



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

October 6, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland
Security and Governmental Affairs
United States Senate

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland
Security and Governmental Affairs
United States Senate

Dear Chairman Johnson and Ranking Member Carper,

On behalf of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), we write to strongly support the bipartisan substitute amendment to Senate bill S.579, the “Inspector General Empowerment Act of 2015” (S.579).¹ This legislation is critical to ensuring IGs receive access to “all” records needed to conduct effective, independent oversight. This legislation will also strengthen the ability of IGs to provide the type of rigorous and thorough oversight of government programs and operations that is expected by taxpayers.

A bedrock principle of the Inspector General Act of 1978, as amended (IG Act), is that IGs must have access to “all” agency records and information necessary to conduct oversight. However, two months ago, an opinion of the Department of Justice’s Office of Legal Counsel (OLC) determined that Section 6(a) of the IG Act does not give the IG for the Department of Justice (DOJ) independent access to all records in the DOJ’s possession that are necessary to perform its oversight work. OLC’s restrictive reading of the IG Act turns that bedrock principle of access on its head by allowing officials whose agencies are under review to decide what documents an IG can and cannot have. This is fundamentally inconsistent with the independence that is critical for effective and credible oversight. As such, the OLC opinion represents a potentially serious challenge to the authority of every IG and places our collective ability to have timely and independent access to agency records and information at risk. Indeed, at a hearing before the Senate Judiciary Committee on August 5, 2015, the DOJ itself supported a legislative solution to this issue. S. 579 does just that by making clear that no law or provision restricting access to information applies to IGs unless Congress expressly so states, and that such IG access extends to all records available to the agency, regardless of location or form.

¹ In addition to being sponsored by Chairman Johnson and co-sponsored by Ranking Member Carper, the bipartisan substitute amendment is co-sponsored by Senators Ayotte, Baldwin, Collins, Cornyn, Ernst, Grassley, Kirk, Lankford, McCaskill, and Mikulski.

Additionally, S.579 would address a number of important issues of concern to the IG community and enhance our ability to root out waste, fraud, abuse, and mismanagement. First, it reaffirms existing legal precedent that the supervision provided by an agency head over an IG is 'nominal,' ensuring that any supervision by an agency head does not inhibit an IG's discretion in performance of its oversight work. Second, the bill limits an agency head's ability to improperly sideline an IG by placing the IG in an involuntary non-duty status. Third, the bill provides testimonial subpoena authority to IGs during the course of an investigation or inquiry related to the programs overseen by those IGs, strengthening the ability of IGs to obtain relevant evidence and provide meaningful oversight.² Finally, S.579 strengthens IG oversight of improper and duplicative government payments by exempting IGs from the Computer Matching and Privacy Protection Act (CMPPA) and provisions of the Paperwork Reduction Act (PRA). The CMPPA currently requires an IG to submit its proposal for a Computer Matching Agreement to a protracted review by the very agency the IG oversees, leaving the IG's request to the discretion of agency leadership. Similarly, under the PRA, an IG undertaking a survey must first obtain approval from a "senior official" of the agency and then from the Office of Management and Budget. Requiring agency officials to approve OIG surveys conflicts with the mandate that IGs be independent. Removing these impediments will enable IGs to conduct their work in a more timely, efficient, and independent manner.

Thank you for your efforts to strengthen the ability of IGs to provide oversight of government programs and operations. In the over three decades since the IG Act's passage, Inspectors General have saved taxpayers hundreds of billions of dollars and improved the programs and operations of the Federal government through their independent oversight. S.579 will allow us to build on this record of accomplishment, and to provide even more effective oversight for the American public in the years ahead. We remain available to continue to work with you and the Congress on the important issues addressed in this legislation.

Sincerely,



Michael E. Horowitz
Chair, CIGIE



Kathy A. Buller
Chair, CIGIE Legislation Committee

cc: The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Barbara Mikulski
Vice Chairwoman
Committee on Appropriations
United States Senate

² While the current proposed legislation does not provide testimonial subpoena authority to the Inspectors General of the Intelligence Community or Central Intelligence Agency, we understand that is under consideration by the Senate.

The Honorable Kelly Ayotte
Committee on Homeland
Security and Governmental Affairs
United States Senate

The Honorable Tammy Baldwin
Committee on Homeland
Security and Governmental Affairs
United States Senate

The Honorable Susan Collins
Committee on Appropriations
United States Senate

The Honorable John Cornyn
Committee on the Judiciary
United States Senate

The Honorable Joni Ernst
Committee on Homeland
Security and Governmental Affairs
United States Senate

The Honorable Mark Kirk
Committee on Appropriations
United States Senate

The Honorable James Lankford
Committee on Homeland
Security and Governmental Affairs
United States Senate

The Honorable Claire McCaskill
Committee on Homeland
Security and Governmental Affairs
United States Senate