



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

October 08, 2020

The Honorable James Inhofe, Chair
Committee on Armed Services
U.S. Senate

The Honorable Jack Reed, Ranking Member
Committee on Armed Services
U.S. Senate

The Honorable Adam Smith, Chair
Committee on Armed Services
U.S. House of Representatives

The Honorable Mac Thornberry, Ranking Member
Committee on Armed Services
U.S. House of Representatives

The Honorable Ron Johnson, Chair
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

The Honorable Gary Peters, Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

The Honorable Carolyn Maloney, Chair
Committee on Oversight and Reform
U.S. House of Representatives

The Honorable James Comer, Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives

Dear Chairs and Ranking Members:

As you work to reconcile the House and Senate versions of the Fiscal Year 2021 National Defense Authorization Act (NDAA), we write to share our views on section 1115 in the House-passed version of the legislation, H.R. 6395.¹ Section 1115 would amend the Federal Vacancies Reform Act of 1998 by requiring that any individual who is designated by the President to serve as an acting Inspector General (IG) be a senior individual who currently serves in an Office of an Inspector General (OIG). The Council of the Inspectors General on Integrity and Efficiency (CIGIE) believes that this provision will improve the institutional independence that is critical to effective IG oversight.

In July, CIGIE wrote to a bipartisan group of senators who sponsored similar legislation, S. 3994. We similarly noted that the bill would improve the institutional independence that is critical to IG oversight and stated:

While under the Federal Vacancies Reform Act of 1998 (Vacancies Act)² the IG's selected deputy typically assumes leadership of an OIG, the President may elect to direct a political appointee³ or a senior employee in the agency overseen by the OIG to temporarily serve as acting IG. The

¹ Section 1115 was adopted by voice vote during House floor consideration of H.R. 6395.

² See Pub. L. No. 105-277, Div. C, Title 1, § 151, 112 STAT. 2681-611, (codified at 5 U.S.C. §§ 3345-3349d).

³ Under 5 U.S.C. § 3345(a)(2), this is an individual who has been appointed by the President, by and with the advice and consent of the Senate.

appointment of a political appointee from the administration or the appointment of a senior employee in the overseen agency risks creating both actual and apparent conflicts that negatively affect the ability of the acting IG to maintain the required independence.

For example, a critical function of IGs is protecting the identity of whistleblowers who disclose fraud, waste, and abuse in government. Agency employees will be reluctant to blow the whistle if they suspect a senior agency employee or political appointee will have access to their complaints and their identity.

[S. 3994] would preclude such appointments by limiting who is eligible to temporarily serve as acting IG to the IG's designated deputy or another senior oversight professional from within the IG community. Doing so would prevent the conflicts inherent in asking individuals to serve in a managerial or political role in their agencies while also exercising independent oversight, and ensure the institutional independence required by the IG Act.⁴ Indeed, agencies themselves benefit when an acting IG is independent in both fact and appearance. That independence allows IGs to be a critical, credible source for answers when controversial allegations of mismanagement or wrongdoing arise.⁵

The issues that we highlighted in our July letter are not new ones. Rather, they have stretched across administrations, as indicated in multiple Government Accountability Office (GAO) reports. This is perhaps best illustrated by concerns that have been raised across three successive administrations regarding the Inspector General position at the State Department.

In 2007, GAO expressed concern over the temporary appointment of State Department management officials to head the IG office in an acting capacity and subsequently return to management positions. From January 2003 through April 2005, four such management officials served as acting IG, including those who served in presidential appointments as U.S. ambassadors. Of the four management officials, three returned to significant management positions within the State Department.⁶ In January 2008, another Foreign Service Officer was appointed as acting IG following the departure of the Senate-confirmed Inspector General. That individual led the State IG office for five years. In 2011, GAO again noted that "the appointment of management and Foreign Service officials to head the State OIG in an acting capacity for extended periods of time is not consistent with professional standards for independence."⁷ At the time, both the then-Chair and Ranking Member of the House Committee on Foreign Affairs expressed serious bipartisan reservations about the effectiveness of the State Department's acting IG on account of his concurrent role as a senior Foreign Service officer.⁸

⁴ Jack Goldsmith, the former head of the Department of Justice's Office of Legal Counsel, recently wrote that amending the Vacancies Act to prohibit political appointees and agency officials from serving as an acting IG was an effective, "clearly constitutional" way to promote IG independence (June 10, 2020). <https://www.lawfareblog.com/constitutional-response-trumps-firings-inspectors-general>.

