

Council of the Inspectors General on Integrity and Efficiency
Q&A Guide for Offices of Inspector General
Responding to Reporting Requirements for the
Semiannual Reports to Congress, as Imposed by the Inspector General
Empowerment Act of 2016 and the National Defense Authorization Act of 2020

The Inspector General Empowerment Act of 2016 (IGEA) established new reporting requirements for the Semiannual Reports to Congress (SARC). These requirements amended portions of §5 of the Inspector General Act (IG Act). In an effort to assist Offices of Inspector General (IG Offices) with understanding and responding to these new reporting requirements, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) created a SARC Working Group in 2017. The Working Group created an implementation guide in a “Q&A” format. After passage of the National Defense Authorization Act of 2020 (hereinafter, “FY20 NDAA”), a similar CIGIE Working Group updated this guide in 2020. The updated portion appears at questions 14, 15 and 16.

This guide is not binding on any IG Office. Rather, it is designed to assist IG Offices in complying with the IGEA SARC reporting requirements, as well as with the FY20 NDAA SARC reporting requirement. Moreover, with respect to the provisions of the IGEA, the FY20 NDAA and the IG Act discussed herein, the guide does not represent the official legal interpretation of CIGIE, nor that of any CIGIE members. Each IG Office should make its own independent assessment of how to apply the SARC reporting requirements discussed herein. Because the legal parameters are not identical across the IG community, IG Offices are strongly encouraged to consult with their respective office of legal counsel. IG offices may also seek further clarification by engaging in discussions with legislative committees, as appropriate.

The Q&A format herein is organized according to specific questions that arise from the IGEA and from the FY20 NDAA, as those statutes relate to the IG Act and to the SARC. After incorporating the IGEA verbiage and the FY20 NDAA verbiage into the IG Act, the pertinent portions of the IG Act, as amended, appear below in italicized green font. The questions are numbered as closely as possible to the order in which the applicable statutory verbiage appears in the IG Act.

§5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems; disclosure of information; definitions

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to-

(10) a summary of each audit report, inspection reports, and evaluation reports issued before the commencement of the reporting period-

(A) for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(B) for which no establishment comment was returned within 60 days of providing the report to the establishment; and

(C) for which there are any outstanding unimplemented recommendations, including the aggregate potential cost savings of those recommendations.

- 1. Question:** What is meant in §5(a)(10) by having to provide “a summary of each audit report, inspection reports, and evaluation reports...”? How, as is the case for some IGs, can the SARC best communicate voluminous information that could potentially include as many as 1,000 recommendations?

Response: We recommend IG Offices provide a narrative summary section. This is a customized summary section that may include detailed summaries, priority summaries, a link to the summaries/reports on your website, etc. The size and scope of the narrative summary section may vary depending on the size of the IG Office. For example, larger IG Offices with a high volume of unimplemented recommendations may choose to incorporate or provide a link to their Compendium of Unimplemented Recommendations or another source document where the relevant information appears. On the other hand, smaller IG Offices or other offices with fewer reports to summarize may offer a narrative summary of each report that contains outstanding unimplemented recommendations.

Whereas, question 1 of the Chairmen Grassley/Johnson letters previously sought an accounting of this information, this new requirement seeks a summary of each report. Because an accounting is not identical to a summary, we recommend providing a summary of this information, or at a minimum, a summary table that includes basic information about the report, such as:

Fiscal Year	Number of Reports with Unimplemented Recommendations (such as report title, report number, hyperlink to report, etc.)	Number of Unimplemented Recommendations	Dollar Value of Aggregate Potential Cost Savings ¹
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2. **Question:** Does the placement of “and” between §5(a)(10)(B) and §5(a)(10)(C) require a summary when all three conditions are met or does “and” really mean “or”?

Response: A literal interpretation of “and” would limit summaries to reports for which all three criteria are met, which may effectively nullify reporting under these provisions, thereby reducing the scope of reporting and providing much less information to Congress. On the other hand, interpreting the language in §§5(a)(10)(A) through (C) with a preference toward reporting when (A), (B) or (C) is met would be more consistent with the requirement of IG Act §2(3) to keep Congress fully and currently informed about a lack of agency responsiveness to IG reports. This reporting preference would suggest reporting three separate displays or sections in the report. Under this preference, if an IG Office has responsive information to any of the three conditions, it should be reported. Such reporting beyond a strict interpretation of the “and” language in §5(a)(10)(B) is also consistent with IG Act §5(a), which indicates that reporting need not be limited to the requirements listed as subsections to §5(a).

