscal year 2020 budget request from the Department of Defense, their OIG will operate on \$350 million, while one of the smallest, the OIG of the Appalachian Regional Commission, has requested just over \$500,000. The Peace Corps IG is one of the smaller IG offices. Do your size and limited resources affect your ability to accomplish your statutorily required responsibilities?

The Peace Corps Office of Inspector General (Peace Corps OIG) has independent oversight of more than 7,000 Volunteers serving in 61 countries, 900 U.S. direct hire staff and almost 3,000 locally-hired personnel at posts. To overcome the challenge of limited resources and ensuring effective oversight of an organization with global presence, we leverage our resources by working with Federal partners such as the Department of State/Diplomatic Security Service. For FY 2019, our budget of \$6,000,000 and approximately 30 full-time equivalent employees were adequate to fulfill our mission.

That is not to say Peace Corps OIG could not do more with more resources. To effectuate the Sam Farr and Nick Castle Peace Corps Reform Act of 2018, my office requested approximately \$300,000 in additional funding to perform investigations of Volunteer deaths during service. The small funding increase would help OIG obtain the additional staffing and medical oversight expertise that this new mandate requires.

Offices of Inspectors General (OIGs) do vary in size and budget. However, the issue of limited resources affects all OIGs regardless of size. While statutory mandates affecting the broader Inspector General (IG) community (e.g., the Federal Information Security Modernization Act of 2014) may account for a larger percentage of a smaller OIG's resources, larger OIGs might receive more statutorily required mandated reports that are unique to larger OIGs (e.g., OIGs overseeing CFO Act agencies) or unique to an OIG. The Council of the Inspectors General on Integrity and Efficiency (CIGIE) has long encouraged Congress to allow OIGs to take a risk-based approach towards oversight work by ensuring that any statutorily required mandate is appropriately tailored, and CIGIE looks forward to continuing that conversation.

2. Are there opportunities to stretch IGs' limited resources by working across the IG community?

Individual OIGs consistently make efforts to maximize efficiency and return on investment. Our community currently collaborates to facilitate our missions, and to ensure the success of cross-cutting projects that prove beneficial to the entire community and the federal government at large. Shared technology services, both general (e.g., Information Technology (IT) support) and mission-oriented (e.g., digital forensics), are already implemented to a limited degree. For example, several years ago the United State Postal Service OIG began hosting Peace Corps OIG's IT system, bolstering our independence from our agency as well as the overall quality of the IT services we receive. Similar initiatives exist on an *ad hoc* basis.

In the realm of IT, expanding IG community collaborative initiatives could enable OIGs to maintain greater independence from their host agencies' networks, which in turn could help to preserve and enhance mission independence and effectiveness. We are exploring this currently with the expansion of our Oversight.gov site as a platform for hosting individual OIG websites, which could provide IGs with greater control over the distribution of information about their offices and oversight work and bolster their independence. Using Federal funding already approved by Congress, CIGIE plans to develop templates for such web pages on Oversight.gov, and then offer them to IGs who agree to reimburse CIGIE for future operation and maintenance costs incurred.

3. What are some of the roadblocks IGs might encounter when attempting collaborate across the IG community?

Generally, roadblocks to collaborative efforts fall into two main groups – resources and legal authorities. Further, in addition to weighing other considerations such as mission independence, the IG community would weigh whether the IG community or individual OIG's can provide the service in a more cost-effective manner than other Federal government providers of shared services.

With regard to shared technology services, a lack of capacity compared to demand may hinder collaboration. While many OIGs could likely benefit from some degree of shared services, few OIGs are currently in a position to provide such services to the community and CIGIE's capacity to

provide such services is currently limited. This lack of capacity could be alleviated with increased resources specifically dedicated to technology collaboration, and an improved ability and authority to compete for and retain IT personnel.

4. How could Congress support possible demonstration projects or other incentives for IGs to collaborate?

Congress's support for Oversight.gov, evidenced by bi-partisan expressions of support and direct appropriations of funding, is a great example of how Congressional support for demonstration projects facilitates IG collaboration.

As a focal point of the IG community, CIGIE is one option to foster cross-OIG collaboration and coordinate demonstration projects. Congress could best support this goal by legislating a permanent appropriation for CIGIE. This would allow CIGIE to more effectively budget for and fund these types of projects, including Oversight.gov and other pilots for IG-community specific shared services.

