PEACE CORPS
Office of
INSPECTOR GENERAL

Council of the
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on INTEGRITY *and* EFFICIENCY

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Introduction

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

Thank you for the invitation to appear before you today in my role as the Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to discuss how the Legislation Committee has been a part of CIGIE's development, and CIGIE's Legislative Priorities.

In February 2009, CIGIE adopted its charter, which instituted six committees representing major OIG divisions (audit, investigations, and inspections and evaluations) and areas of mutual concern (professional development, information technology, and legislation). From its outset, CIGIE began to work on issues common to the IG community. For example, since its creation as part of CIGIE's first charter in February 2009, the Legislation Committee has expressed the IG community's common positions on legislative initiatives that would affect government oversight or would remove a legal impediment that IGs face during the course of their oversight. Thanks to past and current CIGIE leadership, CIGIE has steadily matured to be able to address as a community some of the most intractable issues the IG community faces.

In my 33 years in the IG community, I have seen the IG community develop from a group of entities with a common authorizing statute into a strong community of practice that coordinates oversight, shares resources and guidance, and uses our collective authority to provide effective oversight of the government. I have seen Congress stand up dozens of new Inspectors General, and participated in the merger of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency into a unified coordinating body – CIGIE. I was appointed as the Peace Corps IG less than 5 months before passage of the Inspector General Reform Act of 2008, which created CIGIE. As a new IG, I saw CIGIE develop and benefited from CIGIE creating resources and best practices that I could apply to my own office. Recognizing what CIGIE could offer the IG community, I became more actively involved. I served as the vice- or co-chair of the Inspections and Evaluations Committee from 2011 until 2015, helping to develop the Inspection and Evaluation peer review process. Since 2015, I have served as the Chair of the Legislation Committee. Through being both a member and part of CIGIE's leadership, I have witnessed CIGIE develop into an agency that helps the IG community to use our collective resources to conduct more effective oversight, better train our employees, and provide better technical assistance to Congress.

The Legislation Committee has been in existence since CIGIE's first charter in February 2009, and in many ways typifies the role CIGIE has played in the IG community. While each IG is expected to maintain its own relationship with Congressional stakeholders, we recognize that through a collective effort we are able to more effectively provide technical assistance to Congress on issues that the community shares in common. That is one of the core missions of CIGIE – to "address integrity, economy, and effectiveness issues that transcend individual

Government agencies."[1] Most recently, through the hard work of CIGIE and the Legislation Committee membership, the IG community came together to address the most significant IG-community reform legislation since the IG Reform Act of 2008 – the Inspector General Empowerment Act of 2016. The IG community worked together to engage Congress to restore IG access to all information available to the agencies we oversee and to enact legislative changes that the IG community collectively identified to improve the independence and oversight of IGs.[2] I would be remiss without thanking this Committee's members and staff for your tireless efforts to pass the Inspector General Empowerment Act of 2016.

Legislative Priorities

As Chair of the CIGIE Legislation Committee, I work with the Committee's 25 other IGs in determining the Committee's positions and priorities on legislative issues and coordinating our communication with Congress, the IG community, and other stakeholders. For example, each new Congress, the CIGIE Legislation Committee presents to the Office of Management and Budget and Congress those legislative initiatives which, if addressed, would best support government oversight and integrity or address legal challenges that the Inspector General community faces. Today, I will address CIGIE's Legislative Priorities for the 116th Congress. The IG community is ready to work with Congress to further improve our ability to perform the oversight mission that taxpayers and Congress expect from the IG community.

For the 116th Congress, our priorities are:

- Testimonial Subpoena Authority
- Protecting cybersecurity vulnerability and other related sensitive information from public disclosure
- Amendments to the Program Fraud Civil Remedies Act
- The appropriate use of paid or unpaid, non-duty status in cases involving an IG
- Protection against reprisal for Federal subgrantee employees
- Statutory exclusion for felony fraud convicts to protect Federal funds
- Enhancing Lead IG oversight for Overseas Contingency Operations
- Technical amendments to the Inspector General Reform Act of 2008

I will address each priority in turn.

Testimonial Subpoena Authority

The inability to require the testimony of witnesses who have information relevant to IG inquiries that cannot be obtained by other means significantly hampers OIG oversight. For example, Federal employees have a duty to cooperate with IGs. However, if a Federal employee under investigation for misconduct (for example, for whistleblower retaliation) resigns, the IG no longer has the authority to require the now former Federal employee to cooperate with the investigation. This inability to require cooperation may thwart the IG's ability to hold the

[1] Inspector General Act of 1978, as amended, 5 U.S.C. App. § 11(a)(2).

individual accountable for their misconduct during their government service or shed light on systemic problems within the agency. In one example, in connection with an OIG's review of alleged safety issues at an agency facility, the OIG was unable to interview the central person identified in the allegation or that person's supervisor since both had left Federal service and declined voluntary interviews. The unavailability of those key witnesses hampered the OIG's ability to fully understand alleged safety issues or to address a key objective of the inspection, which was to identify factors that may have contributed to leadership being unaware of safety problems at the facility.

