



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

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before the

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

concerning

"Protecting Those Who Blow the Whistle on
Government Wrongdoing"

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Mr. Chairman, Ranking Member Meadows, and Members of the Subcommittee:

Thank you for inviting me to testify at today's hearing to discuss the important role of whistleblowers in uncovering waste, fraud, abuse, and misconduct in the federal government, and how they must be protected from retaliation or even the threat of retaliation. For over 40 years, since enactment of the Inspector General Act in 1978, information provided by whistleblowers has played a central role in the ability of Inspectors General to conduct non-partisan, independent oversight of federal programs and operations. Accordingly, during my tenure as Inspector General of the Department of Justice (DOJ) and Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), one of my highest priorities, and a critical CIGIE initiative, has been to educate federal employees about the importance of whistleblowing, and to ensure that those who blow the whistle are protected from retaliation. The Inspector General community believes that individuals who bring information about waste, fraud, abuse, and gross mismanagement to our offices should be lauded for working within the laws, rules, and regulations that have long existed to encourage and protect whistleblowers.

CIGIE's Efforts to Educate Federal Employees and Employees of Contractors and Grant Recipients About the Importance of Whistleblowing

In order to encourage whistleblowers to come forward with evidence of wrongdoing, OIGs take proactive steps to educate agency employees about the importance of reporting waste, fraud, abuse, and gross mismanagement, and about the laws that protect individuals for doing so. CIGIE has been at the forefront of the community's efforts to educate employees about their right to disclose information and to improve OIG efforts to protect them.

For example, in July 2019, as part of CIGIE's effort to further enhance Oversight.gov, CIGIE worked with the Office of Special Counsel (OSC) to launch a new whistleblower protection web page, [Oversight.gov/Whistleblowers](https://www.oversight.gov/whistleblowers). As this Committee well knows, the legal landscape for potential whistleblowers can be confusing, and the options available to individuals who want to blow the whistle, or who believe they have been retaliated against, depend on their specific place of employment. Recognizing this, the Oversight.gov/Whistleblowers page provides an interactive form to assist potential whistleblowers in determining where to make a protected disclosure or file a retaliation claim – to an OIG, the OSC, or some other entity. The site provides informational resources for individuals in various sectors, including government employees, government contractors and grantees, those in the military, and private-sector individuals. CIGIE believes that these education and outreach efforts will help to ensure that whistleblowers are empowered to make lawful disclosures, and that disclosures will continue to contribute to OIG efforts to cut waste and improve government programs. We are currently seeking ways to improve this tool to further engage and educate federal employees about the process for reporting wrongdoing. We have received constructive feedback from government employees, Members of Congress and their staffs, organizations that help and support whistleblowers, and academia, and we look forward to incorporating their important suggestions in the coming weeks and months.

Also in July 2019, in connection with National Whistleblower Appreciation Day, CIGIE issued a report, "[Whistleblowing Works: How Inspectors General Respond to and Protect Whistleblowers](#)," which illustrates the important contributions of whistleblowers to OIG efforts to root out waste, fraud, and abuse, and to improve government programs. From ensuring that veterans receive timely access to health care to protecting the integrity of our financial institutions, the OIG investigations, audits, and reviews highlighted in the CIGIE report were initiated or advanced because of a whistleblower disclosure. All of those OIG reports, along with examples of OIG efforts to protect whistleblowers from retaliation, are available on Oversight.gov.

In addition to these efforts, CIGIE has established training programs that align with our role of informing and supporting whistleblowers. CIGIE recently conducted two training sessions for OIG personnel that focused on best practices for investigating whistleblower retaliation allegations. These trainings complement the work being done by CIGIE's Whistleblower Protection Coordinator (WPC) Working Group, which CIGIE launched in 2015 shortly after I became CIGIE Chair and is led by my office. The working group meets quarterly, and is often joined by congressional and nongovernment stakeholders and OSC, to discuss approaches to education, outreach, and enforcement of whistleblower laws. In conducting these trainings and meetings, CIGIE is actively complying with the letter and spirit of the "Whistleblower Protection Coordination Act," which this Committee passed in 2018, and requires CIGIE to work with OSC and the WPCs to develop best practices for handling protected disclosures and enforcing whistleblower protection laws.

In recent meetings, the working group has discussed and developed ways to better educate federal employees about lawfully disclosing classified information, discussed best practices for the release of completed whistleblower Reports of Investigation, identified ways to promote better compliance with whistleblower notification requirements in the government contracting community, and discussed legislative solutions to further strengthen whistleblower protections for contractors and grantees.

