June 21, 2024

Honorable Mark Lee Greenblatt
Chairperson
Council of the Inspectors General on Integrity and Efficiency
1750 H Street, N.W., Suite 400
Washington, D.C. 20006

Report of Findings for Integrity Committee Case 22-048

Dear Chairperson Greenblatt:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to 5 U.S.C. § 424(d)(8)(A), the IC hereby forwards its enclosed findings and conclusions regarding IG Gail Ennis, U.S. Social Security Administration Office of Inspector General.

The IC also provided its findings and conclusions to the President, the CIGIE Executive Chairperson, and the Congressional committees of jurisdiction, as required by 5 U.S.C. § 424(d)(8)(A).

Sincerely,

Kimberly A. Howell
Chairperson
Integrity Committee

Enclosure
June 21, 2024

Honorable Jason Miller
Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
1750 H Street NW, Suite 400
Washington, D.C. 20006

Report of Findings for Integrity Committee Case 22-048

Dear Executive Chairperson Miller:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to 5 U.S.C. § 424(d)(8)(A), the IC hereby forwards its enclosed findings and conclusions regarding IG Gail Ennis, U.S. Social Security Administration Office of Inspector General.

The IC also provided its findings and conclusions to the President, CIGIE Chairperson, and the Congressional committees of jurisdiction, as required by 5 U.S.C. § 424(d)(8)(A).

Sincerely,

Kimberly A. Howell
Chairperson
Integrity Committee

Enclosure
June 21, 2024

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Rand Paul
Ranking Member
Committee on Homeland Security and
Government Affairs

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
2517 Rayburn House Office Building
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability

Report of Findings for Integrity Committee Case 22-048

Dear Chairpersons and Ranking Members:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to 5 U.S.C. § 424(d)(8)(A), the IC hereby forwards its enclosed findings and conclusions regarding IG Gail Ennis, U.S. Social Security Administration Office of Inspector General.

After thoroughly reviewing the report of investigation and IG Ennis’s response, the IC found by a preponderance of the evidence that IG Ennis abused her authority and engaged in conduct that undermined the integrity reasonably expected of an Inspector General. Accordingly, the IC recommended appropriate disciplinary action, up to and including removal. The IC provided its findings and conclusions to the President, the CIGIE Executive Chairperson, and the CIGIE Chairperson, as required by 5 U.S.C. § 424(d)(8)(A).

Sincerely

Chairperson
Integrity Committee

Enclosure
June 21, 2024

Via Email
Honorable Gail Ennis
Inspector General
U.S. Social Security Administration
Office of Inspector General
6401 Security Boulevard
Baltimore, MD 21235

Through


Report of Findings for Integrity Committee Case 22-048

Dear Inspector General Ennis:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG).

On May 31, 2022, the IC initiated an investigation into allegations against you and engaged the U.S. Department of Justice OIG to conduct the investigation. After thoroughly reviewing the Report of Investigation and your comments, the IC found by a preponderance of the evidence that you abused your authority and engaged in conduct that undermined the integrity reasonably expected of an Inspector General.\(^1\) In pertinent part, the IC found that you made incomplete, misleading, or inaccurate representations about another OIG to various government entities; failed to retract, withdraw, or otherwise modify those representations when informed they were untrue; and then wrongfully interfered in the IC’s investigation of you and

\(^1\) In accordance with section 10.C.i. of the Integrity Committee Policies & Procedures (ICP&P) (2018), the IC determines "whether (1) facts within the report of investigation are proven by a preponderance of the evidence and (2) those facts provide a reasonable basis to conclude that the Respondent engaged in particular wrongdoing." Moreover, 5 U.S.C. § 424(d) requires the IC to report its investigative findings, regardless of whether the allegations were substantiated or not substantiated.
other SSA OIG senior employees. Rather than recusing yourself from the IC’s investigation due to the inherent conflict of interest, you actively made organizational decisions that impacted the investigation and your self-interest.

The IC provided the enclosed findings and conclusions to the President, the appropriate Congressional committees of jurisdiction, the CIGIE Executive Chairperson, and the CIGIE Chairperson, as required by 5 U.S.C. § 424(d)(8)(A).

Sincerely,

(b) (8)

Kimberly A. Howell
Chairperson
Integrity Committee

Enclosure
June 21, 2024

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Report of Findings for Integrity Committee Case 22-048

Dear Mr. President:

This letter sets forth the findings, conclusions, and recommendations of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) regarding allegations of misconduct against Inspector General (IG) Gail Ennis, Social Security Administration (SSA) Office of the Inspector General (OIG).

The IC finds by a preponderance of the evidence that IG Ennis abused her authority and engaged in conduct that undermined the integrity reasonably expected of an Inspector General.\(^1\) In pertinent part, the IC finds that IG Ennis made incomplete, misleading, and inaccurate representations about another OIG to various government entities; failed to retract, withdraw, or otherwise modify those representations when informed they were untrue; and then wrongfully obstructed the IC’s investigation of her and other SSA OIG executives. Rather than recusing herself from an investigation that concerned her own alleged misconduct due to the inherent conflict of interest, she participated personally and substantially in her official capacity in the SSA OIG’s decision-making regarding the IC’s investigation into her conduct, in clear violation of federal ethics requirements and despite being reminded by the IC in March 2024 of her obligation to recuse herself because the matter being investigated affected her personal interests.\(^2\)

A brief synopsis of the allegations and the IC’s findings are provided below. A detailed Report of Investigation (ROI), which was prepared by the U.S. Department of Justice OIG (IC investigators) on the IC’s behalf, and IG Ennis’s response are also enclosed.

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\(^1\) In accordance with section 10.C.i. of the Integrity Committee Policies & Procedures (ICP&P) (2018), the IC determines "whether (1) facts within the report of investigation are proven by a preponderance of the evidence and (2) those facts provide a reasonable basis to conclude that the Respondent engaged in particular wrongdoing." Moreover, 5 U.S.C. § 424(d) requires the IC to report its investigative findings, regardless of whether the allegations were substantiated or not substantiated.

\(^2\) IC member Christopher Dale was recused from this matter and did not participate in the IC’s deliberations and findings.
IC Jurisdiction and Case History

Congress designated the IC, which is composed of four IGs, a representative from the Federal Bureau of Investigation, and a representative from the Office of Government Ethics, to be the independent mechanism that ensures senior officials in the IG community “perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.”

In May 2022, the IC received a complaint alleging IG Ennis and other senior leaders of the SSA OIG abused their authority and grossly mismanaged the SSA’s Civil Monetary Penalty (CMP) program, when they allegedly levied unprecedented fines against subjects of CMP proceedings without due process and retaliated against two OIG employees who raised concerns about the management of the CMP program.

On May 31, 2022, the IC initiated an investigation into the allegations against IG Ennis, one other current SSA OIG employee, and one former SSA OIG employee. The IC made this decision after it thoroughly reviewed the allegations and supporting documentation, which included a May 6, 2022, opinion from a Merit Systems Protection Board (MSPB) administrative judge. Among other things, the administrative judge found that IG Ennis and other senior OIG employees engaged in whistleblower retaliation against an SSA OIG employee for her protected disclosures regarding the management of SSA OIG’s CMP program.

Pursuant to IC policy, IG Ennis (an IC member) was recused from all matters in this case, as well as any matter before the IC while she was under IC investigation. On May 25, 2022, IG Ennis acknowledged that she was recused from participating in the IC’s consideration of these allegations against her and other senior officials from her office.

During the subsequent investigation, IC investigators found internal SSA OIG documents indicating that SSA OIG did not have evidence that some subjects received notice before the SSA OIG imposed financial penalties, and that for other CMP subjects, the notice provided by the SSA OIG did not comply with the requirements of the CMP statute. In essence, IC investigators had found compelling evidence that the U.S. Government, through the SSA OIG, imposed financial penalties on its citizens without due process or in violation of the notice

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4 The IC notified a fourth subject of the allegations on June 7, 2022, and later expanded the scope of the investigation to include a fifth subject on November 3, 2022.
7 Enclosure (Encl.) 1, Exhibit (Ex.) 3.
8 Specifically, IC investigators found that SSA OIG had not notified some subjects in a manner authorized by Federal Rule of Civil Procedure 4, as required by the CMP statute, before imposing financial penalties. And in three cases, the SSA OIG had no evidence in its file that it provided any notice whatsoever, yet the SSA OIG still imposed penalties exceeding $100K in all three cases. Encl. 1, Ex. 10 at 6.
requirements of the CMP statute, and those individuals may now, or in the future, be subject to financial harm through the withholding of SSA benefits to satisfy the penalties imposed.\(^9\)

With the then-IC Chairperson’s approval and consistent with CIGIE’s Quality Standards for Investigations, IC investigators then readjusted their investigative priorities and prepared a letter with draft recommended corrective actions for the IC’s consideration, which detailed the notice issues that the IC investigators had identified.\(^10\) On March 7, 2024, the IC Chairperson forwarded this letter, which recommended that SSA review whether the notice provided by SSA OIG complied with due process and statutory notice requirements, to the SSA Commissioner for any action deemed appropriate.

IG Ennis, however, actively resisted issuance of the recommended corrective action letter through a variety of means and arguments, to include letters and phone calls to the CIGIE Chairperson (who has the authority to appoint and remove IC members), complaining about the IC, the investigation, its investigators, and otherwise questioning IC investigators’ authority to prepare such a document. CIGIE investigative standards, however, clearly permit such a process and are described later in this report.