To address any concerns about this priority, CIGIE already has agreed to certain safeguards Congress has proposed aimed at ensuring that OIGs use testimonial subpoena authority judiciously. For example, CIGIE does not object to having a panel of IGs review a testimonial subpoena prior to issuance. Likewise, CIGIE does not oppose a requirement to notify the Attorney General prior to issuing a testimonial subpoena.

We appreciate the Committee on Oversight and Reform (COR)'s bipartisan support for this priority during the past three Congresses, as well as that of many of the members of this subcommittee. In both the 114th and 115th Congresses, the House unanimously passed legislation providing all IGs with testimonial subpoena authority. We hope for continued support for testimonial subpoena authority from this subcommittee, COR, and our other Congressional stakeholders as we collectively look at ways of strengthening government oversight.

Protecting Cybersecurity Vulnerability and Other Related Sensitive Information from Public Disclosure

Holding agencies accountable to both the public and Congress is important and critical to the mission of IGs. Sunlight is the best disinfectant. However, that interest must be balanced with the need to protect from disclosure sensitive, granular information that could be used by a hacker to exploit the very weaknesses agencies and OIGs are tasked with identifying or remediating. Cybersecurity threats are becoming ever more present. Government agencies share services, technologies, and platforms, making a known risk to one agency a potential risk to many. In short, the need to protect information is greater than ever.

Since 2011, OIGs across the Federal government have raised serious concerns that information related to Federal agencies' information security may be unprotected from disclosure. Although FOIA exemptions apply to classified information and documents compiled for law enforcement purposes, no single exemption currently covers the extremely large area of documents or other information that analyze, audit, and discuss in detail the information security vulnerabilities of the Federal government. Agencies and IGs are increasingly required to focus on identifying, documenting, and remediating agency IT security vulnerabilities under laws like the Federal Information Security Management Act[3] (FISMA), penetration tests, or other oversight work. The

[3] The Federal Information Security Management Act of 2002, Pub. L. No. 107-347 (Dec. 17, 2002), as amended by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014).

documentation and analysis of testing protocols, vulnerability scans, identified weaknesses, and other information reflecting IT vulnerabilities should be protected from improper disclosure.

CIGIE hopes to work with Congress to provide a tailored legislative proposal to protect information from malicious entities looking for a roadmap into our Federal systems. The language proposed should be narrow, protecting only information that could reasonably be expected to harm an agency's information system or information. Such a tailored approach would still shine sunlight on agency failures but protect the exploitable details from malicious actors.

Program Fraud Civil Remedies Act Amendments

The Program Fraud Civil Remedies Act (PFCRA) is often referred to as the "mini False Claims Act" because it provides administrative remedies for smaller false and fraudulent claims against the government that the Department of Justice (DOJ) declines to enforce. Unfortunately, because of problems in the original legislation, passed over 3 decades ago in 1986, PFCRA remains a relatively underutilized tool.

A 2012 report from the Government Accountability Office (GAO), and a subsequent CIGIE-conducted survey of the IG community, revealed a number of continuing challenges that inhibit widespread use of the PFCRA to combat fraud. For example, the original statutory jurisdictional limit of $150,000 per claim from 1986 has not changed. PFCRA's "mini false claim" cases must be approved by the Attorney General or Assistant Attorney General even though larger false claims cases require a much lower level of approval. Further, agencies cannot keep any portion of the recovery and so must expend additional resources beyond their losses to pursue cases in which they have no hope of rededicating recouped losses to the programs that were defrauded. Additionally, only an Administrative Law Judge has authority to hear a PFCRA claim; however, many agencies do not employ administrative law judges or have access to them.

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:

- **Increase the dollar amount of claims subject to PFCRA**. $150,000 in 1986 dollars, simply adjusted for inflation, well exceeds $300,000. Additionally, increasing the dollar amount accounts for the current reality of the dollar value of cases that DOJ and U.S. Attorney's offices typically accept.

- **Increase the efficiency of DOJ approval of PFCRA requests by allowing delegation of PFCRA approval authority to a lower level than the Assistant Attorney General.** There is a higher-level approval requirement for "mini" false claims under PFCRA than under the False Claims Act. The authority should be delegable to mirror the False Claims Act's delegable authority.