3. **Question:** Regarding the requirement in §5(a)(10)(B) to provide a summary of certain reports, “for which no establishment comment was returned within 60 days of providing the report to the establishment,” what if we do not track that information, or what if the agency asks for an extension?

Response: If an agency engages in substantive discussions and/or correspondence with an IG Office within 60 days of an IG Office issuing a report to the agency, (i.e., discussions about report content, findings, how or if the agency intends to address OIG report recommendations), such substantive discussions or correspondence could be considered an “establishment comment.” Substantive discussions, informal correspondence containing substantive discussions, and formal responses/comments about report content, including findings, or how or if an agency intends to address a recommendation, should be documented for tracking purposes. We recommend

¹ In S. 114-36, the Committee Report to a predecessor bill to the Inspector General Empowerment Act, S. 579, HSGAC references the intent to receive information similar to the Grassley/Johnson letter (“These reports are not statutorily required; they have been supplied pursuant to a 2010 request by then-Ranking Members Tom Coburn and Charles E. Grassley. On February 27, 2015, Chairman Ron Johnson and Chairman Charles E. Grassley renewed the requests....Specifically, the requested reports provide information concerning: ...unimplemented IG recommendations; reports not responded to by the agency within 60 days;....These semi-annual reports have been a significant source of information to the Members, and help the committees ensure they are supporting the IGs and performing effective oversight of the executive branch. Because they are not statutorily required, however, they have not necessarily been provided to all appropriate Members and committees. The Committee believes that the request for these letters should be codified as a requirement to keep Congress better informed as well as to support the community of IGs and empower their work.”).

reporting non-compliance with the 60-day practice when an agency does not engage in any substantive discussions and/or correspondence about report content, or provide any substantive comments in any manner within 60 days of an IG Office transmitting a report to the agency for comment. While a request for an extension is not synonymous with a substantive agency comment, IG Offices should consult with their office of legal counsel to decide whether these requests could be considered “establishment comments.”

4. **Question:** In connection with §5(a)(10)(C) reporting, is Congress looking for unimplemented recommendations for the given SARC reporting period or all outstanding unimplemented recommendations dating back to when the respective IG Office was first established?

Response: We recommend a summary of all outstanding unimplemented recommendations, including those which have passed the agreed-upon implementation dates, and which fit the reporting criteria in §§5(a)(10)(A) and (10)(B), dating back to when the respective IG Office was first established. It may be advisable to distinguish between unimplemented recommendations that are past due and recommendations with future implementation dates beyond the current reporting period. If it is not feasible for an IG Office to provide information prior to a certain date, consider identifying that date in a footnote or textual statement within the report. Another approach would be to limit reporting to the recommendations that have not been rendered obsolete or irrelevant over the passage of time. Regardless of the approach taken, a transparent explanation of the chosen approach is recommended.

5. **Question:** Please clarify “aggregate potential cost savings” as referenced in §5(a)(10)(C), and whether IG Offices should report aggregate potential cost savings for each report separately or the total for all reports.

Response: Regarding what is included in aggregate potential cost savings, we understand “aggregate potential cost savings” as including questioned costs and funds put to better use, which would be consistent with the IG Act and the interpretation CIGIE reporting has used to report “potential savings,” which Congress quoted in its Report by the Committee on Oversight and Government Reform issued in support of the passage of the IGEA (Committee Report). Therefore, when reporting “a summary of each audit report, inspection reports, and evaluation reports issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period – (C) for which there are any outstanding unimplemented recommendations, including the *aggregate potential cost savings* of those recommendations” per §5(a)(10), we recommend including questioned costs and funds put to better use as potential cost savings.

The IG Act, in §5(f), specifically defines the terms “questioned costs,” “unsupported costs,” “disallowed costs,” and “recommendations that funds be put to better use.” The

legislation uses five examples to define “funds put to better use,” then includes a sixth item: “any other *savings*” which are specifically identified. The use of the word “savings” within the definition of “funds put to better use” implies that Congress sees the “funds put to better use” as included in the general definition of cost savings.