IG Ennis’s objections to this matter extended beyond her interactions with the CIGIE Chairperson. In late February 2024, IG Ennis requested review by the DOJ Office of Legal Counsel (OLC) and the U.S. Government Accountability Office (GAO) of the facts and circumstances of the corrective action letter, requesting, among other things, opinions on whether the IC investigation exceeded the IG Act’s grant of authority and whether programmatic recommendations made as part of the IC investigation violated appropriations law.\(^11\) A key component of IG Ennis’s arguments to OLC and GAO was that SSA OIG was not alone in how it notified citizens of proposed CMP penalties. Specifically, IG Ennis strongly asserted that SSA OIG mirrored the processes used by the U.S. Department of Health and Human Services (HHS) OIG, which administers a similar CMP program.

However, IC investigators discovered evidence that IG Ennis’s representations that the SSA OIG and the HHS OIG use the same notice procedures were not true, and that the HHS IG had specifically informed IG Ennis of this fact – yet IG Ennis took no action to correct or withdraw the untrue statements she had made to the CIGIE Chairperson, OLC, GAO, or the IC. Further, IC investigators learned that IG Ennis was participating personally and substantially in an official capacity in the SSA OIG’s decision-making regarding the IC’s investigation of her own alleged misconduct, instead of recusing herself as required by the standards of ethical conduct that apply to employees of the executive branch. Among other things, IG Ennis directed SSA OIG staff to “suspend any work related to” the investigation until OLC’s and GAO’s review was complete, including responding to document or interview requests from IC investigators related to the investigation. Consequently, the SSA OIG refused to cooperate with the IC’s investigation, and the investigation largely stalled.

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\(^9\) CMPs may be recovered through several mechanisms, including by withholding up to 100% of SSA benefits to which an individual might otherwise be entitled. Encl. 1, Ex. 10 at 2-3 & n.4.

\(^10\) IG Kevin Winters served as IC Chairperson until June 16, 2024, when his term ended.

\(^11\) Encl. 1, Ex. 20; Ex. 21.
Accordingly, on March 13, 2024, the IC expanded the scope of its investigation to include additional allegations. The IC investigators were asked to determine:

1. Whether any subject abused his or her authority in the implementation of the CMP program, or grossly mismanaged the CMP program, or otherwise managed the CMP program in violation of applicable laws, rules, or regulations, or made incomplete, misleading, or inaccurate representations about the HHS OIG CMP program to any other federal agency or branch of the federal government, in violation of applicable laws, rules, or regulations.

2. Whether any subject abused their authority by failing to cooperate in this investigation, or by obstruction or attempted obstruction of this investigation, or by a personal and substantial participation in an official capacity in this investigation, and/or violated applicable laws, rules, regulations, or policies related to this conduct.

3. Whether any subject’s actions in any of the above circumstances demonstrate an abuse of authority and/or a lack of the integrity or independence reasonably expected of a senior official in the Inspector General community.

By April 18, 2024, both OLC and GAO had concluded their reviews of IG Ennis’s requests. IC investigators then attempted to reengage with SSA OIG, assuming IG Ennis would honor her promise to begin cooperating at the conclusion of OLC and GAO’s review. Unfortunately, IC investigators encountered multiple instances where IG Ennis wrongfully continued to actively participate in an official capacity in this investigation, rather than recuse herself.

Due to the ongoing nature of IG Ennis’s obstruction of the IC’s investigation, the IC decided to bring this matter to your attention without delay, noting that the other allegations relating to the SSA OIG’s implementation of the CMP program involving IG Ennis and other current and former SSA OIG employees remain under investigation and will be reported upon at a later date.

On May 2, 2024, IC investigators provided their draft ROI to the IC. They concluded by a preponderance of the evidence that IG Ennis abused her authority and lacked the integrity reasonably expected of her position by including inaccurate representations about the HHS OIG in her communications to the CIGIE Chairperson, OLC, GAO, and the IC, and failing to correct those inaccuracies after being notified of their falsity by the HHS IG. They also concluded that IG Ennis’s continued personal and substantial participation in her official capacity in decision-making by SSA OIG concerning the IC’s investigation into her own alleged misconduct violated the standards of ethical conduct applicable to executive branch employees.

On May 2, 2024, in accordance with 5 U.S.C. § 424(d), the IC provided IG Ennis the opportunity

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12 Encl. 1, Ex. 39, Ex. 51. Ultimately, OLC and GAO made no substantive decisions regarding the CMP program’s notice requirement.
13 Encl. 1, Ex. 53.
14 The IC investigators provided the first draft ROI to the IC on April 26, 2024. The IC received the second draft ROI on May 2, 2024, which it then provided to IG Ennis for review and comment. On June 6, 2024, IC investigators provided this final ROI, which acknowledged IG Ennis’s comments to the IC.
to respond to the draft ROI before the IC made its findings.\textsuperscript{15} IG Ennis’s response, which was received by the IC on May 30, 2024, and the final ROI by IC investigators are enclosed.\textsuperscript{16}

\textbf{IC Findings and Analysis}

After thoroughly reviewing the ROI, supporting evidence, and IG Ennis’s response, the IC finds, by a preponderance of the evidence, that IG Ennis abused her authority and engaged in conduct undermining the integrity reasonably expected of an Inspector General when she provided incomplete, misleading, and inaccurate representations about an HHS OIG process to multiple government agencies and failed to correct those inaccuracies after being formally notified that they were untrue. Similarly, the IC finds, by a preponderance of the evidence, that IG Ennis abused her authority when she failed to recuse herself as required by the standards of ethical conduct and engaged in conduct undermining the integrity reasonably expected of her position by obstructing the IC’s investigation.\textsuperscript{17}

\textbf{1. IG Ennis made incomplete, misleading, and inaccurate representations about HHS OIG’s processes and then failed to correct those inaccuracies after it was formally brought to her attention}

The IC finds, by a preponderance of the evidence, that IG Ennis abused her authority and engaged in conduct undermining the integrity reasonably expected of an Inspector General when she provided inaccurate representations about the HHS OIG’s Section 1128A program to multiple federal entities and when she failed to correct those representations after being made aware that they were untrue.

During the IC’s investigation of alleged wrongdoing by current and former senior SSA OIG personnel implementing or overseeing the CMP program, the SSA OIG provided IC investigators with several documents that raised serious concerns about the way the SSA OIG provided notice to CMP subjects. The evidence (or lack thereof) caused IC investigators to question the validity of the SSA OIG’s imposition of civil monetary penalties in the absence of legally sufficient notice.\textsuperscript{18} With the approval of the then-IC Chairperson and consistent with

\textsuperscript{15} On May 2, 2024, the IC provided the redacted draft ROI to IG Ennis with a deadline of May 16, 2024, for any comments. On May 6, 2024, the IC Chairperson approved IG Ennis’s request for an extension, in part, by extending the deadline to May 30, 2024.

\textsuperscript{16} Encls. 1 and 2. Notably, IG Ennis’s response does not directly address the substance underpinning the allegations, but instead makes claims of procedural flaws with the investigation, such as retaliation, and political bias. The IC carefully considered her response and specifically found her arguments to be wholly without merit. The IC also forwarded IG Ennis’s complaints about the IC to the CIGIE Chairperson for any action deemed necessary.

\textsuperscript{17} “Abuse of authority” means an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons.

\textsuperscript{18} Section 1129 of the Social Security Act, which was enacted in 1994, authorizes the Commissioner to initiate a legal proceeding to impose a civil monetary penalty against a person who is alleged to have made false statements to obtain or to continue to receive benefits to which the individual was not entitled or who omitted information that the individual knew or should have known was material to the determination of an initial or continuing benefit. 42 U.S.C. § 1320a-8. Section 1129(b)(1) expressly provides that “The Commissioner…may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil
CIGIE’s Quality Standards for Investigations, IC investigators provided the SSA OIG with a draft letter detailing these concerns and recommending that the SSA (which has ultimate statutory authority for the program) determine whether the SSA OIG has records of notice being provided to CMP subjects, and, if so, whether the methods of service complied with Rule 4, and if not, take corrective action and notify the affected CMP subjects.19

On January 19, 2024, IG Ennis responded to the draft letter on behalf of the SSA OIG, in which response she asserted that the SSA OIG’s process for initiating Section 1129 actions mirrored the process used by the HHS OIG when initiating CMP actions under Section 1128A and that the SSA OIG had “affirm[ed] HHS OIG’s legal interpretation of the service requirements for HHS CMPs as recently as 2024.”20 IG Ennis raised objections to the CIGIE Chairperson and to the IC regarding the draft letter and forwarded the SSA OIG response to OLC and GAO requesting that each of those offices provide legal opinions related to the IC investigation.21 Those communications and supporting attachments likewise asserted that the HHS OIG’s process for initiating CMP actions was similar to the SSA OIG’s, stating, “If SSA OIG has wrongly interpreted the [Section 1129 statute] and failed to provide effective service since 1995, then so too has HHS OIG since 1982.”22

On March 8, 2024, after learning about the representations IG Ennis made about HHS OIG’s procedures for serving notice, the HHS IG formally complained to the IC about IG Ennis’s inaccurate description of the HHS OIG’s procedures for serving notice of the initiation of Section 1128A proceedings.23 That same day, the HHS IG wrote to IG Ennis directly to advise her that the statements she made about the HHS OIG “simply are not true” and to ask IG Ennis to “cease and desist from referring to HHS-OIG’s process as the same as [SSA OIG’s process].”24 The HHS IG also told IG Ennis that she was “alarmed and dismayed that a fellow Inspector General would take it upon herself to describe and characterize the process and procedure used by another Inspector General without so much as a phone call to discuss Procedure.” 42 U.S.C. § 1320a-8(b)(1). SSA OIG administered its CMP program from 1995 until January 20, 2023, when the SSA directed the SSA OIG to cease initiating actions to impose civil monetary penalties under Section 1129 until further notice.