⁵ CIGIE Letter to Senators Johnson, Peters, Grassley, Portman, Lankford, Hassan, Carper, Romney, Tester, Feinstein, and Collins re. S. 3994, the "Securing Inspector General Independence Act of 2020" (July 8, 2020). https://www.ignet.gov/sites/default/files/files/S3994_CIGIE_Views_letter_07082020.pdf.

⁶ Government Accountability Office, "Inspectors General: Activities of the Department of State Office of Inspector General," GAO-07-138, page 27 (Mar. 23, 2007).

⁷ Government Accountability Office, "State Department Inspector General: Actions to Address Independence and Effectiveness Concerns Are Under Way," GAO-11-382T, page 2 (April 5, 2011). <https://www.gao.gov/assets/130/125878.pdf>.

⁸ *Watching the Watchers: The Need for Systemic Reform and Independence of the State Department Inspector General*: Hearing Before the H. Comm. on Foreign Affairs (April 5, 2011). <https://www.govinfo.gov/content/pkg/CHRG-112hhrg65626/html/CHRG-112hhrg65626.htm>.

Similar concerns persisted until a permanent IG, Steve Linick, was nominated by the President and confirmed by the Senate in 2013. At a 2015 hearing to discuss OIG vacancies, Chairman Johnson and multiple witnesses discussed the perception that the State Department's acting IG had failed to conduct independent and effective oversight of then-Secretary Hillary Clinton because of the acting IG's temporary appointment and the inherent conflict of interest created when an official serves in both a management and an oversight role simultaneously.⁹ Similarly, in a letter to CIGIE and then-Secretary of State Kerry in 2015, Senator Grassley raised specific concerns about the performance of the State Department's acting IG, noting, "As these examples demonstrate, an inspector general must be independent, because agencies cannot be trusted to investigate themselves."¹⁰

The May 2020 designation of a State Department presidentially appointed, Senate-confirmed official and the subsequent September 2020 designation of a Foreign Service officer and appointed ambassador to serve as the acting IG at the State Department has again raised independence concerns, as it did during the Bush and Obama administrations. This challenge is not unique to the State Department Inspector General. For example, in May 2020, the Deputy IG at the U.S. Department of Transportation who had been serving as acting IG was replaced with a presidentially appointed and Senate confirmed official, the head of the Department's Federal Pipeline and Hazardous Materials Safety Administration. Addressing independence principles for Inspectors General, GAO again 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 independence requirements of generally accepted government auditing standards, other professional standards that IGs follow, and the purposes of the IG Act."¹¹ In the same report, GAO recognized the potential for significant threats to independence posed by IGs with "dual-hatted" roles.¹²

In our view, the institutional independence of all OIGs would be strengthened by the reforms contemplated in section 1115 of H.R. 6395. We thank you for considering these views and for your continued support of the IG community. If you have any questions, please do not hesitate to contact us.

Sincerely,



The Honorable Michael Horowitz
Chair, CIGIE
Inspector General, Department of Justice

Kathy A. Buller
Chair, CIGIE Legislation Committee
Inspector General, Peace Corps

⁹ *Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years*: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs (June 3, 2015). <https://www.hsgac.senate.gov/hearings/watchdogs-needed-top-government-investigator-positions-left-unfilled-for-years>

¹⁰ Letter from Senator Charles Grassley to the Honorable Michael Horowitz and the Honorable John Kerry (August 27, 2015). <https://www.grassley.senate.gov/sites/default/files/news/upload/2015-08-27%20CEG%20to%20CIGIE%20and%20State%20Dept%20%28IG%20Vacancy%29.pdf>

¹¹ 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>

¹² *Id.* at 7.