CIGIE's Efforts to Protect Whistleblowers from Retaliation and the Threat of Retaliation

Let me turn briefly to CIGIE's efforts to protect whistleblowers from retaliation. Whistleblowers perform an essential public service in ensuring accountability in government, and it is therefore critically important that protections from retaliation be meaningful and robust. No one should be retaliated against, or threatened with retaliation, for bringing forward information that they reasonably believe evidences waste, fraud, abuse, or misconduct. Otherwise, there is a substantial risk that whistleblowing will be chilled, and the result would be far less effective government oversight. As Senator Charles Grassley, Chairman and co-founder of the U.S. Senate's Whistleblower Caucus, noted recently, whistleblowers "ought to be heard out and protected," and "we should always work to respect whistleblowers' requests for confidentiality."

This is not just a principle we agree with, it is enshrined in the law. On a bipartisan basis, Congress has passed numerous laws to protect whistleblower confidentiality and prohibit retaliation against them. For example, the Inspector General Act expressly prohibits Inspectors General from disclosing the identity of a whistleblower without their consent, except in limited circumstances. And, the Whistleblower Protection Act of 1989 makes it unlawful for any government actor to retaliate – or even threaten to retaliate – against a whistleblower who has brought forward a reasonable concern of misconduct. Since 1989, Congress has extended similar protections to federal contractors and grantees, Intelligence Community employees and contractors, and military personnel. CIGIE’s new website, Oversight.gov/Whistleblowers, provides these individuals with additional information on the rights and protections available to them.

Under each of these laws, Inspectors General play a central role in receiving evidence of criminal or administrative wrongdoing because Congress has recognized that we are particularly well-suited to receive whistleblower disclosures. We have the independence, capability, and expertise to credibly assess the information and take appropriate steps to correct any identified misconduct. Most importantly, because we are within the agency we oversee, it is *always* lawful for an employee to bring information to an IG. And, under every applicable anti-retaliation law, employees are specifically protected for disclosing information to the Inspector General. CIGIE raised these specific whistleblower protection principles in an October 2019 letter, signed by 67 IGs, to the DOJ Office of Legal Counsel (OLC) in response to an OLC opinion that the IG community believed affected our important role in ensuring that whistleblowers have confidence in the lawful channels established by Congress to disclose sensitive information.

IG Whistleblower Retaliation Investigations and Need for Testimonial Subpoena Authority

When a whistleblower alleges retaliation for providing allegations of wrongdoing, Inspectors General have the responsibility to conduct a thorough and independent assessment of the facts. OIG whistleblower investigations not only seek justice on behalf of individual whistleblowers but also seek to deter potential future reprisals and promote accountability for those who have retaliated or engaged in other misconduct. To effectively conduct such investigations, OIGs must have access to all relevant testimony and witnesses, including individuals who may resign or retire during an OIG reprisal investigation. However, with the exception of the Department of Defense OIG, OIGs do not have the authority to compel testimony from former agency employees in such investigations, which is a significant impediment to our ability to fulfill this important responsibility.

To remedy this, CIGIE has identified testimonial subpoena authority (TSA) for OIGs as one of its primary legislative priorities, and this Committee has worked in the past on a bipartisan basis to support this legislative priority. Without testimonial subpoena authority, an employee’s resignation or retirement can substantially hamper an IG audit, investigation, or other review into matters pertaining to that individual’s former responsibilities, including any action taken

against a whistleblower. My office and others throughout the IG community continue to encounter situations where not having this authority results in our inability to obtain important and relevant information from former employees in connection with our whistleblower investigations. Our efforts to promote accountability and deter future misconduct are hampered by our inability to receive testimony from former employees.

Congress has already taken steps to grant or consider granting TSA to specific OIGs. As noted above, the Department of Defense OIG has TSA and has used it judiciously to advance its oversight work. Earlier this month, a bipartisan group of Senators introduced the Strengthening Oversight for Veterans Act, S. 3177, which would grant the Department of Veterans Affairs OIG testimonial subpoena authority. The IG community understands the potential concerns with granting OIGs such an authority. Accordingly, we support incorporating controls to ensure this authority is exercised properly. I look forward to working with this Committee, as we have in prior Congresses, to advance this crucial measure that would both enhance whistleblower protection and independent oversight.

Through these and other efforts, the IG community continues to explore ways to encourage individuals to report waste, fraud, abuse, and gross mismanagement. I thank the Subcommittee for the opportunity to testify, and look forward to your questions.