20 Encl. 1, Ex. 20. IG Ennis also asked GAO to opine on whether programmatic recommendations made as part of the IC investigation violated appropriations law by improperly augmenting the SSA OIG’s appropriations, violated the Purpose Statute, 31 U.S.C. § 1301(a), or violated the Anti-Deficiency Act, 31 U.S.C. §§ 1341 & 1342. Encl. 1, Ex. 21.

22 Encl. 1, Ex. 20 at 3 n. 9. After receiving the final corrective action letter from IC investigators, the IC determined that, given the potentially ongoing harm to individuals, waiting to raise these issues until the end of its investigation would not be in the public’s interest and referred the matter to the SSA Commissioner and four congressional oversight committees on March 7, 2024. Encl. 1, Ex. 11, Ex. 12.

23 Encl. 1, Ex. 13 at 1-3.

24 Encl. 1, Ex. 13 at 7-8.
involving them in an ongoing investigation” and that she was “sending letters today to the CIGIE Integrity Committee and to [OLC] providing information and an explanation of how HHS-OIG actually serves process in its CMP cases.”

The IC finds that IG Ennis’s conduct in this regard constitutes an abuse of her authority and conduct undermining the integrity reasonably expected of an Inspector General. Indeed, IG Ennis wrote authoritatively about significant and material aspects of HHS OIG programs, despite the fact that neither she nor anyone from the SSA OIG meaningfully and transparently conferred with the HHS IG or her senior executives to determine if those statements were true. Moreover, IG Ennis’s inaccurate representations about how the HHS OIG serves notice falsely insinuates that the HHS OIG engaged in the same widespread, programmatic reliance on certified mail as the SSA OIG and that they both interpret Rule 4 as authorizing that type of service.

Even after the HHS IG directly advised IG Ennis that her characterization of the HHS OIG’s service of process was not true and asked IG Ennis to “cease and desist,” IG Ennis did not withdraw, retract, or modify her incorrect statements to the IC, the OLC, the GAO, or the CIGIE Chairperson, despite the fact that OLC and the GAO were still in the process of considering official requests from IG Ennis that incorporated her incorrect statements. Again, the IC finds that such actions were an abuse of authority and inconsistent with the integrity reasonably expected of an Inspector General.

2. IG Ennis abused her authority and engaged in conduct undermining the integrity reasonably expected of her position by failing to recuse herself as required by the standards of ethical conduct and obstructing the IC’s investigation.

The IC finds, by a preponderance of the evidence, that IG Ennis abused her authority and engaged in conduct undermining the integrity reasonably expected of an Inspector General by personally and substantially participating in an official capacity in the SSA OIG’s decision-making in the IC’s investigation of her own alleged misconduct, rather than recuse herself.

From the inception of the IC’s investigation in May 2022 through January 2024, the SSA OIG cooperated in the IC’s investigation. However, in February and March 2024, IG Ennis took several actions to obstruct the IC investigation. The IC was troubled to learn that in February 2024, IG Ennis unilaterally issued a directive to the affected SSA OIG staff to suspend any work related to the investigative efforts by the IC, such as responding to IC investigators’ requests for documentation or interviews, and that in February 2024, IG Ennis asked the CIGIE Chairperson to intervene and issue an immediate stay of the IC’s investigation.

In a March 13, 2024, letter the IC specifically reminded IG Ennis of her obligation to recuse herself and “avoid any official involvement in matters affecting your personal interests in this

25 Encl. 1, Ex. 13 at 7-8.
26 On March 15, 2024, OLC advised IG Ennis that it was declining her request for a legal opinion. Encl. 1, Ex. 39.
27 Encl. 1, Ex. 51.
Despite this notice, IG Ennis continued to use her official authority in connection with making decisions for the SSA OIG concerning the IC investigation.

On March 21, 2024, IC investigators received emails from two SSA employees declining to be interviewed because they said IG Ennis had informed them that “at this time, as the agency head for SSA OIG,” she would not “waive any and all applicable privileges, to include confidential, privileged or protected information.” Moreover, the SSA OIG was not permitted to provide documents requested by IC investigators, and a witness cited IG Ennis’s directive as the reason for refusing to schedule an interview with IC investigators.

The IC – or any OIG – cannot accomplish effective oversight when the entity or person they are investigating seeks to limit the participation of witnesses or endeavors to produce some, but not all, records that investigators deem relevant to completing their work. While IG Ennis eventually rescinded her directive, she should never have made such decisions on behalf of the SSA OIG in the first place. Based on her experience as an IG, an IC member, and as a knowledgeable attorney, IG Ennis was fully aware of not only the need to avoid conflicts of interest, but the need to avoid even the appearance of any type of conflict or impropriety in order to preserve the credibility of her office and maintain investigative integrity. In passing the IG Act, Congress expressly acknowledged “the inherent conflict of interest which exists when…investigative operations are under the authority of an individual whose programs” are being investigated.

In a letter to the CIGIE Chairperson and IC Chairperson, IG Ennis claimed that she had “not participated in any matter affecting my personal financial interest and the IC Investigation does not encompass any allegations that I did so.” IG Ennis added that she viewed it as “overreach for CIGIE, the IC, or DOJ OIG to demand that another [Inspector General] cease managing their office with respect to an official proceeding.” Contrary to IG Ennis’s assertion, an individual’s employment and corresponding salary is a financial interest. An IG whose alleged misconduct is under investigation by the IC is at risk of being removed from their position by the President if the IC substantiates the allegations against them; therefore, an IC investigation has a “direct and predictable effect” on their financial interests.

Finally, as a subject of an IC investigation, IG Ennis cannot determine the terms and conditions upon which SSA OIG cooperates with that investigation. Moreover, IG Ennis’s continued failure to recuse herself impeded the IC investigators from fully developing the facts necessary to complete the IC’s investigation and, as such, is in contravention with the law and beneath the standard of integrity expected of an Inspector General.

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28 Encl. 1, Ex. 38 at 2-3.
29 Encl. 1, Ex. 43, Ex. 44.
30 Encl. 1, Ex. 41, Ex. 42.
32 Encl. 1, Ex. 48 at 4.
33 Id.
34 5 U.S.C. § 403(b)
IC Conclusions and Recommendations

The IC finds, by a preponderance of the evidence, that IG Ennis abused her authority and engaged in conduct undermining the integrity reasonably expected of an Inspector General when she provided incomplete, misleading, and inaccurate representations about an HHS OIG process to multiple government agencies and failed to correct those inaccuracies after being formally notified that they were untrue. Similarly, the IC finds, by a preponderance of the evidence, that IG Ennis abused her authority when she failed to recuse herself as required by the standards of ethical conduct and engaged in conduct undermining the integrity reasonably expected of her position by personally and substantially participating in an official capacity in the SSA OIG’s decision-making concerning the IC’s investigation of her own alleged misconduct and acting to obstruct the IC’s investigation. Accordingly, the IC recommends appropriate disciplinary action, up to and including removal.

The IC also provided its findings and conclusions to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the Congressional committees of jurisdiction, as required by 5 U.S.C. § 424(d)(8)(A).

Sincerely,

Kimberly Howell
Chairperson
Integrity Committee

Enclosures:
1. DOJ OIG Report to the Integrity Committee
2. IG Ennis’s Response to the DOJ OIG Report
Enclosure 1
Report of Investigation of Alleged Misconduct by Inspector General Gail Ennis

June 2024
I. Executive Summary

On May 6, 2022, a Merit Systems Protection Board (MSPB) administrative judge issued an opinion finding that Inspector General Gail Ennis (IG Ennis) and other senior officials in the Social Security Administration Office of the Inspector General (SSA OIG) engaged in whistleblower retaliation by taking adverse personnel actions against an SSA OIG employee who had made protected disclosures regarding the SSA OIG's handling of a program within its responsibilities.1 *Shaw v. Social Security Administration*, No. PH-1221-21-0091-W-1, 2022 WL 1448513 (May 6, 2022). The SSA OIG employee's protected disclosures concerned the SSA OIG's administration of a Civil Monetary Penalty (CMP) program that levies fines against individuals who obtain, or continue to receive, Social Security and disability benefits to which they are not entitled through false statements or omissions (which are referred to as “Section 1129 CMP” cases).

Shortly thereafter, in May 2022, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) received multiple allegations that IG Ennis and other current and former SSA OIG officials had abused their authority, engaged in gross mismanagement, and/or violated applicable laws, rules, or regulations in their administration of the Section 1129 CMP program.2 The IC takes action on allegations of wrongdoing against Inspectors General and designated members of their staff, among others, that involve an abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons. *Integrity Committee Policies and Procedures* (ICP&P) §§ 2, 4, & 7.A.