The Committee Report stated: “During fiscal year 2013, 72 Offices of Inspector General made recommendations with *potential cost savings* to taxpayers totaling \$51.8 billion².” That report cites as its source the CIGIE *Progress Report to the President Fiscal Year 2013*³. The inside front cover of the CIGIE report shows “...*potential savings* totaling approximately \$51.8 billion...” and states that it is composed of \$37 billion in potential savings from audit recommendations agreed to by management and \$14.8 billion from investigative receivables and recoveries. Table 3 on page 15 of the CIGIE report shows that the \$37 billion was made up of \$32 billion of funds put to better use and \$5 billion in questioned costs.

Regarding whether aggregate potential cost savings should be reported for each report separately or cumulatively for all reports, on its face, §5(a)(10) refers to “each report.” Thus, a strict construction of this language would mean IG Offices should report aggregate potential cost savings separately for each report. However, we note that both the Committee Report and the Johnson/Grassley request referred to cumulative totals. Thus, IG Offices may choose to provide the cumulative total in addition to the potential cost savings for each report. See the response to Question 1 for guidance on how to report this information.

- 6. Question:** In considering when the report has been provided to the establishment under §5(a)(10)(B), should draft reports to the agency trigger the “60-day” period?

Response: We encourage IG Offices to be consistent with their business processes when determining when the “60-day” requirement has been triggered. More specifically, IG Offices should consider the “60-day” reporting requirement under §5(a)(10)(B) consistently with past responses to question 2 in the Chairmen Grassley/Johnson letter, which requests a narrative description of all audits and evaluations “provided to the agency for comment but not responded to within 60 days.” Similarly, if IG business processes are designed to obtain comments on draft versions of IG reports, the reporting under §5(a)(10)(B) could be interpreted to mean any final report issued before the commencement of the reporting period for which the establishment did not comment within 60 days on the draft version of that report.

§5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems; disclosure of information; definitions

² Committee Report available at: <https://www.gpo.gov/fdsys/pkg/CRPT-114hrpt210/pdf/CRPT-114hrpt210.pdf>

³ The CIGIE report is available at: <https://www.ignet.gov/sites/default/files/files/CIGIE%202013%20Progress%20Report.pdf>

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to-

(17) statistical tables showing-

(A) the total number of investigative reports issued during the reporting period;

(B) the total number of persons referred to the Department of Justice for criminal prosecution during the reporting period;

(C) the total number of persons referred to State and local prosecuting authorities for criminal prosecution during the reporting period; and

(D) the total number of indictments and criminal informations during the reporting period that resulted from any prior referral to prosecuting authorities;

(18) a description of the metrics used for developing the data for the statistical tables under paragraph (17);

- 7. Question:** Given the fact that the IGEA took effect mid-way through the current reporting period, should IG Offices attempt to retroactively compile the data for the above requirement as of October 1, 2016 or should IG Offices start tracking the data as of the date of the IGEA in December 2016?

Response: A number of IG Offices do not currently track information in such a way as to readily comply with all aspects of subsection §5(a)(17). The fact that the IGEA was enacted in the middle of the current reporting period may compound the difficulty in reporting such information. IG Offices in these situations should disclose in paragraph 5(a)(18) their methodology or any limitations on their ability to fully respond to these requirements for this semiannual reporting period.

- 8. Question:** How should we define “investigative report?” What if it is not feasible to determine how many investigative reports were issued, particularly in larger IG Offices?

Response: Because the IG community is so diverse, it would be difficult for the entire community to agree on a single matrix for this statistical table. We recommend discussing these and related issues with your office of legal counsel and components and defining these terms and requirements to the best of your abilities. We recommend using §5(a)(18) as a means to clearly explain the information provided, including what type of reports you are including in the total figure provided for subsection §5(a)(17)(A).

- 9. Question:** Should we include sealed indictments?

Response: Similar to the response above, each IG Office should decide on its own whether to include sealed indictments in their statistical table. In the metrics

explanation required by §5(a)(18), we recommend stating whether or not the statistical numbers include sealed indictments. Either way, the reporting should not be formatted in such a way as to allow identification of the number of any sealed indictments. Also see §5(e) for information on protections for such information.

10. Question: Regarding the word “referred,” some IG Offices track referrals by case and not by the individual person. §§5(a)(17)(B) and (17)(C) require “the total number of persons referred.” May IG Offices continue to report cases referred?

Response: While practices are mixed in the IG community, the indication is that Congress wants to track persons (i.e., a headcount) in order to track a consistent metric across IG Offices. Those IG Offices requiring time to revise their internal tracking systems in order to report the number of persons referred may, after making a good faith effort to respond to the requirement, consider describing in §5(a)(18) metrics used to respond to §§5(a)(17)(B) and (17)(C) and any limitations on their ability to fully respond to the requirements.