5. Are there members of CIGIE who, under current statute, can be removed from office without 30-day notice to Congress?

Under IG Act Sections 3(b) or 8G(e), the President or Designated Federal Entity (DFE) head, respectively, must communicate to both Houses of Congress the reasons for removing or transferring the IG at least 30-days prior to removal or transfer. While IG Act Sections 3(b) or 8G(e) protect most members of CIGIE, notably all Establishment IGs and DFE IGs, there are IGs who are not subject to those provisions. Rather, such IGs are subject to the removal provisions of their governing statutes that, while often similar to IG Sections 3(b) and 8G(e), contain slight differences.¹

6. Does 30-day notice for the removal of an IG foster further independence for individual IGs?

Although IGs generally serve at the pleasure of the President or DFE head, the 30-day removal procedural safeguards help ensure the independence of IGs and to ensure that Congress is informed of the reasons for their removal or transfer before such action takes place. As CIGIE has noted, these safeguards are meant to prevent IGs from being removed for political reasons or simply because they are doing an effective job of identifying fraud, waste, and abuse.

While the 30-day notice requirement provides an important safeguard to protect an IG's independence, this safeguard is defeated when an IG is placed on "administrative leave" or is

¹ As non-IG entities are also members of CIGIE (e.g., the Office of Special Counsel), this response covers just those CIGIE members who are IGs. For examples of removal provisions in the governing statutes of non-IG Act IGs, see 2 U.S.C. 1808(c)(2) (Architect of the Capitol IG – "The Inspector General may be removed from office by the Architect of the Capitol. The Architect of the Capitol shall, promptly upon such removal, communicate in writing the reasons for any such removal to each House of Congress."); 31 U.S.C. 705(b)(2) (Government Accountability Office IG – "The Inspector General may be removed from office by the Comptroller General. The Comptroller General shall, promptly upon such removal, communicate in writing the reasons for any such removal to each House of Congress."); 50 U.S.C. 3517(b)(5) (Central Intelligence Agency IG – "The Inspector General may be removed from office only by the President. The President shall communicate in writing to the intelligence committees the reasons for any such removal not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.").

"suspended without pay" (i.e., a paid or unpaid, non-duty status) by the President in instances involving an IG of an establishment or a head of a DFE in instances involving an IG of a DFE. As a result of this problem, CIGIE, in its legislative priorities this Congress, has proposed an amendment to the IG Act to establish a congressional notification requirement when an IG is placed in a paid or unpaid, non-duty status.

7. Would the IG community have concerns about enactment of a statute requiring 30-day notice for any intention to remove an acting IG from their post?

Under most circumstances, the principal deputy to the IG fulfills the role as acting IG or the temporary head of the IG office. The principal deputy is often in the best position to continue the robust oversight work of the OIG and minimize any disruption caused by the vacancy.

With regards to the enactment of a statute requiring 30-day notice for removing an acting IG from their post, there are a few factors that Congress should consider. First and foremost, many acting IGs are career civil servants with statutory and regulatory protections that should not be affected by their serving in the acting IG role. Additionally, Presidentially appointed, Senate-confirmed IGs are subject to the Federal Vacancies Reform Act of 1998. That law limits the amount of time that the first assistant to IG position may be referred to as the "Acting IG". As Establishment IG vacancies often exceed that time limit, any such statute should protect the temporary head of the IG office throughout their service in that role. The CIGIE Legislation Committee is ready to support Congress with technical advice should Congress have legislative proposals on this topic.

8. Are there additional ways that Congress could support the IG community to ensure it gets the access to the information it needs?

The IG community is very appreciative of the support that Congress and this Committee, more specifically, have provided to ensure the IG community has access to the records it needs to fulfill IGs' oversight missions. One particularly effective way Congress can support IG access is promptly and strongly reminding agencies of their duty to provide timely and complete access to records and information when IGs report their access-challenges to Congress. Additionally, language that appears in many, but not all, appropriations bills prohibiting the use of appropriated funds to deny timely IG access to agency records and information have been extremely helpful in ensuring agencies comply with the letter and the spirit of the IG Act.