On May 25, 2022, IG Ennis acknowledged that, as an IC member, she was recused from participating in the IC's consideration of these allegations against her and other senior officials from her office. Ex. 3. Pursuant to its procedures, and after considering these allegations, on May 31, 2022, the IC requested that the Department of Justice Office

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1 The SSA filed a petition for review of this decision. Ex. 1 at 1. On January 5, 2024, following the recusal of one of the Merit Systems Protection Board (MSPB) members, the MSPB determined that it lacked a quorum to alter the administrative judge's initial decision. Ex. 1 at 1. Accordingly, the administrative judge's initial decision became the final decision of the MSPB. Ex. 1 at 1. On May 23, 2024, the Social Security Administration (SSA) filed a motion to reopen the MSPB's final decision, following the Senate's confirmation of an additional MSPB board member on May 14, 2024. Ex. 55. The SSA argued that the confirmation of the additional board member provides the MSPB with a quorum to render a decision on the merits of the SSA's petition for review. Ex. 55.

2 These allegations included a May 23, 2022, email from SSA OIG to the Integrity Committee (IC) referring herself, as well as IG Ennis, to the IC for action, if appropriate. Ex. 2. Subject to limited exceptions, the Inspector General Act of 1978, as amended, and Section 5A of the Integrity Committee Policies and Procedures 2018 (ICP&P), require an Inspector General to promptly refer, in writing, to the IC any allegations of wrongdoing against themselves or designated staff members. 5 U.S.C. § 424(d)(4); ICP&P § 5.A.
of the Inspector General (DOJ OIG) conduct an investigation into the allegations of wrongdoing against IG Ennis and other current and former SSA OIG senior officials in the administration of the Section 1129 CMP program. Ex. 4. The same day, the IC notified IG Ennis and three other current and former SSA OIG senior officials of their status as subjects of this investigation; because IG Ennis is a member of the IC, the IC informed her that she was recused from all other IC matters during the pendency of this investigation as well. Ex. 5 at 2. On November 3, 2022, the IC notified a fifth individual that they had been added as a subject of the investigation.

Pursuant to the ICP&P, the IC must be provided with “full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary to carry out the IC’s duties and responsibilities....” ICP&P, Addendum A, § A. The ICP&P further provides that the IC “shall have access to OIG records, documents, witnesses, and other information to the same extent, and under the same terms, that Section 6 of the [Inspector General] Act provides each [Inspector General] with such access with respect to its establishment.” ICP&P, Addendum A, § A. Additionally, the ICP&P states that “[t]he IC does not consider the provision by an OIG of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties.” ICP&P, Addendum A, § D. This provision is consistent with the access granted to Inspectors General to potentially privileged records of the agencies they oversee, as outlined in a 2008 legal analysis by the DOJ’s Office of Legal Counsel (OLC). Ex. 6. Lastly, the ICP&P provides that an Inspector General’s failure “to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information” may result in “an independent finding of wrongdoing against such [Inspector General]...for failure to cooperate in the IC investigation, either as part of its findings, conclusions, and recommendations regarding the underlying investigation or in a separate report.” ICP&P, Addendum A, § E.

From May 2022 through January 2024, the SSA OIG, acting through a designated point of contact (POC), cooperated in the investigation. During this time, the SSA OIG POC provided the DOJ OIG with more than 1.5 million documents for review. As of January 31, 2024, the DOJ OIG had conducted 47 voluntary interviews with 33 current SSA OIG employees and 14 former SSA OIG employees. However, beginning in January 2024, as a result of a direction from IG Ennis, the SSA OIG ceased cooperating with the DOJ OIG after the DOJ OIG alerted the IC and the SSA OIG of potentially serious, and systemic, failures by the SSA OIG to comply with legal requirements for initiating Section 1129 CMP proceedings.

As described in detail below, several of the documents provided to the DOJ OIG by the SSA OIG during the investigation raised serious concerns about the way the SSA OIG had notified subjects, who were later held in default, of the initiation of the Section 1129 CMP actions against them. Specifically, the DOJ OIG identified information in the SSA OIG’s files indicating that the SSA OIG held certain individuals in default and imposed significant civil monetary penalties on them in cases where the SSA OIG did not have any evidence in
its files that the individuals had been provided written notice of the SSA OIG’s initiation of a Section 1129 action against them. Additionally, the DOJ OIG identified numerous cases in which the SSA OIG defaulted individuals and imposed civil monetary penalties on them where the SSA OIG used service methods that Section 1129 does not appear to authorize. This information raised significant questions about the validity of the SSA OIG’s imposition of civil monetary penalties through default determinations against these individuals, who are potentially subject to having their future Social Security and disability benefits withheld in order to satisfy the civil monetary penalties imposed against them.

Following discussions with the IC Chairperson, on December 19, 2023, the DOJ OIG provided the IC Chairperson with a draft letter detailing these concerns and recommending that the Social Security Administration (SSA) take corrective action to address these potentially improper default judgments that had been entered. ³ Ex. 7. On December 20, 2023, the DOJ OIG provided electronic access to the draft letter to the SSA OIG POC and requested that the SSA OIG POC review and comment on whether anything in the draft letter was factually inaccurate or too sensitive for public release. Ex. 8 at 1. The POC requested, and the DOJ OIG provided, electronic access for several additional SSA OIG employees to review the draft letter, including IG Ennis. Ex. 15.

On January 19, 2024, the SSA OIG provided the DOJ OIG with a response in the form of a memorandum from IG Ennis to the Department of Justice Inspector General (SSA OIG Response). Ex. 9. In the SSA OIG Response, IG Ennis acknowledged that the SSA OIG used methods of service that were not authorized by the specifically applicable rule pertaining to service upon individuals within the United States. Nonetheless, IG Ennis argued in the SSA OIG Response that the methods of service the SSA OIG used were legally permissible for several reasons. In support of these arguments, IG Ennis included in the SSA OIG Response a lengthy discussion asserting that the SSA OIG’s legal interpretation of the Section 1129 service requirements, and its process for initiating actions under Section 1129, mirrored the legal interpretation and process used by the Department of Health and Human Services Office of Inspector General (HHS OIG) for initiating CMP actions under Section 1128A of the Social Security Act. Ex. 9 at 6-7. IG Ennis further asserted in the SSA OIG Response that the SSA OIG had “affirm[ed] HHS OIG’s legal interpretation of the service requirements for [Department of Health and Human Services] CMPs as recently as 2024.” Ex. 9 at 15.

In addition to submitting the SSA OIG Response to the DOJ OIG, IG Ennis raised objections to the CIGIE Chairperson and to the IC regarding the DOJ OIG’s draft letter. In

³ The DOJ OIG recommended that the corrective actions be directed to SSA, even though the SSA OIG administered the Section 1129 program during the time period relevant to our investigation, because the SSA Commissioner maintains ultimate statutory authority over the Section 1129 program, the SSA recently exerted its authority to cease initiation of Section 1129 civil monetary penalties, and the SSA has the authority to either collect or compromise the civil monetary penalties the SSA OIG imposed through default. See 42 U.S.C. § 1320a-8(e) and Ex. 14.
those communications, IG Ennis likewise asserted that the HHS OIG’s interpretation of its
CMP statutory provisions and its process for initiating CMP actions was similar to the SSA
OIG’s, and that the DOJ OIG’s draft letter would therefore implicate another Inspector
General’s office. Additionally, IG Ennis sent the SSA OIG Response to the DOJ’s (OLC and
the Government Accountability Office (GAO) in connection with her effort, discussed below,
to have each of those offices provide legal opinions related to the IC investigation. In
communications with OLC, IG Ennis directly asserted that: “If SSA OIG has wrongly
interpreted the [Section 1129 statute] and failed to provide effective service since 1995,
then so too has HHS OIG since 1982.” Ex. 20 at 3 n. 9. IG Ennis’s communications to the
GAO included numerous attachments claiming that the HHS OIG and the SSA OIG held
the same view of the legal requirements and process for serving notice. Ex. 21 at 10.

Upon receipt of the SSA OIG Response that included IG Ennis’s statements about the
HHS OIG, the DOJ OIG contacted the HHS OIG to determine whether IG
Ennis’s assertions in the SSA OIG Response regarding the HHS OIG’s handling of its CMP
program were accurate.4 The DOJ OIG learned that the claims IG Ennis made in the SSA
OIG Response were false. Contrary to IG Ennis’s assertions, the HHS OIG advised the DOJ
OIG that it handled service consistent with the specifically applicable service rule and not in
the manner alleged by IG Ennis. After receiving this information from the HHS OIG, and
carefully reviewing the other arguments IG Ennis made in the SSA OIG Response, on
February 22, 2024, the DOJ OIG finalized the letter notifying the IC of these serious issues
and recommending that the SSA take corrective action to address the potentially improper
defaults that had been imposed. Ex. 10. The IC concluded that waiting to raise these
issues until the end of the investigation would not be in the public’s interest given the
potentially ongoing harm to individuals who had CMPs imposed on them without legally
sufficient notice, and, on March 7, 2024, the IC referred the matter to the SSA
Commissioner and four congressional oversight committees. Ex. 11; Ex. 12.