Regarding the definition of “persons,” IG Offices should consult with their office of legal counsel as to whether a “person” referred includes an entity. For example, a referral to DOJ of two individuals and a business entity may equate to three “persons.”

11. Question: §§5(a)(17)(B) and (17)(C) require separate reporting of referrals to DOJ (in §5(a)(17)(B)) as well as the number of referrals to state and local authorities (in §5(a)(17)(C)). May IG Offices continue to combine these numbers as one data point of referrals?

Response: The above response notes Congress’s interest in a headcount of referrals, and Chairman Chaffetz has expressed interest in DOJ’s handling of IG referrals. IG Offices should start separating out the number of DOJ referrals vs. the number of state and local referrals. As with other aspects of §5(a)(17), IG Offices may, after making a good faith effort to respond to the requirement, consider describing in §5(a)(18) metrics used to respond to §§5(a)(17)(B) and (17)(C) and any limitations on their ability to fully respond to the requirements.

12. Question: Should the metrics be standardized?

Response: As mentioned above, due to the diversity of the IG Offices – from personnel size to the data collected – we do not have a specific recommendation for responding to §5(a)(18). Based on the questions presented thus far, however, it is likely that many IG Offices will want to define “investigative reports” and may want to specify if their tables include sealed indictments. IG Offices may want to consider including circumstances where a limitation prevented fully responding to the requirements. For example, as discussed above, some IG Offices are currently unable to report persons referred as

opposed to cases referred. Other IG Offices have explained they currently cannot report DOJ referrals separately from the state and local referrals.

§5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems; disclosure of information; definitions

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to-

(19) a report on each investigation conducted by the Office involving a senior Government employee where allegations of misconduct were substantiated, including the name of the senior government official (as defined by the department or agency) if already made public by the Office, and⁴ a detailed description of-

(A) the facts and circumstances of the investigation; and

(B) the status and disposition of the matter, including-

(i) if the matter was referred to the Department of Justice, the date of the referral; and

(ii) if the Department of Justice declined the referral, the date of the declination;

(20) a detailed description of any instance of whistleblower retaliation, including information about the official found to have engaged in retaliation and what, if any, consequences the establishment imposed to hold that official accountable;

(21) a detailed description of any attempt by the establishment to interfere with the independence of the Office, including-

(A) with budget constraints designed to limit the capabilities of the Office; and

(B) incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information, including the justification of the establishment for such action; and

(22) detailed descriptions of the particular circumstances of each-

(A) inspection, evaluation, and audit conducted by the Office that is closed and was not disclosed to the public; and

(B) investigation conducted by the Office involving a senior Government employee that is closed and was not disclosed to the public.

13. Question: Please clarify “senior government employee.” What about instances in which the legislative definition may not fit the personnel?

⁴ SEC. 1710. INCLUSION OF CERTAIN INDIVIDUALS INVESTIGATED BY INSPECTORS GENERAL IN THE SEMIANNUAL REPORT. Section 5(a)(19) of the Inspector General Act of 1978 (Public Law 95–452; 5 U.S.C. App.) is amended by inserting “the name of the senior government official (as defined by the department or agency) if already made public by the Office, and” after “including.”

Response: The IGEA defines a “senior government employee” as:

- (A) an officer or employee in the executive branch (including a special Government employee as defined in section 202 of title 18, United States Code) who occupies a position classified at or above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and
- (B) any commissioned officer in the Armed Forces in pay grades 0–6 and above.

For clarification, the base pay of a GS-15, step 1 in 2017 is \$103,672. Multiplying that amount by 120% yields the amount of \$124,406. For additional guidance, we note that the IGEA’s definition of a senior government employee mirrors language in §101(f) of the Ethics in Government Act, whereby Congress defines which employees are required to file a financial disclosure form. The similarity of the verbiage suggests that Congress consistently delineates the level of seniority, which triggers added scrutiny. If, however, the IGEA’s definition does not fit the appropriate profile of senior government employees under your purview, we recommend consulting with your office of legal counsel.

14. Question: Please clarify the meaning of the term “senior government official.”

Response: The term “senior government official” is not defined in the FY20 NDAA, nor is this exact term defined in the IG Act.

