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SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
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“METRO: REPORT CARD FOR AMERICA’S SUBWAY”

TESTIMONY OF GEOFFREY A. CHERRINGTON  
INSPECTOR GENERAL  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Chairman Connolly, Ranking Member Meadows, and distinguished Members of the Subcommittee:

Thank you for inviting me to appear before you today to discuss the role of the Office of Inspector General at the Washington Metropolitan Area Transit Authority (WMATA). I would like to describe briefly how my office came into being, some of the similarities and differences between my office and the Federal offices of inspector general (OIGs), how we are organized, our main priorities, and our key challenges.

**Nature and History of OIG**

As you know, the WMATA OIG is not a Federal OIG. We are not covered by the provisions of the Inspector General Act of 1978, as amended, but instead derive our authority from the WMATA Compact (discussed below) and a 2006 resolution by the WMATA Board of Directors. Before my appointment as WMATA Inspector General, however, I had many years of law enforcement experience in the Federal inspector general community, where I held senior executive and investigative positions in several departments and agencies. I experienced firsthand the crucial importance of statutory protections safeguarding the independence and objectivity of Federal inspectors general.

To explain the nature of my office and how it came to be, I should first say a word about the creation of WMATA and what it is.

WMATA occupies a unique and sensitive place among U.S. transit systems. It is responsible for providing multistate transit service to virtually all Federal agencies and activities throughout the National Capital Region. WMATA carries a significant portion of the Federal workforce to and from work every working day, receives substantial Federal funding, and is itself a major component in the critical infrastructure of the Nation’s Capital. As the General Accountability Office recently observed:

[WMATA] is one of the largest transit operators in the nation, providing service for nearly 1-million rail and bus passenger trips each day, making it critical to the National Capital Area's transportation infrastructure.<sup>1</sup>

WMATA is an interstate compact agency formed in 1967. It was created by the Commonwealth of Virginia, the State of Maryland, and the District of Columbia as signatories to the WMATA Compact. Congress consented to the Compact (by legislation in 1966) consistent with the U. S. Constitution (Article I, Section 10), which prohibits agreements among States without the consent of Congress.

The Compact makes WMATA a government agency and instrumentality of each signatory (Virginia, Maryland, and DC). WMATA receives appropriated funds from all three signatories, and from the Congress. As a government agency WMATA depends heavily on these public funds. In fiscal year 2020, \$2.7 billion, or 75% of WMATA's total funding of \$3.6 billion, will come from public sources. Of those, over \$500 million will come from the Congress, and \$2.2 billion will come from the three Compact signatories. In other words, 14% of WMATA's funds from all sources in FY 2020 will come from Congressional appropriations. For fiscal years 2011 through 2017, Congress provided over \$3.2 billion, or 55%, of WMATA's capital funding. Legislation now pending in the House of Representatives would authorize an additional \$2 billion in Federal funds over ten years, beginning in 2020, for WMATA capital and operating expenses.

Originally the Compact did not provide for a WMATA IG. WMATA's first IG was appointed in 2007 as the result of a resolution passed by the WMATA Board of Directors in 2006 (Resolution 2006-18) creating an inspector general and an office of inspector general. The resolution is still in effect, although as a board resolution it does not have the force of law.

Three years later, in 2009, Virginia, Maryland, and the District of Columbia amended the Compact, with the consent of Congress, by establishing an inspector general as an officer of WMATA heading an office of inspector general. This amendment was in response to a requirement that Congress included in the Rail Safety Improvement Act of 2008, prohibiting WMATA from receiving any funds authorized by the act until the Compact was amended to create an office of inspector general. The Compact is statutory in nature and is codified in the laws of Maryland, Virginia, and the District of Columbia. Therefore, the WMATA OIG has had statutory status since 2009.

Since assuming office in April 2017 I have modeled the work of the WMATA OIG after the Federal inspectors general to the extent possible. I have been able in practice to operate independently of WMATA management in most respects, thanks in great measure to the current Chairman of the Board, Paul Smedberg, and the General Manager/Chief Executive Officer (GM/CEO), Paul Wiedefeld. They have both strongly supported the goal of having an independent, objective inspector general.

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<sup>1</sup> GAO, *Washington Metropolitan Area Transit Authority: Actions Needed to Strengthen Capital Planning and Track Preventive Maintenance Program*, GAO-19-202 (Washington, D.C.: Jan. 31, 2019), p. 1.

At the same time, the only statutory provisions for a WMATA IG are in the Compact. Those provisions are quite general. They would provide scant protection to IG independence and objectivity, should a future Board of Directors or senior WMATA management alter their policies or practices regarding the IG.

Under the Compact the WMATA IG is appointed and may be removed by the Board of Directors. The IG serves at the pleasure of the Board, which sets the IG's compensation and decides whether the IG is full- or part-time. The IG reports to the Board and heads OIG, which the Compact describes as an independent and objective unit that conducts and supervises audits, program evaluations, and investigations relating to WMATA activities; detects and prevents fraud and abuse in WMATA activities; and keeps the Board fully and currently informed about deficiencies in WMATA activities along with the necessity for and progress of corrective action.