As we detail in this report, between January and March 2024, IG Ennis took several
actions to impede the IC investigation, including issuing a directive to SSA OIG employees
to suspend their cooperation with the IC investigation and declining requests to schedule
an interview with DOJ OIG investigators.5 IG Ennis claimed that she had “no choice” other

4 These communications were initiated by the DOJ OIG contacting the HHS OIG to determine whether IG
Ennis’s assertions in the SSA OIG Response regarding the HHS OIG’s handling of its CMP
program were accurate. Ex. 35 at 1. In the communications with the HHS OIG, the DOJ OIG did not reference the IC investigation or the
SSA OIG and advised the HHS OIG that the DOJ OIG could not disclose the reason the DOJ OIG was requesting
information about the HHS OIG’s interpretation of service requirements or handling of service in its CMP
program. Ex. 35 at 1. As reflected below, the SSA OIG later revealed the existence of the IC investigation to the
HHS OIG on March 5, 2024, when SSA OIG contacted her counterpart at the HHS OIG. Ex. 35 at 1, 2.

5 IG Ennis herself declined to interview with the DOJ OIG, despite repeated requests during which DOJ OIG
investigators provided IG Ennis’s counsel with multiple proposed interview dates and also advised IG Ennis’s
counsel that the DOJ OIG was “prepared to conduct the interview at any mutually-agreeable location, and at any (Cont’d.)
than to take these actions while her requests remained pending with OLC and the GAO. Ex. 22; Ex. 26 at 1. IG Ennis also instructed two SSA witnesses that the SSA OIG would not waive privileges to allow them to be interviewed by DOJ OIG investigators.

On March 8, 2024, after learning about the representations IG Ennis made in the SSA OIG Response regarding the HHS OIG's handling of its CMP program, the Department of Health and Human Services Inspector General (HHS IG) wrote to IG Ennis directly to advise IG Ennis that the statements in the SSA OIG Response about the HHS OIG “simply are not true” and to request that IG Ennis “cease and desist from referring to HHS-OIG’s process as the same as [SSA OIG's process].” Ex. 13 at 7-8. The HHS IG also wrote to the IC to provide an accurate description of the HHS OIG's procedures for serving notice of the initiation of Section 1128A proceedings and to request that the IC consider whether IG Ennis had engaged in potential misconduct. Ex. 13 at 1-3. Despite receiving the letter from the HHS IG, IG Ennis took no action to correct or withdraw her untrue claims, even though IG Ennis's requests for legal opinions remained under consideration by both OLC and the GAO.6

In light of these issues, the IC broadened the scope of its investigation to consider whether any subjects, including IG Ennis, made incomplete, misleading, or inaccurate representations about the HHS OIG's Section 1128A CMP program to other federal agencies; failed to cooperate in this investigation, obstructed or attempted to obstruct this investigation, or personally and substantially participated in an official capacity in this investigation; or abused their authority or lacked the integrity reasonably expected of senior officials in the Inspector General community through such actions. The IC notified IG Ennis of the expanded scope of its investigation on March 13, 2024. Ex. 38.

mutually-agreeable time, including before or after ordinary business hours.” Ex. 26 at 2; Ex. 40 at 2; Ex. 54 at 4; Ex. 56 at 1. The proposed interview dates included: March 19, March 20, March 21, March 22, April 4, April 5, April 15, April 16, April 18, April 19, April 23, April 24, April 25, and April 26. Ex. 40 at 2; Ex. 54 at 4. After the DOJ OIG advised IG Ennis's counsel that the DOJ OIG would “proceed with our investigation accordingly” if IG Ennis did not agree to be interviewed by April 26, Ex. 49 at 2, IG Ennis's counsel proposed an interview date of May 10. Ex. 54 at 3. For reasons detailed in this report, including the seriousness of the misconduct by IG Ennis and IG Ennis's ongoing efforts to interfere with the investigation, the DOJ OIG did not agree to delay concluding the investigation of the allegations in this report as requested by IG Ennis's counsel. Ex. 54 at 1, 3. The DOJ OIG therefore completed its investigation of the allegations in this report, and the IC provided a draft of this report to IG Ennis's counsel on May 2, 2024. IG Ennis's claim in a May 29, 2024, response to the draft report that the DOJ OIG “simply did not want to interview” IG Ennis, Ex. 57 at 4, is refuted by the record of the DOJ OIG's efforts to schedule an interview with IG Ennis and IG Ennis's repeated refusals to do so. Ex. 26 at 2; Ex. 40 at 2; Ex. 54 at 4; Ex. 56 at 1.

6 IG Ennis reviewed a draft of this report and submitted a response on May 30, 2024. Ex. 57. In her response, IG Ennis did not contest that the information she provided to OLC, the GAO, the IC, the DOJ OIG, and the CIGIE Chairperson about the HHS OIG’s procedures for serving notice was false, nor did she assert that she took any actions to correct or withdraw her statements about the HHS OIG's procedures once she knew that they were false. Ex. 57.
On March 15, 2024, OLC advised IG Ennis that it was declining her request for a legal opinion. Ex. 39. On April 18, 2024, the GAO advised IG Ennis that the SSA OIG had not violated appropriations laws by cooperating in the IC investigation. Ex. 51. Despite the resolution of these issues by OLC and the GAO, and IG Ennis’s prior representation to the DOJ OIG and the IC that she would cooperate fully with the investigation once OLC and the GAO either declined or addressed her requests, Ex. 26 at 1, IG Ennis instructed the SSA OIG POC on April 18, 2024, that the SSA OIG POC was “not authorized to provide to the CIGIE IC or DOJ OIG any privileged documents or information or any information protected by the Privacy Act…[because] our ability to disclose and their ability to access such documents and information is not yet resolved.” Ex. 53. When the DOJ OIG contacted personal counsel for IG Ennis on Friday, April 19, 2024, and Monday, April 22, 2024, about scheduling an interview with IG Ennis during the week of April 22-26, 2024, regarding the additional allegations included in the IC’s March 13, 2024 letter, Ex. 49; Ex. 54, IG Ennis’s personal counsel stated that IG Ennis was not available to interview until “May 10 (or a mutually convenient date thereafter).” Ex. 54 at 3. Due to the urgency of the issues presented by IG Ennis’s continued involvement in making decisions for the SSA OIG that impacted the IC investigation and her ongoing refusal to allow the DOJ OIG unfettered access to documents and witnesses needed for the IC investigation, the DOJ OIG determined that further delay in addressing the issues raised in this report would not be appropriate.

This report addresses the allegations regarding IG Ennis’s representations about the HHS OIG’s Section 1128A CMP program to other federal agencies, IG Ennis’s participation in the SSA OIG’s decisions concerning the IC investigation, and IG Ennis’s failure to cooperate in the IC investigation.8 Given the serious nature of these allegations and the ongoing

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7 In her May 30, 2024, response following review of a draft of this report, IG Ennis argued that the demand for the SSA OIG to disclose privileged and confidential information to DOJ OIG investigators was “legally unsupported, as Congress conspicuously omitted providing CIGIE-appointed IGs with such authority.” Ex. 57 at 4. To the contrary, as discussed in Section II.A. and Section II.B. of this report, the Inspector General Act requires the IC, in conjunction with CIGIE, to establish policies and procedures to ensure fairness and consistency in investigations, 5 U.S.C. § 424(d)(7)(B), and Congress has specified its interest in ensuring that senior officials in the Inspector General community “apply the same standards of…accountability to themselves as they apply to the agencies that they audit and investigate.” H. Rep. 110-354 at 9, 11. Consistent with this congressional statement, the IC’s policies and procedures provide its investigators with access to information that mirrors the access Congress provided Inspectors General to the records of agencies that they oversee, including information that might include deliberative or otherwise privileged information (as articulated in a 2008 legal analysis by the DOJ’s OLC). Compare ICP&P, Addendum A, §§ A and E, with 5 U.S.C. § 406(a)(1)(A) and Ex. 6. Moreover, in 2021, the then 75 Inspectors General who were members of CIGIE voted overwhelmingly to adopt these policies and procedures, and to apply the same standards to themselves as they apply to the agency officials they oversee. See Hearing of the Senate Committee on Homeland Security and Governmental Affairs, S. Hrg. 117-513—SAFEGUARDING INSPECTOR GENERAL INDEPENDENCE AND INTEGRITY, Oct. 21, 2021, at 260, available at https://www.congress.gov/117/chrg/CHRG-117shrg47980/ChRG-117shrg47980.pdf (accessed June 4, 2024). As IG Ennis notes in her May 30, 2024, response, she did not support the adoption of these policies and procedures. Ex. 57 at 1.

8 Other aspects of the allegations against IG Ennis, and the allegations against the other subjects of the IC investigation, will be addressed in a separate report.
threat to the IC investigation posed by IG Ennis's interference, these issues mandated expeditious resolution. Indeed, with each day that elapsed, IG Ennis continued to violate federal ethics regulations concerning conflicts and recusal, flouted the access requirements of the ICP&P, and impeded the IC's ability to conduct a full and thorough investigation.

Because the IC applies the preponderance of the evidence standard to determine whether there is a reasonable basis to conclude an individual subject to its jurisdiction has committed misconduct, we applied that standard here. See ICP&P § 10.C.i. As explained below, we found that:

A. IG Ennis abused her authority and engaged in conduct that undermines the integrity reasonably expected of an Inspector General by including inaccurate representations about the HHS OIG in the SSA OIG Response and by failing to correct those inaccuracies after being notified of their falsity by the HHS IG.

B. IG Ennis's continued substantial and personal participation in the SSA OIG's decisions concerning the IC investigation into her conduct violated Section 2635.402 of the Standards of Ethical Conduct for Employees of the Executive Branch.

C. IG Ennis failed to cooperate in the IC investigation and engaged in conduct that undermines the integrity reasonably expected of an Inspector General through that conduct.