- **Allow agencies to retain PFCRA recoveries to the extent needed to make them whole.** PFCRA specifies that all agencies except two must deposit any PFCRA recoveries into the Treasury Miscellaneous Receipts account, a disincentive to investing significant time or effort into pursuing PFCRA claims. In fact, PFCRA not only fails to make the agency whole, but also requires the agency to expend additional money to pursue the PFCRA claim. Allowing agencies and OIGs to be made whole for damages suffered and administrative costs expended would assist agencies in pursuing PFCRA claims.

- **Revise the definition of Hearing Officials.** CIGIE supports expanding the definition of Hearing Official to include member judges at agency boards of contract appeals so that agencies to expand the available forums for PFCRA claims.

  Aligning PFCRA to the False Claims Act. CIGIE recommends that Congress better align PFCRA with the False Claims Act by amending the statute of limitations for PFCRA to mirror the False Claims Act, allowing PFCRA recovery for "reverse false claims" cases in which a party withholds information material to that party's obligation to pay the Government, and using the same definition for the term "material" as the False Claims Act does.

Though individual recoveries may seem low, when taken together, PFCRA could become a significant tool to recover fraudulent expenditures for the benefit of taxpayers and deter individuals from committing smaller dollar fraud. We look forward to pursuing reform of this tool to make it more effective in combatting fraud, waste, and abuse.

Appropriate Use of Paid or Unpaid, Non-Duty Status in Cases Involving an IG

The IG Act requires Congressional notification not later than 30 days before removal of an IG or transfer of an IG within the agency.[4] These removal standards safeguard IGs' independence in carrying out their oversight work. However, when an agency head or the President places an IG in paid or unpaid, non-duty status, there is no requirement to notify Congress. Thus, the safeguards in place to maintain IG independence are defeated, and the IG may be muzzled.

CIGIE supports amending the IG Act to require congressional notification when the agency head or the President places an IG in paid or unpaid, non-duty status. This notification requirement would also encourage the President or agency head to more quickly assess or validate an allegation and take a more concrete action, whether that be by returning the IG to duty or otherwise. H.R. 1847, the Inspector General Protection Act, which already has passed the House, would address this very issue. CIGIE greatly appreciates this subcommittee's bipartisan efforts, including those of Representatives Lieu and Hice, to protect IG independence by requiring Congressional notification when an IG is placed in a paid or unpaid, non-duty status.

[4] 5 U.S.C. Appx. 3, §§ 3(b), 8G(e).

Protection Against Reprisal for Federal Subgrantee Employees

The National Defense Authorization Act for Fiscal Year 2013 enhanced whistleblower protections for Federal contractor, subcontractor, and grantee employees on a pilot program basis. Subsequent amendments in 2016 both made the program permanent and sought to enlarge the group of protected individuals to include, among others, Federal subgrantee and subcontractor employees.

The statute lays out a proscriptive process for whistleblowers, agencies, and their IGs. While the 2016 amendments explicitly included Federal subgrantee employees as protected individuals, coordinated changes were not made in the statute's related sections. Similar mentions of subcontractor employees were left out. CIGIE proposes to close this gap and clarify that this whistleblower protection statute specifically applies to employees of Federal subgrantees who make protected disclosures. The proposed amendments would make changes in the statute's related sections addressing (1) to whom the disclosures must be made; (2) the entity or company to whom an OIG provides the Report of Investigation; (3) the remedy provisions; and (4) the rights notification provision.

We appreciate the Chair and Ranking member's support for this priority, as shown through their co-sponsorship of H.R. 4147, the Whistleblower Expansion Act of 2019, as well as the support the proposal has received from Senator Braun and Senator Hassan through the introduction of the counterpart Senate Bill S. 2315. We believe these clarifications will strengthen whistleblower protections in the Federal program area and eliminate uncertainties for agencies, OIGs, and Federal subgrantee and subcontractor whistleblowers with respect to the investigation and processing of such complaints.

Statutory Exclusion for Felony Fraud Convicts to Protect Federal Funds

Federal felons who defraud the Government are often not suspended or debarred, leaving them eligible to access government funding. CIGIE proposes to create a floor by which the Federal government would ensure that individuals convicted of certain felonies involving defrauding the government cannot misuse government funding in the future. To achieve this, CIGIE proposes to automatically exclude those individuals convicted in Federal court involving agency contract, grant, cooperative agreement, loan or other financial assistance fraud.

Under current law, there is no general, mandatory exclusion for individuals convicted of felonies related to defrauding the Federal government. Regulations allow agencies to take discretionary actions to exclude felony fraud convicts from receiving Federal grants and contracts through government-wide suspensions or debarments. Under these discretionary actions, agencies suspend or debar individuals after determining that the individual is not "presently responsible" to handle or receive government funds.