Apart from these general provisions, the Compact is silent on the authorities and responsibilities of the IG. The Compact lacks the safeguards to independence and objectivity associated with Federal inspectors general under the Inspector General Act of 1978, as amended. For example, the Compact does not specifically provide:

- Organizational protections of IG independence (such as giving Congress and the Compact signatories notice and reasons before removing an IG);
- Guaranteed IG access to the Board and management officers;
- Restrictions on Board or management interference with OIG work;
- Mandatory IG access to WMATA books and records (although the Board resolution creating OIG does so provide);
- A duty for the IG to keep WMATA's appropriators, i.e., Congress and the Compact signatories, fully and currently informed (although I endeavor to do so voluntarily);
- OIG law enforcement authority;
- Independent hiring, contracting, procurement, or budgetary authority for OIG;
- A requirement for independent legal counsel reporting to the IG (although I recently hired one after the Board consented);
- Oversight of OIG activities by an objective, independent body such as the Council of the Inspectors General on Integrity and Efficiency;
- A guaranty of public access to OIG reports without management redactions;
- A requirement to protect the identity of WMATA employees who provide information to OIG (although we do so in practice);
- Protection of whistleblowers against retaliation (although a WMATA management policy does so, and my office has a staff member dedicated to whistleblower cases).

As noted, Board actions and WMATA management policies do, to a degree, ameliorate some of these deficiencies. But Board decisions and management policies do not have the force of law and may be changed by the Board or management.

Bills now pending in the House and Senate would address some of these deficiencies, notably in OIG budget, procurement and hiring authorities, mandatory public access to OIG recommendations, and independent OIG legal counsel. Chairman Connolly has been a leader in this effort by introducing the Metro Accountability and Investment Act (H.R. 2520), which the entire House delegation of the National Capital Region has joined as original cosponsors.

### **OIG Budget, Staff, and Return on Investment**

The OIG FY 2020 budget is \$9.9 million, representing a 33% increase over FY 2019. OIG's FY 2020 budget is .275% of WMATA's \$3.6 billion budget.

OIG's staff of 44 is .35% of WMATA's 12,225 positions.

The OIG staff collectively has over 300 years of IG experience, including substantial prior service in the Federal IG and law enforcement communities. Some of our staff also have significant prior experience in transportation and transit agencies specifically. We have former career members of the Federal Senior Executive Service, former Federal auditors, former prosecutors, and former special agents and criminal investigators from the Internal Revenue Service, Postal Inspection Service, Postal IG, General Services Administration, and the Departments of State, Transportation, and Interior.

My top three senior officers (the two Deputy IGs and the Counsel) and I all held career senior executive positions at multiple departments in the Federal service. My Deputy Inspector General for Audits has over 44 years of government auditing experience, previously served in the Defense and State Department OIGs, and was Assistant Inspector General for Audit at the Nuclear Regulatory Commission. My Deputy Inspector General for Investigations and Special Projects has 27 years of Federal OIG service, was an auditor in the HUD OIG, and was a special agent at the FHFA OIG where he was also a deputy inspector general for investigation. My Counsel has 23 years of Federal service and for over 10 years was the general counsel to three Federal inspectors general (Departments of State and Homeland Security, and the Special Inspector General for Iraq Reconstruction). Before my appointment as WMATA Inspector General I had over 32 years of law enforcement experience (including a combat tour in the First Gulf War); 22 of those years were in the Federal inspector general community, where I held senior executive and investigative positions in the OIGs at the Departments of Defense, State, Agriculture, and the GSA.

In FY 2019 OIG identified \$6.97 in possible savings for every dollar spent on OIG operations, for a return on investment of about seven to one.

### **Mission and Structure of OIG**

OIG is an independent and objective unit of WMATA that conducts and supervises audits, program evaluations, and investigations relating to WMATA activities; detects and prevents fraud and abuse in WMATA activities; and keeps the Board fully and currently informed about deficiencies in WMATA activities along with the necessity for and progress of corrective action.

OIG is made up of two offices: Investigations and Special Projects (OI), and Audits (OA).

**OI** conducts criminal, civil, and administrative investigations of fraud, waste, and abuse related to WMATA programs and operations. OIG investigations can lead to criminal prosecution, civil penalties, disciplinary action, and administrative action. OI manages the OIG Hotline, including in-take of complaints and determining the appropriate handling of those complaints. Complaints may be investigated by OI or referred to management, to OA for audit consideration, or to another agency, as appropriate. This office also pursues proactive investigations through data analysis, recruiting confidential informants, and mining financial information for fraud detection.

**OI** also investigates whistleblower retaliation cases. Whistleblower retaliation reports are submitted to the WMATA Whistleblower Panel for review and determination. OIG reports information to the WMATA Board on investigations and proceedings, including trends and outcomes; Whistleblower Panel actions; employee and supervisor training; and regulatory proceedings or litigation relating to any protected activity or prohibited personnel practices.