Pursuant to ICP&P § 10.A.i., on May 2, 2024, the IC provided a draft of this report for review and comment to IG Ennis through her counsel. On May 30, 2024, IG Ennis submitted her response to the draft report. Ex. 57. IG Ennis's May 30, 2024, response did not contain any substantive arguments or dispute the facts set forth in this report, nor did it alter our analysis of the facts or our findings that IG Ennis engaged in misconduct. Ex. 57. On May 31, 2024, IG Ennis announced her resignation from her position as the Inspector General for the SSA. Ex. 58.

II. Relevant Laws, Regulations, and Standards of Conduct

A. The Inspector General Act

The Inspector General Act of 1978 (IG Act) created independent offices headed by Inspectors General, who are responsible for conducting and supervising audits and investigations; promoting economy, efficiency, and effectiveness; and preventing and detecting fraud and abuse in government programs and operations. Committee on Oversight and Government Reform, Improving Government Accountability Act, 110th Cong. (Sept. 27, 2007) (H. Rep. 110-354) at 16; see also 5 U.S.C. § 402. When the IG Act was originally enacted in 1978, Congress articulated the need to “remov[e] the inherent conflict of interest which exists when...investigative operations are under the authority of an
individual whose programs are being [investigated].” Committee on Governmental Affairs,

The IG Act also provides Inspectors General with access to all information they
deam relevant to their investigations, free from external restrictions. 5 U.S.C. § 406(a)(1)(A).
In fact, Congress described access to all relevant information as “obviously crucial” for
conducting effective, credible oversight of federal agencies. S. REP. 95-1071, 1978 WL 8639
at *33. Congress confirmed this core principle in the Inspector General Empowerment Act
of 2016, which amended the IG Act to explicitly state that each Inspector General is:

- authorized to have timely access to all records, reports, audits, reviews,
documents, papers, recommendations, or other materials available to the
applicable [agency] which relate to the programs and operations with respect
to which that Inspector General has responsibilities under this [Act].

5 U.S.C. § 406(a)(1)(A). It is also well established that an agency cannot use attorney-client
privilege or any similar restriction as a basis to withhold documents or testimony from its
“Chuck” Grassley, while serving as Chairman of the Senate Judiciary Committee, specifically
stated that under this provision of the IG Act, Inspectors General are “legally entitled to
access ALL Department records, period. If the Inspector General deems a document
relevant to do his job, then the agency should turn it over immediately, without hesitation
or review.”

To guarantee that Inspectors General are also accountable for their own conduct, in
2008, Congress amended the IG Act to establish CIGIE and codify the IC, which is comprised
of four Inspectors General appointed by the CIGIE Chairperson, an official from the Federal
Bureau of Investigation, and the Director of the Office of Government Ethics or his or her
designee.10 5 U.S.C. § 424(d)(2)(A). The purpose of the IC is to ensure that senior officials in
the Inspector General community “perform their duties with integrity and apply the same
standards of conduct and accountability to themselves as they apply to the agencies that
they audit and investigate” and, as needed, to “investigate any allegations of wrongdoing
made against Inspectors General or their senior staff members and report substantiated
allegations to the executive branch.” H. Rep. 110-354 at 9, 11.

9 Prepared Statement of Senator Charles “Chuck” Grassley, Senate Judiciary Committee August 5, 2015, Hearing
“All Means ‘All’: The Justice Department’s Failure to Comply with Its Legal Obligation to Ensure Inspector
General Access to All Records Needed for Independent Oversight,” available at
(accessed April 26, 2024).

10 Prior to 2008, the IC existed pursuant to an Executive Order. H. Rep. 110-354 at 11 (discussing the IC as it
existed under Executive Orders 12805 and 12993 and how those Executive Orders were superseded by the
The IG Act places IC investigations under the supervision of the IC Chairperson, who is required to conduct a “thorough and timely investigation,” 5 U.S.C. § 424(d)(6)(A), in accordance with CIGIE’s Quality Standards for Investigations. 5 U.S.C. § 424(d)(7)(A). The IG Act also requires the IC to establish “policies and procedures necessary to ensure fairness and consistency in...conducting investigations,” 5 U.S.C. § 424(d)(7)(B)(i)(II), which the IC has done through adoption of the ICP&P.

B. The Integrity Committee Policies and Procedures

Under the ICP&P, Inspectors General are required to “promptly refer to the IC in writing any allegation of wrongdoing concerning that IG” or designated members of his or her senior staff, who are referred to as “Covered Persons.”11 ICP&P § 5.A.i. The ICP&P also articulates the threshold standard for the IC to take action on allegations of wrongdoing, which is those involving:

- abuse of authority in the exercise of official duties..., substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation, or conduct that undermines the independence or integrity reasonably expected of a Covered Person.

ICP&P § 7.A. The ICP&P also contains a specific definition of the term “abuse of authority.” It states that:

“Abuse of authority” means arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons. There is no de minimis standard for abuse of authority.

ICP&P, Appendix A. Black’s Law Dictionary defines the term “arbitrary” as “a determination made without consideration of or regard for facts” or influenced by “preference rather than on reason or fact.” ARBITRARY, Black’s Law Dictionary (11th ed. 2019).

When the IC refers allegations against an Inspector General or member of his or her senior staff to the IC Chairperson for investigation, the IC may engage the services of an Office of the Inspector General, which the ICP&P refers to as an “Assisting IG,” to conduct the investigation subject to the control and direction of the IC Chairperson. ICP&P § 8.B.

11 Pursuant to ICP&P, an Inspector General “will promptly refer to the IC in writing any allegation of wrongdoing concerning a Designated Staff Member if: a. Review of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and b. The IG determines that an internal investigation of the matter might not be objective in fact or appearance.” ICP&P § 5.A.i.
In addition, the ICP&P provides that members of the IC are required to recuse themselves in several circumstances, including where that member “knows that he or she is under...IC investigation”; where that member “has personally and substantially participated” in the matter under investigation; and where that member believes, or the IC determines, that the member’s impartiality would be questioned by a reasonable person with knowledge of the relevant facts. ICP&P § 3.K.

The ICP&P provides that “in reviewing or investigating an allegation of wrongdoing against a Covered Person in a particular OIG, the IC shall have access to OIG records, documents, witnesses, and other information to the same extent, and under the same terms” as provided in the access provisions of the IG Act. ICP&P, Addendum A, § A. The ICP&P further specifies that this provision entitles the “IC or its designated investigators...[to] full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary” for the investigation. ICP&P, Addendum A, § A. The ICP&P also states that “[t]he IC does not consider the provision by an OIG of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties.” ICP&P, Addendum A, § D.

The ICP&P also specifically addresses the failure to cooperate with the IC during an investigation, as follows:

if an IG...fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG...for failure to cooperate in the IC investigation, either as part of...the underlying investigation or in a separate report.

ICP&P, Addendum A, § E.12

C. Conflict of Interest Disqualification Requirement—5 C.F.R. § 2635.402

The U.S. Office of Government Ethics issued the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), found at 5 C.F.R. Part 2635, which sets forth 14 general principles of ethical conduct in Subpart A and specific standards in Subparts B through I. The Standards of Ethical Conduct also instruct executive branch employees to apply the general principles when considering situations not

12 Contrary to IG Ennis’s assertion in her May 30, 2024, response that the adoption of ICP&P, Addendum A was an “abusive policy overreach,” Ex. 57 at 1, almost all of the then 75 Inspectors General that comprised the CIGIE membership voted to support the IC’s adoption of ICP&P, Appendix A because they agreed with the principle that Inspectors General had to hold themselves to the same standards of conduct and cooperation that they apply to the agency employees that they oversee. See Senate Committee on Homeland Security and Governmental Affairs Hearing at 260, available at https://www.congress.gov/117/chrg/CHRG-117shrg47980/CHRG-117shrg47980.pdf (accessed June 4, 2024).
specifically addressed by the standards. 5 C.F.R. § 2635.101(b). Consequently, conduct that is not addressed by one of the specific standards enumerated in Subparts B through I may nevertheless violate the general principles.

A provision of Subpart D (5 C.F.R. § 2635.402) is relevant here. 5 C.F.R. § 2635.402 is titled “Disqualifying Financial Interests” and incorporates and interprets the financial conflict of interest prohibitions set forth in 18 U.S.C. § 208(a). 5 C.F.R. § 2635.402 states as follows:

Statutory prohibition. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he...has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

5 C.F.R. § 2635.402(a). This provision requires executive branch employees to disqualify themselves from participating “personally and substantially” in a “particular matter” in which they have a financial interest unless they disclose the conflict and obtain a waiver from the appropriate official. This “disqualification” requirement provides, in part:

Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption...an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he...has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

5 C.F.R. § 2635.402(c). The regulations provide definitions of “particular matter,” “personal and substantial” participation, and “direct and predictable effect.” Section 2635.402(b)(3) states that the term “particular matter” means “matters that involve deliberation, decision, or action that is focused upon the interests of specific persons....” 5 C.F.R. § 2635.402(b)(3). To participate “personally” means “to participate directly,” and it includes “active supervision of the participation of a subordinate in the matter.” 5 C.F.R. § 2635.402(b)(4). To participate “substantially” means that “the employee's involvement is of significance to the matter.” Id. Personal and substantial participation may occur when, for example, an employee participates through “decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.” Id. A particular matter will have a “direct” effect on a financial interest if there is a “close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.” 5 C.F.R. § 2635.402(b)(1)(i). A particular matter will not have a direct effect on a financial interest, however, “if the chain of causation is attenuated or is contingent upon...events that are speculative or that are independent of, and unrelated to, the matter.” Id. A “predictable” effect exists “if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest.” 5 C.F.R. § 2635.402(b)(1)(ii). An employee may participate in a particular matter where the disqualifying financial interest
arises from their federal government salary or benefits, “except an employee may not...[m]ake determinations that individually or specially affect his own salary and benefits.” 5 C.F.R. § 2640.203(d)(1).