For clarification, if an IG Office’s department or agency does define “senior government official” then IG Offices are to follow that definition. If, however, an IG Office’s department or agency does not define the term, IG Offices have the option of asking their respective departments or agencies to define the term and then to follow the definition, once it becomes available. In the absence of a definition of the term, then IGs should consider applying the term as if it were synonymous with the similar term of “senior government employee.” The IG Act defines the latter term as follows:

- (A) an officer or employee in the executive branch (including a special Government employee as defined in section 202 of title 18, United States Code) who occupies a position classified at or above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and
- (B) any commissioned officer in the Armed Forces in pay grades 0–6 and above.

15. Question: How should we address Personally Identifiable Information (PII⁵), Privacy Act, and other concerns over protected information with regard to §§5(a)(19), (20) and (22)? Should we identify the subject by name, title, pay grade, duty position, etc.?

Response: Balancing transparency and privacy requires careful analysis. Freedom of Information Act (FOIA), other laws, rules and regulations pertaining to a given report or document have not been overridden by the IGEA, nor by the FY20 NDAA. While the misconduct of senior government employees is often of greater public interest than that of lower-level employees, the senior government employees may still retain a privacy interest under laws governing public disclosure (e.g., FOIA or the Privacy Act). CIGIE therefore recommends that each IG Office address PII and Privacy Act concerns consistently. To that end, we recommend consulting with your office of legal counsel and FOIA office. As a general rule, where the more detailed FY20 NDAA disclosures are not triggered, SARC reporting requirements could be satisfied with a reference such as “a senior Government employee allegedly engaged in...”.

We recommend each IG Office formulate a definitive response plan for addressing PII and Privacy Act concerns and consistently apply it when drafting responses.

Pursuant to §5(e)(1) of the IG Act, public disclosures under the IG Act are prohibited if the disclosure is specifically prohibited by any other provision of law. This express limitation still applies to the SARC reporting requirements in the IGEA. For example, 44 U.S.C. §3555(f) (Federal Information Systems Modernization Act) provides statutory authority for agencies to “take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.” Consult with your office of legal counsel if you have any questions regarding the correct balance of transparency and privacy in this context.

16. Question: What is meant by the term “made public by the office” and how should it be applied?

Response: The word “office” refers to the IG Office. If the IG Office, as opposed to some other source, has made the name public through the official channels of that IG Office, then such a disclosure would have been made public by “the office.” In contrast, accidental disclosures and leaks, or other unofficial disclosures such as by the media, would not have been made public by the office. Typical disclosures made during the course of an investigation, such as to other OIG offices or to witnesses during interviews, would not be considered to be public disclosures. Releases under FOIA

⁵ OMB’s definition of PII, from OMB memo M-07-16, states that “personally identifiable information refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

present another facet of the analysis needed for this reporting requirement. Under the theory that release to one party under FOIA constitutes a release to all, names disclosed in response to a FOIA request may well constitute a public release for purposes of this analysis. With this response in mind, however, IG Offices should consult with their respective offices of legal counsel any time the precise contours of this verbiage might be unclear in the context of a particular situation.

17. Question: What is the definition of “detailed discussion/response” and how much detail should be provided?

Response:

17A. Regarding §5(a)(19)(A), IG Offices should review each related case individually and consult with their office of legal counsel on the level of detail to provide. For example, DOJ OIG provides information on how they approach this question on their webpage titled, [“Investigative Findings in Cases Involving Administrative Misconduct.”](#) The webpage contains links to summaries of investigative findings in cases involving administrative misconduct that meet either of the following criteria: (1) cases involving as subjects members of the Senior Executive Service and employees at the GS-15 grade level or above, and Assistant U.S. Attorneys, in which the OIG found misconduct and no prosecution resulted; or (2) cases involving high profile investigations, or in which there may otherwise be significant public interest in the outcome of the investigation.

17B. Regarding §5(a) (20), IG Offices must protect the PII of the whistleblower and should consider whether the PII of the retaliating official should be protected. The IG Act states in §(5)(e)(5) that, “An Office may not provide to Congress or the public any information that reveals the personally identifiable information of a whistleblower under this section unless the Office first obtains the consent of the whistleblower.” Given the sensitivity of these topics, consultation with your office of legal counsel is highly recommended.

17C. If an IG Office does not have access to whistleblower retaliation cases or the results of those cases, then the IG Office should explain this circumstance in its response to §5(a) (20).