Nevertheless, challenges remain. Despite the IG Act's requirement that agencies provide IGs with "timely" access to records, OIGs still face obstacles in obtaining information in a "timely" fashion. For example, in his October 17, 2019 testimony to the House Appropriations Committee's Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies, Housing and Urban Development (HUD) OIG General Counsel Jeremy Kirkland testified that HUD OIG already had waited two months for HUD to produce emails in response to a HUD OIG request. Kirkland stated:

We don't feel that's timely production of emails. And [HUD] continue[s] to hide behind a poorly scoped e-discovery contract that they run these emails through as a reason for the fact they can't produce them timely to us. But any delay in the production of that information is a delay in our ability to carry out our work, our investigation.²

² See https://appropriations.house.gov/subcommittees/transportation-and-housing-and-urban-development-and-related-agencies-116th-congress/congress_hearing.

The Corporation for National and Community Service (CNCS) OIG has outlined challenges to its independence in its two most recent semiannual reports, including matters that will negatively affect the IG's access to information. CNCS OIG reported that CNCS publicly announced steps it is taking to amend its policies and procedures to limit direct communications and exchanges of information between CNCS-OIG and agency personnel. CNCS OIG also reported CNCS announced its intent to revise grant terms and conditions that currently require grantees to report directly to the OIG information or allegations of fraud, waste, abuse or mismanagement. An OIG must maintain the independence to engage agency personnel directly as needed, to maintain the confidentiality of its work and obtain timely access to information. Attempts to restrict such contacts chill free communications and may dissuade whistleblowers and witnesses from coming forward with their concerns, negatively impacting the OIG's ability to carry out its oversight responsibilities.

We also want to draw Congressional attention to the concerns that the Environmental Protection Agency (EPA) OIG expressed in a October 29, 2019 "Seven Day Letter", as well as the November 7, 2019 "Reply of Acting EPA Inspector General to General Counsel Memorandum – Seven Day Letter", in which the EPA OIG raised a "particularly serious or flagrant problem" concerning two instances of refusal to fully cooperate and provide information to the OIG.

9. At the hearing, in response to my question to you about access to records and IG independence, you raised a concern about independence at Peace Corps. I would like to follow up on that and ask if there are steps Congress might consider ensuring your independence is preserved? Are there additional details you could provide, or steps Congress could take to further support IGs in your situation?

We are continuing to work with senior leadership to address this issue, however, I remain concerned that recent actions by the Peace Corps Office of General Counsel threaten the independence with which the Peace Corps OIG conducts investigations of serious Volunteer misconduct. OIG is also concerned that those actions will risk Volunteer safety and security by negatively affecting OIG's ability to investigate serious Volunteer misconduct.

Ensuring staff and Volunteer misconduct is independently and thoroughly investigated is essential to the health, safety, and wellbeing of our Volunteers. The IG Act and agency policy make OIG responsible for investigative policy related to the integrity of Peace Corps programs, including investigations into Volunteer misconduct. Peace Corps policy unequivocally supports and encourages reporting to and cooperating with OIG.

The Peace Corps has a zero-tolerance policy on Volunteer drug use, and notes that "drug involvement by [Volunteers/trainees] in any country could seriously jeopardize the entire Peace Corps program, as well as the safety and health of the [Volunteers/trainees]". Through OIG investigations and reporting, OIG expressed concern that the agency's efforts to address Volunteer drug use have been insufficient.

In response, the Peace Corps Office of General Counsel unilaterally issued guidance to key staff re-interpreting longstanding policy that will:

- curtail OIG investigative independence,

- inhibit cooperation between post staff and OIG investigators,
- reduce types of serious misconduct that must be reported to OIG, and
- chill whistleblowing by telling post staff to report certain misconduct to OIG through senior management.

This guidance affected more than just Peace Corps OIG's ability to investigate drug cases. It also negatively affected OIG's ability to provide key investigative support to overseas post staff trying to handle other serious misconduct by Volunteers, such as Volunteer-on-Volunteer sexual misconduct. The guidance also sets a concerning precedent whereby certain allegations of misconduct must be reported through senior management. This guidance is inconsistent with both the IG Act and with existing agency policy.