III. Factual Findings

A. The DOJ OIG’s Identification of Potential Systemic Non-Compliance with Section 1129 CMP Statute’s Service of Notice Requirements

During the DOJ OIG’s investigation of the allegations contained in the IC’s referral letter dated May 31, 2022, several of the documents the SSA OIG provided raised concerns that the SSA OIG was defaulting subjects of Section 1129 CMP actions and imposing substantial monetary penalties on them without properly providing notice to them of the initiation of the actions. Section 1129 states that proceedings to impose a CMP may be initiated “by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure” (Rule 4) and states that an adverse determination cannot be made against an individual until they have “been given written notice and an opportunity for the determination to be made on the record after a hearing....” 42 U.S.C. §§ 1320a-8(b)(1) & (2). Rule 4 provides four methods for serving individuals who reside within the United States: “following state law for serving a summons”; “delivering a copy...to the individual personally”; “leaving a copy...at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there”; or “delivering a copy...to an agent authorized by appointment or by law to receive service of process.” Fed. R. Civ. P. 4(e)(1) & (2). Once an individual has been legally served with the notice described in Section 1129, if he or she does not request a hearing with the Department of Health and Human Services’ Departmental Appeals Board or reach a settlement with the SSA OIG, then monetary penalties become “final upon the expiration of the 60-day period” contained in the notice. 42 U.S.C. §§ 1320a-8(d)(1) & (f). Applicable regulations then require that the individual be notified by “certified mail, return receipt requested, of any penalty and assessment...that has been imposed and of the means by which the [individual] may satisfy the amount owed.” 20 C.F.R. § 498.110. SSA OIG employees frequently refer to the expiration of the 60-day period as authorizing the imposition of a Section 1129 CMP through “default,” although the statute and regulations do not use that term. Ex. 9 at 14.

From the inception of the Section 1129 CMP program in 1995 through 2018, the SSA OIG used certified mail, return receipt requested (certified mail) through the U.S. Postal Service (USPS), to provide written notice of the initiation of Section 1129 CMP proceedings.13 Ex. 9 at 3. Then, starting in August 2018, the SSA OIG changed its process...
such that the written notice of the initiation of Section 1129 CMP proceedings was sent to individuals via United Parcel Service (UPS) and USPS first-class mail. Ex. 9 at 3. In June 2019, the SSA OIG again changed its process for initiating Section 1129 CMP actions such that the written notice was sent by certified mail, and, if that delivery was unsuccessful, a second attempt at delivery was made via UPS. Ex. 9 at 3.

In the documents the SSA OIG provided was legal research SSA OIG attorneys conducted between 2004 and 2008 and in May 2016 that appeared to suggest that, during its entire operation of the Section 1129 CMP program, the SSA OIG may have been improperly serving Section 1129 notices because the methods the SSA OIG used (certified mail, UPS, or USPS first-class mail) do not appear to be authorized by Rule 4, except in states that specifically allow service of process through these methods.\footnote{In a limited number of cases, the SSA OIG had its agents personally serve notice upon subjects of Section 1129 proceedings, which would appear to satisfy the requirements of Rule 4(e)(2)(a).} Ex. 7 at 4. Thus, for more than 20 years, the SSA OIG may not have been complying with Section 1129’s notice requirements for initiating actions before imposing civil monetary penalties through default. Moreover, in the documents the SSA OIG provided was an internal SSA OIG spreadsheet that appeared to show several cases during the August 2018 to May 2019 timeframe in which the SSA OIG had defaulted subjects in excess of $100,000 without evidence in its files that the subjects had received written notice of the initiation of a Section 1129 CMP action against them, raising significant due process concerns. Ex. 7 at 3.

Consistent with the CIGIE Quality Standards for Investigations and DOJ OIG’s usual practice, the DOJ OIG raised these concerns to the IC Chairperson and the IC before the full investigation was completed because the DOJ OIG believed these concerns required prompt agency attention and corrective action. Ex. 7 at 2. After conferring with the IC Chairperson, on December 19, 2023, the DOJ OIG provided a draft letter to the IC detailing these concerns and recommending certain corrective actions to the SSA (DOJ OIG Draft Letter). Ex. 7. On December 20, 2023, the DOJ OIG also provided electronic access to the SSA OIG POC to review and comment on whether anything in the DOJ OIG Draft Letter was factually inaccurate or too sensitive for public release. Ex. 8 at 1. The POC requested, and the DOJ OIG provided, electronic access for several additional SSA OIG employees to review the DOJ OIG Draft Letter, including IG Ennis. Ex. 15.

On January 19, 2024, the SSA OIG provided the DOJ OIG with the SSA OIG Response, which was a memorandum from IG Ennis to the DOJ Inspector General on official letterhead. Ex. 9. In the SSA OIG Response, IG Ennis did not contend that the methods the SSA OIG used to serve notice (certified mail, UPS, or USPS first-class mail) are authorized by Rule 4(e), described above, which sets forth the rules for service on individuals residing

SSA directed the SSA OIG to cease initiating actions to impose civil monetary penalties under Section 1129 until further notice. Ex. 14.
within the United States. Ex. 9 at 3-5. Instead, in the SSA OIG Response, IG Ennis raised statutory construction, due process, and harmless error arguments to assert that the SSA OIG’s methods of service were legally sufficient, even in the cases where the SSA OIG had no evidence that it ever served the subjects. Ex. 9 at 3-4, 9-11, 12-13.

In the SSA OIG Response, IG Ennis also portrayed the SSA OIG’s use of certified mail as consistent with the HHS OIG’s process for initiating CMP actions under Section 1128A of the Social Security Act, which contains the same language as Section 1129 regarding service of notice for initiating proceedings. Ex. 9 at 5-7, 15. In the SSA OIG Response, IG Ennis claimed to have “affirm[ed] HHS OIG’s legal interpretation of the service requirements for HHS CMPs as recently as 2024”; and asserted that the “SSA OIG’s and HHS OIG’s reasonable interpretation [of Section 1129 and Section 1128A respectively] is entitled to deference.” Ex. 9 at 5, 7-8, 15 (emphasis added). IG Ennis also stated in the SSA OIG Response that the “SSA OIG recently received information from HHS OIG that they determine the method of service on a case-by-case basis, including continuing to serve by certified mail, return receipt requested” and stated that, because these two agencies interpret and apply their respective statutes in an identical manner, any remedial action would require the involvement of the HHS OIG “to ensure all CMP subjects have received due process under the law.” Ex. 9 at 2-3, 7 (emphasis added).

B. IG Ennis’s Contacts with CIGIE Chairperson and IC Chairperson

On January 22, 2024, IG Ennis provided a copy of the SSA OIG Response to the CIGIE Chairperson and the IC Chairperson and asked them to delay taking any action until the SSA OIG could submit additional information “articulating significant concerns with DOJ OIG’s investigation and draft” letter. Ex. 16 at 1. On February 5, 2024, IG Ennis sent a letter to the CIGIE Chairperson alleging that the IC and the DOJ OIG had exceeded the authority granted by the IG Act to conduct IC investigations, diverged from the IG Act’s reporting requirements by issuing an “interim” report, and failed to comply with CIGIE’s Quality Standards for Investigations and the ICP&P, among other issues. Ex. 17. IG Ennis suggested that OLC should be asked to provide “executive branch-wide guidance” concerning the limits of CIGIE and IC authority under the IG Act, including whether CIGIE and the IC even have the “authority to opin[e] on an agency’s interpretation of the statute it administers.” Ex. 17 at 2, 4. IG Ennis asserted that finalization of the DOJ OIG Draft Letter would “impermissibly affect” the functioning of CMP programs administered by both the SSA and the Department of Health and Human Services, and she asked the CIGIE Chairperson to exercise his authority to “direct that the [DOJ OIG Draft Letter]...be rescinded.” Ex. 17 at 4, 10.

As reflected in a February 20, 2024, letter from IG Ennis to the CIGIE Chairperson, on February 14, 2024, IG Ennis spoke with the CIGIE Chairperson and General Counsel and requested an immediate stay of the IC investigation. Ex. 18. IG Ennis reiterated that request in her February 20, 2024, letter to the CIGIE Chairperson. Ex. 18 at 1.
C. The DOJ OIG's February 2024 Communications with the HHS OIG

On February 16, 2024, the DOJ OIG General Counsel (DOJ OIG GC) and an attorney in the DOJ OIG's Office of General Counsel discussed the HHS OIG's process for serving notice of Section 1128A actions with the Chief Counsel for the HHS OIG (HHS OIG CC) and the HHS OIG, who supervises the HHS OIG's Section 1128A CMP program. Ex. 19. The discussion focused on Section 1128A of the Social Security Act, which contains the same language as Section 1129 regarding the initiation of actions “by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.” Compare 42 U.S.C. § 1320a–7a(c)(1) with 42 U.S.C. § 1320a–8(b)(1). HHS OIG stated that the HHS OIG has served notice under Rule 4 less than 10 times in the past 10 years, because most of the HHS OIG's Section 1128A cases settle before the initiation of formal proceedings. Ex. 19 at 2. HHS OIG also said that in the rare instances when the HHS OIG has initiated a proceeding under Section 1128A, the HHS OIG has served individuals by having a federal agent personally deliver the written notice to the individual or by serving the individual's counsel, who has agreed to accept service. Ex. 19 at 2. HHS OIG further stated that the HHS OIG would likely send written notice in several ways at the same time “which may include...UPS” but that sending notice via UPS “would not be in lieu of the manner used to accomplish service...authorized by Rule 4.” Ex. 19 at 2.