Unfortunately, due to limited resources and other factors, many individuals convicted of felonies involving fraud against Federal programs are not suspended or debarred. Our proposal would ensure the most egregious bad actors, whose convictions clearly demonstrate they are not "presently responsible to receive additional Federal program funds," are automatically prohibited

from receiving funds for 3 years. Applying the mandatory exclusion to those convicted of a felony statute involving government programs ensures 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. This would also allow agencies to use their limited enforcement resources to focus on more complicated cases.

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. For example, 10 U.S.C. § 2408 provides for a limited 5-year exclusion from defense contracts for individuals convicted of fraud or any other felony arising out of a defense contract; 15 U.S.C. § 645 mandates that any person who makes a misrepresentation to obtain small business preferences shall be ineligible to participate in any program or activity pursuant to the Small Business Investment Act of 1958; 38 U.S.C. § 8127 similarly requires that business concerns (and the principals of the concerns) that engage in willful and intentional misrepresentations regarding small businesses owned and controlled by veterans/service disabled veterans are automatically debarred from Veterans Affairs contracts for not less than 5 years. CIGIE proposes that any new authority should not diminish those other authorities[5] or the authorities providing for additional discretionary action.

Enhancing Lead IG Oversight for Overseas Contingency Operations

Coordinated oversight assists Congress and agency leaders in making informed program, policy, and funding decisions. Recognizing this, Congress has mandated different means by which IG oversight should be coordinated and the role that CIGIE can play. One mechanism for coordinating oversight in the IG community, the Lead IG model under IG Act Section 8L, has required the IGs of the Department of Defense, the Department of State, and the U.S. Agency for International Development to conduct oversight of an overseas contingency operation through a Lead IG selected by the CIGIE Chair. Lead IG responsibilities are triggered by the commencement or designation of a military operation as an overseas contingency operation.

When an overseas contingency operation lasts more than 60 days, the Chair of CIGIE is required to designate a Lead IG from the three IGs specified in the IG Act.

Under current law, there are unique challenges in implementing efficient and effective oversight of overseas contingency operations. To enhance the Lead IG oversight for overseas contingency operations, CIGIE has proposed three groups of proposals that would:

- Improve employee recruitment and retention
- Enhance oversight by clarifying responsibilities and facilitating coordination
- Formalize notification procedures

CIGIE supports the provisions of the Senate-passed NDAA, S. 1790, that would resolve the unique challenges outlines below.

[5] For example, an agency head should still be able to exempt an individual from exclusion.

Improve employee recruitment and retention. Most lead IG employees are hired on a time-limited basis due to statutory, 5-year term restrictions. When our overseas contingency operations extend beyond 5 years, that restriction is misaligned with oversight needs. CIGIE recommends amending current law to ensure the Lead IGs are not forced to terminate and hire new temporary employees during key periods of overseas contingency operation oversight. Further, providing non-competitive eligibility to Lead IG staff would enhance the ability of the lead IG to recruit and retain qualified individuals.

Enhance Oversight by clarifying responsibilities and facilitating coordination. The IG Act does not address how oversight will be coordinated if none of the Lead IG agencies have principal jurisdiction of an overseas contingency operation program. Furthermore, the Lead IG model relies on good communication and comprehensive oversight in complicated environments. CIGIE recommends the law be amended to clarify jurisdiction, as well as facilitate enhanced communication and encourage comprehensive oversight by providing the Lead IG with a tailored authority to obtain information from other OIGs that may be conducting overseas contingency operation oversight.

Formalize notification procedures. Current law impedes the Lead IG's ability to ensure the timely activation and conclusion of oversight. The IG Act requires the CIGIE Chair to designate a Lead IG for any overseas contingency operations that exceed 60 days. However, there is no mechanism to ensure the CIGIE Chair is notified when an overseas contingency operation begins or is designated. Additionally, the IG Act bases the sunset of lead IG authority on a reduction in appropriations rather than termination of the mission. CIGIE recommends that the notification and sunset provisions be better aligned to ensure timely activation and conclusion of the overseas contingency operation oversight duties.

Conclusion

Since its establishment, CIGIE's mission has included helping IGs to address issues of integrity, economy, and effectiveness that transcend individual Government agencies. CIGIE continues to increase its role in helping IGs identify and recommend ways to address those transcendent issues. Like CIGIE, the Legislation Committee has striven to help the IG community formulate and express our community's views on the most pressing legislative issues affecting oversight and the common issues in the programs we oversee. Towards that aim, we continue to look forward to engaging Congress on ways to further enhance IG oversight.