Peace Corps OIG is committed to helping ensure that agency management is supported by independent, thorough investigations when handling serious Volunteer misconduct. We are further committed to ensuring that whistleblowers are free to report any matter directly to OIG, and that Volunteers and staff are properly educated on their associated rights and protections.

10. Do you think the 2016 Empowerment Act has helped to improve the timeliness and access to information for IGs? How?

Yes. As CIGIE Chairperson, DOJ IG Michael Horowitz, testified before the House Committee on Government Oversight and Reform's hearing on November 15, 2017, the IG Empowerment Act of 2016 "made it clear that IGs must be given unimpeded and timely access to all agency records."

For Peace Corps, the IG Empowerment Act had an immediate impact. Prior to the IG Empowerment Act, Peace Corps hindered our ability to conduct oversight of its sexual assault risk and reduction program by only providing us with redacted records, making it virtually impossible to determine which records related to which case. Upon passage of the IG Empowerment Act, we received full, non-redacted access to such records and are now able to effectively conduct oversight of the program.

That is not to say that all issues related to timely, complete access to records and information have been resolved. As the examples provided in a prior response imply, there are instances of agencies delaying OIG oversight by not providing timely, complete access, thereby impacting our ability to provide the timely, robust oversight that Congress and the American taxpayer deserve.

11. Congress seeks to ensure that OIG employees or other individuals who raise allegations under 5 U.S.C. 1213 receive the same attention as other whistleblower allegations. Does CIGIE have an opinion on how such allegations would most effectively routed to the appropriate investigatory body?

CIGIE fully supports the intent of this question - to ensure that whistleblower allegations against OIGs under 5 U.S.C. 1213 are handled thoroughly and appropriately. We also trust that Congress appreciates the needs for IG independence to be respected throughout the Section 1213 process.

Under 5 U.S.C. 1213, the Office of Special Counsel (OSC) refers credible allegations to the relevant agency head for investigation or other action. With limited exception, those allegations must be thoroughly investigated, with the results reported by the agency head to OSC for review. However, it

is unclear what entity should investigate if the IG, the IG's staff, or the OIG's operations are the subject of the allegation. For example, the head of an agency, through its investigation or resulting corrective action, may improperly impinge on the independence of an IG.

To ensure that OIG employee whistleblowers are treated in the same manner as other Federal employee whistleblowers, and to preserve IG independence, CIGIE recommends amending the law to ensure that the IG is assigned the same responsibility as the agency head for allegations concerning the IG, the IG's staff, or the operations of the IG's office under 5 U.S.C. 1213.

However, Congress should be mindful that the jurisdictions of the CIGIE Integrity Committee and OSC are not disturbed. While the CIGIE Integrity Committee may be involved in many Section 1213 allegations, the Integrity Committee may not have jurisdiction over all Section 1213 allegations (e.g., against an employee not covered by IG Act Section 11(d)) or may not address all of the issues raised under a Section 1213 referral. However, just as the agency head would be responsible for allegations against an agency, the relevant IG would be responsible for appropriately handling a Section 1213 allegation against the OIG. This would include any required self-referral by the IG to the CIGIE Integrity Committee, consistent with the Integrity Committee's Policies and Procedures. To further transparency into this process, were Congress to make such a change, CIGIE is committed to promulgating guidance for IGs on properly handling any referral made by OSC and to make that guidance public.

12. What should Congress consider when deliberating whether to extend an IG's jurisdiction to cover an agency or program without an IG or to create a new IG?

The extension of an IG's jurisdiction to additional entities or programs should be performed carefully and on a case-by-case basis. When deciding whether to do so, Congress should provide adequate resources to ensure that the OIG's current oversight portfolio is not negatively affected. Additionally, Congress should consider the level of similarity between the OIG's current agency and the new agency or program to be covered. For example, while Peace Corps has an overseas mission, our staffing and expertise may not lend itself to economically overseeing other, unrelated overseas missions.

When Congress is considering creating a new IG, it should ensure that the new IG has the same authorities and responsibilities as other IGs. Often, the best way to ensure that authorities and responsibilities are properly assigned is to include the IG in those portions of the IG Act defining Establishments (Section 12) or DFEs (Section 8G), and their respective IGs. Additionally, consistent statutory language enabling IGs helps to ensure consistent practices across the Federal government and in the IG community.