17D. Regarding §5(a) (21), IG Offices should consult with their respective office of legal counsel when deciding how to define “interfere” and “significantly delayed access.” For example, an IG Office may consider including situations in which an agency delays or ignores an IG request for information or provides less information than what was requested. Consider that IG Act § (6)(a)(1)(A) states that IG’s are authorized “to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act.” The new statutory requirement to provide IGs with

“timely access” establishes a context for the verbiage “interfere” and “significantly delayed access.”

17E. Regarding §5(a) (22), IG Offices can consider providing a roll-up summary of audits, inspections, and evaluations, which include title, report number, date released, and possibly a brief summary of the reports. For investigations, we understand more information should be provided when the investigations are substantiated, similar to the DOJ OIG examples above. When reporting substantiated cases, IG Offices should include the status and disposition of the administrative action by the agency, even if the action has not yet been determined. If the investigations were unsubstantiated, the privacy rights of the persons investigated may weigh in favor of limiting disclosure.

18. Question: How should we define “substantiated” allegations of misconduct under §5(a)(19)?

Response: On the spectrum of evidentiary certainty, a “substantiated” allegation may require a lower standard of proof than a conviction. One common understanding is to consider an allegation of misconduct substantiated when the investigation is completed and reveals sufficient facts to establish credible evidence of the misconduct. Because investigations can vary widely by circumstances, IG Offices should consult with their office of legal counsel when making determinations as to which allegations of misconduct are substantiated and what level of detail to provide.

19. Question: Do these reporting requirements under §5(a)(19) apply to both criminal and administrative cases?

Response: We understand the requirements under §5(a)(19) apply to both criminal and administrative cases.

20. Question: Should §5(a)(19) reporting include open and closed investigations? If open, the IG Office may not be aware of the status of the case if it has been referred to DOJ, and the case may not be disclosed publicly. Also, this section could imply disclosing communications with DOJ, which may be privileged.

Response: We understand §5(a)(19) reporting generally applies only to closed investigations. Disclosures under §5 and all of its subsections, including §5(a)(19), are subject to the prohibitions on disclosure set forth in IG Act §5(e). IG Act §5(e)(1)(C) states that nothing in this section (§5) shall be construed to authorize the public disclosure of information which is a part of an ongoing criminal investigation. However, §5(e)(2) permits public disclosure of information as part of an ongoing criminal investigation if such information has been included in a public record. Due to the complexity of disclosure issues, and exceptions to disclosure, we recommend consulting with your office of legal counsel to make the determination on the propriety of any questionable disclosures under IG Act §5, including changes pursuant to the IGEA.

21. Question: Does §5(a)(22)(B) include investigations in which the allegations were unsubstantiated and/or investigations in which no wrongdoing was found?

Response: Yes. For those instances in which the IG office has substantiated one of more allegations, consider whether further detail is warranted. Conversely, for investigations where allegations were unsubstantiated, the weight of the privacy interest may be greater, and may not require the same level of detail under the IGEA. We also recommend including criminal investigations in which the U.S. Attorneys' Office declined the case. At a minimum, IG Offices should remove PII when describing parties involved in cases with unsubstantiated allegations. See our response for question 14 for further guidance.

22. Question: Should we include grand jury cases or cases that contain classified information?

Response: Pursuant to §5(e)(1) of the IG Act, public disclosures under the IG Act are prohibited if the disclosure is specifically prohibited by any other provision of law. Under §5(e)(1) of the IG Act, the following information is prohibited from public disclosure:

“(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section [§5] may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.”

Therefore, if information, including classified information, grand jury material, or other sensitive material, is prohibited from disclosure by other laws or Executive order, that specific information should not be disclosed. Each IG Office should consult with its office of legal counsel to ascertain the extent to which case information from a grand jury investigation is derived from the grand jury process, and thus is prohibited from disclosure under Rule 6(e) of the Federal Rules of Criminal Procedure, or if case information is classified and cannot legally be disclosed. This may involve consultation with applicable prosecutorial authorities to facilitate a proper assessment and segregation of grand jury material. Rule 6(e) of the Federal Rules of Criminal Procedure establishes rules for grand jury secrecy and must be followed in connection with potential disclosures of grand jury material.

23. Question: Regarding §5(a)(22), how should IG Offices handle the public release of detailed descriptions of the particular circumstances of each (A) inspection, evaluation, and audit, and (B) senior Government employee investigations, conducted by the IG Office that were closed but “not disclosed” to the public? What is the definition of a “not disclosed” inspection, evaluation, audit, or investigation?