**OI** also conducts management and programmatic inspections, evaluations, and special projects. These projects provide insight into issues of concern to WMATA and other key stakeholders. In addition, OI conducts preliminary special assessments that address concerns, in an expedited manner, related to WMATA's operations. These expedited assessments alert WMATA management to matters that may involve either safety issues or non-safety situations that may help WMATA curtail or avoid loss of assets and/or resources.

During FY 2019, OI contributed to four criminal indictments and two convictions. In addition, OI issued 11 reports of investigation, five management alerts, and three management assistance reports. OIG received 413 complaints during the year.

**OA** is comprised of two teams: the financial and contract audit team, and the information technology and administration audit team. OIG audits independently assess WMATA programs and operations, helping to reduce waste, abuse, and mismanagement and promote economy and efficiency. OIG also oversees audit work done by outside audit firms on behalf of OIG.

Each July, OIG issues an Annual Audit Plan that summarizes the audits planned for the coming fiscal year. OIG seeks management input from the GM/CEO and his staff as a part of the planning phase. Unanticipated high-priority issues may arise that generate audits not listed in the Annual Audit Plan.

During FY 2019, OA issued 11 performance and financial audit reports that identified \$36 million in questioned costs or funds put to better use. In addition, OA issued 96 contract audit reports that identified \$9.5 million in possible savings.

### **OIG Priorities**

OIG's work reflects the Board of Directors' mandate to supervise and conduct independent and objective audits, inspections, evaluations, and investigations of WMATA's programs and

operations; to promote economy, efficiency, and effectiveness; and to prevent and detect fraud, waste, and abuse in such programs and operations. We provide advice to the Board and GM/CEO to assist in achieving the highest levels of program and operational performance at WMATA. OIG presents a semi-annual report to the Board summarizing OIG's staffing, budget, priorities, and accomplishments.

Among our top priorities are:

- **Safety:** OIG supports and promotes WMATA's goals for operational safety in every component and activity of the transit system by focusing our oversight activity on achievements, progress, and needed improvements. OIG reported a safety issue focusing on concrete falling from the ceiling of the Rhode Island Station that occurred because of improper inspections and incomplete inspection reports. Recently, OIG confirmed that the Rhode Island Avenue Station inspection reports contained false information over almost a 3-year period. This investigation is ongoing and has been expanded beyond the Rhode Island Avenue Station reports. In addition, OIG issued 2 management alerts in August 2019 highlighting potentially serious safety issues in the construction of the Silver Line extension to Dulles Airport. These issues involve fouled aggregate in track beds and cracks in concrete panels at new stations. Additionally, in March 2019 I met with CEO David Mayer of the Washington Metrorail Safety Commission (WMSC) to initiate what I expect to be a strong collaboration between WMATA OIG and WMSC. The WMSC has significant authorities in assuring the safety of WMATA operations, and our offices are already working together toward that end.
- **Cybersecurity:** OIG assists management in identifying and addressing vulnerabilities in WMATA cybersecurity systems and practices. Recent OIG oversight work, for example, has identified vulnerabilities to cyberattacks and data breaches that may result from compromised third-party systems and services. This and other recent reviews are focused on manipulation of rail software and system availability that could adversely impact the safe operation of the rail system.
- **Procurement:** OIG found train and bus procurements totaling \$68 million that are not in compliance with mandatory Buy America regulations. This noncompliance could result in immediate suspension or withholding of Federal financial assistance from the Federal Transit Administration (FTA) to WMATA, and vehicle disassembly and refurbishment to bring vehicles into compliance with regulations. The OIG also found procurements totaling \$517 million that were not aligned with FTA best practices for Buy America compliance, resulting in a risk of non-reimbursement by the Federal government. Other major deficiencies were identified in the management of blanket purchase agreements, the vendor master file, and the contracting officer's technical representative program.

### **Key OIG Challenges**

As discussed above, WMATA's current Board and executive management have supported my efforts to strengthen the independence and effectiveness of OIG's oversight mission.

As also noted, however, WMATA OIG currently lacks many of the statutory tools and protections available to Federal OIGs. Of the ones described above, I would single out the following as posing the greatest challenges to our independence and effectiveness at the present time:

- The lack of law enforcement authority (to make arrests, execute search warrants, carry firearms, etc.), which hurts our mission in numerous ways by, for example, precluding or reducing our access to criminal data bases, use of special monitoring and surveillance methods, and participation in joint law enforcement task forces on cybercrime, procurement fraud, and other areas essential to our investigative responsibilities;
- The lack of independence in procurement, hiring authority, and administrative operations of OIG;
- The lack of independence in budget matters: OIG has no independent budget line item that cannot be adjusted by WMATA management; WMATA management can direct that only a certain percentage of available funds be spent and any remaining funds go back to the WMATA general fund.

There is a need to institutionalize the independence and objectivity of WMATA OIG through statutory measures that are not subject to changes in the priorities or policies of the organization that OIG is charged to oversee. This need is amplified by the unique and sensitive nature of WMATA's responsibility to operate a multistate transit system that supports Federal agencies and activities throughout the National Capital Region, carries a significant portion of the Federal workforce to and from work every working day, receives substantial Federal funding, and is itself a major component in the critical infrastructure of the Nation's Capital.