Response: IG Offices should consult with their office of legal counsel and decide on a clear distinction between “public” and “not disclosed” reports and investigations. Generally, reports that are completed and posted to IG public facing websites are considered public reports. Publicly providing the title and number of a report or investigation may also be considered “disclosed to the public.” IG Offices are encouraged to consider that detailed descriptions should not include protected information. Accordingly, when providing detailed descriptions of “not disclosed” reports or investigations. IG Offices may consider providing the types of information described below, if not otherwise prohibited by law from disclosure:

- (A) Brief, general descriptions of the reports/investigations that do not include any protected information.
- (B) A listing of the reports or investigations, including report/investigation title/subject matter, report number, and date released.
 - i. If the titles themselves reveal sensitive information, consider providing a more general title than the actual title of the report or investigation.
- (C) If the IG Office has a significant number of “not disclosed” reports or investigations of senior Government employees and those reports or investigations are similar in nature, consider providing a table that places the reports or investigations in detailed, descriptive categories.

24. Question: Please confirm that the language “congressional committees of jurisdiction” in §4(e)(1)(A)(ii) and elsewhere means appropriations, oversight, and authorizing committees.

Response: We understand that the language includes appropriations, oversight, and authorizing committees.

25. Question: Do IG Offices still have to produce reports based on Chairmen Johnson/Grassley evergreen letters and Chaffetz/Cummings letters? How should an IG Office respond to the recent letter from Johnson and Grassley that specifically asked to provide SARCs to Congress within 14 days of transmittal to the head of the establishment?

Response: IG Offices no longer must comply with the recurring SARC request from Chairmen Grassley/Johnson. However, a new request has been made by Chairmen Grassley and Johnson to receive a copy of the SARC immediately after expiration of the statutory deadline for transmittal of the SARC by the head of the agency to the

committees of jurisdiction. With respect to this recent request, IG Offices should adhere to the guidance provided by staff of Chairmen Grassley/Johnson, noted below:

No later than 1 business day after the dates established by Section 5(b) of the Inspector General Act of 1978, as amended (IG Act), for the head of the establishment to transmit the Semiannual reports to the appropriate committees or subcommittees of Congress, OIGs are requested to provide to Chairman Grassley and Chairman Johnson a copy of the Semiannual report. Along with the Semiannual report, the OIG may also provide a copy of the comments to the report by the head of the establishment required under Section 5(b) of the Act. However, the unavailability of such comments should not delay the submission of the Semiannual report to Chairman Grassley or Chairman Johnson.

As the Chaffetz/Cummings letters did not ask IG Offices to respond on a semiannual basis, the same considerations do not apply to their letters. However, the new requirements in the IGEA do not preclude a member of Congress from requesting additional information. The CIGIE Legislation Committee has asked members of Congress to delay making additional requests to the IG community, in order to give IG Offices time to review, discuss, and respond to the new requirements under the IGEA.

SARC Related Question

26. Question: With respect to requests from Congress (including requests from individual members of Congress) for the release of information, if an IG Office provides non-public information described in the SARC to any member of Congress upon request, does release of this information constitute a public release for purposes of FOIA?

Response: It depends. DOJ has long determined that the release of non-public information to a Congressional committee upon request, does not constitute a public release for purposes of FOIA. DOJ has also determined that release of non-public information to a member of Congress relating to an individual, in response to a member's request on behalf of the individual, does not constitute a public release for purposes of FOIA. Otherwise, a release to a member of Congress could constitute a public release.

However, the IGEA §(5)(e)(4) adds a new category of information that upon release to an individual member of Congress, would not constitute a public release. Specifically, IG Act §(5)(e)(1) states, "Nothing in this section shall be construed to authorize the public disclosure of information which is-

- (A) specifically prohibited from disclosure by any other provision of law:
- (B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.”

IG Act §(5)(e)(4) then expressly authorizes disclosure of the above information to a member of Congress, stating: “Subject to any other provision of law that would otherwise prohibit disclosure of such information, the information described in paragraph (1) may be provided to any Member of Congress upon request.” The aforementioned IG Act provision permitting disclosure of information to individual members of Congress that are generally prohibited from public disclosure could be read to suggest that in appropriate cases the disclosure of such information to a member of Congress under this provision would not be considered a public disclosure. CIGIE urges IG Offices to discuss with their office of legal counsel appropriate language to include with disclosures to Congress that describes the sensitivity of information and limitations on disclosure.