D. The DOJ OIG Finalizes the Letter Recommending Corrective Action

The DOJ OIG carefully reviewed the arguments made by IG Ennis in the SSA OIG Response, addressed several points raised therein, and finalized the letter by explaining why the SSA OIG's arguments did not change the DOJ OIG's concern about the need for corrective action. Ex. 10. On February 22, 2024, the DOJ OIG submitted its final letter recommending corrective action (DOJ OIG Final Letter) to the IC. Ex. 10.

E. IG Ennis Requests Legal Opinions from the Office of Legal Counsel and the Government Accountability Office

On February 23, 2024, IG Ennis wrote to the Assistant Attorney General for OLC and requested a formal OLC opinion on several questions of law, including whether the IC investigation exceeded the IG Act's grant of authority and whether the DOJ OIG had properly interpreted Section 1129's service requirements for initiating proceedings. Ex. 20. IG Ennis's letter advised OLC that the HHS OIG was responsible for a similar CMP program; that under “that same language, HHS OIG has served its notices in the same manner as SSA OIG”; and that “[i]f SSA OIG has wrongly interpreted the language and failed to provide effective service since 1995, then so has HHS OIG since 1982.” Ex. 20 at 3 n. 9.

Also on February 23, 2024, IG Ennis wrote to the Managing Associate General Counsel for the GAO to request an opinion from the GAO as to whether programmatic recommendations made as part of the IC investigation violated appropriations law by
improperly augmenting the SSA OIG's appropriations, violated the Purpose Statute, 31 U.S.C. § 1301(a), or violated the Anti-Deficiency Act, 31 U.S.C. §§ 1341 & 1342. Ex. 21 at 1, 5-9. IG Ennis's February 23, 2024, submissions to OLC and the GAO each contained a copy of the SSA OIG Response as well as a copy of IG Ennis’s February 5, 2024, letter to the CIGIE Chairperson. Ex. 20 at 8; Ex. 21 at 10.

F. IG Ennis’s Directive to the SSA OIG Staff to Suspend Work on the IC Investigation, Her Decision Not to Agree to an Interview, and the Cancellation of the DOJ OIG’s Scheduled Interview with the SSA OIG’s Former Deputy Inspector General

On February 23, 2024, IG Ennis directed the SSA OIG’s designated POC for the IC investigation to “suspend any work related to the investigative efforts by the IC or DOJ OIG, including responding to DOJ OIG’s requests for documentation or interviews,” until OLC and the GAO provided further guidance.15 Ex. 22. IG Ennis informed the POC that she felt like she had “no choice” other than to issue this directive until she received “authoritative advice” from OLC and the GAO. Ex. 22. Pursuant to IG Ennis's directive, the SSA OIG did not produce documents to the DOJ OIG that the POC had previously committed to producing. Ex. 23. On March 1, 2024, IG Ennis’s personal attorney declined a DOJ OIG investigator's request to schedule a voluntary interview with IG Ennis; and on March 4, 2024, IG Ennis’s directive to suspend cooperation with the IC investigation was cited as the reason that [b] (6), [b] (7)(C) cancelled his scheduled interview with DOJ OIG investigators.16 Ex. 26; Ex. 27.

When a DOJ OIG investigator emailed the POC on March 5, 2024, to ask about IG Ennis’s directive and to request a copy of that document if it was in written form, the POC responded that the DOJ OIG’s document request had been forwarded to the POC’s supervisor, SSA OIG [b] (6), [b] (7)(C). Ex. 28. Thereafter, [b] (6), [b] (7)(C).

15 IG Ennis’s written directive stated that it was “in accordance with 5 U.S.C. § 2302(b)(13),” of the Whistleblower Protection Act. Ex. 22. However, IG Ennis omitted required statutory language concerning the right of employees to report wrongdoing to the Office of Special Counsel. Compare Ex. 22 with 5 U.S.C. § 2302(b)(13)(A). The Office of Special Counsel issued a statement on April 3, 2024, reminding all federal agencies of their obligation to fully comply with 5 U.S.C. § 2302(b)(13), stating that “agencies may not impose…policies without including language informing employees that their statutory right to blow the whistle supersedes the terms and conditions of the…policy” and that “[n]o agency can seek…to chill such communications.” See U.S. Office of Special Counsel, “OCS Strongly Enforces the Prohibition Against Employee Gag Orders that Chill Whistleblowing” (April 3, 2024), available at https://osc.gov/News/Pages/24-11-Prohibition-Gag-Orders-Whistleblowing.aspx (accessed April 21, 2024).

16 In April 2023, [b] (6), [b] (7)(C) requested to step down from his position as [b] (6), [b] (7)(C) and became [b] (6), [b] (7)(C) in the Office of Counsel to the Inspector General. Ex. 24 at 13; Ex. 25 at 125-26. In his position as [b] (6), [b] (7)(C), [b] (6), [b] (7)(C) was supervised by [b] (6), [b] (7)(C). Ex. 25 at 125-26. In May 2024, the DOJ OIG learned that [b] (6), [b] (7)(C) was no longer employed by the SSA OIG. Ex. 59.
emailed the DOJ OIG investigator directly to accuse the DOJ OIG investigator of misconduct for attempting to communicate with the POC.  Ex. 29.

G. March 5, 2024, Communications with the HHS OIG Chief Counsel

On March 5, 2024, [redacted] emailed the HHS OIG CC and provided him with a copy of the SSA OIG Response and IG Ennis's February 23, 2024, letters to OLC and the GAO.  Ex. 30.  [redacted] told the HHS OIG CC that she was contacting him “to facilitate an inquiry from DOJ OIG” because, despite IG Ennis’s request to pause the IC investigation, “the DOJ OIG…investigators continue to ask for information, including the name of the HHS OIG staff member” who provided information to the SSA OIG.  Ex. 30 at 1.  [redacted] informed the HHS OIG CC that, in preparing the SSA OIG Response, [redacted] office had contacted his staff to ask questions about the HHS OIG’s notice procedures and that “under DOJ OIG’s theory, your office has also served CMP notices incorrectly for years.”  Ex. 30 at 1.  [redacted] added that the SSA OIG had provided its characterization of the HHS OIG service process to OLC and the GAO and identified the HHS OIG as “an impacted agency” regarding the CMP service issue.  Ex. 30 at 1.

The HHS OIG CC responded by stating that he was “frankly stunned…that SSA OIG has made representations within (and outside) the executive branch about HHS OIG’s civil monetary penalty enforcement” and that he “disagree[d] with any assertion that HHS OIG has served CMP notices incorrectly.”  Ex. 31 at 2.  The HHS OIG CC asked [redacted] to provide the names of the HHS OIG staff members that the SSA OIG had contacted and details about the contacts, “including the context in which those contacts occurred.”  Ex. 31 at 2.  [redacted] responded that her staff “reached out for an understanding as to whether HHS OIG still effected service via certified mail” and that her staff member who made the contact was out, but that she thought the contact occurred in January 2024 and was with one of two HHS OIG employees, whom [redacted] named and characterized as her staff’s “general contacts regarding CMP matters.”\(^{17}\)  Ex. 31 at 1.

H. The HHS OIG’s March 2024 Communications with the DOJ OIG

On March 5, 2024, the HHS OIG CC provided the DOJ OIG GC with a January 2024 email exchange between an SSA OIG and an HHS OIG.  In the email exchange, the SSA OIG wrote that the inquiry was regarding “how HHS OIG serves notices” and stated, “I believe you are able under serve [sic] in the regs pursuant to rule 4—do you have any internal processes for service you could share?”  Ex. 34 at 2.  HHS OIG responded that it was “rare that we do it…. Let me ask around. I suspect that service is typically waived.”  Ex. 34 at 2. The SSA OIG then wrote that she was “mostly wondering if you still send

\(^{17}\) DOJ OIG investigators interviewed both of the HHS OIG employees that [redacted] named; only one of them had any contact with the SSA OIG concerning these issues, and that contact was limited to the email exchange referenced in the next section of this report.  Ex. 32 at 9-10; Ex. 33.
them primarily certified mail return requested (if you know).” Ex. 34 at 1. HHS OIG responded that she “asked a colleague” who confirmed that the HHS OIG “decide[s] on service on a case-by-case basis depending on the circumstances,” that often service is waived by opposing counsel, and that the HHS OIG “used...agents for personal service in the past and sent letters via certified mail as well.” Ex. 34 at 1.

On March 7, 2024, HHS OIG provided the DOJ OIG GC with the HHS OIG’s formal interpretation of the service of process language contained in Section 1128A and the corresponding requirements of Rule 4, which stated that the HHS OIG interprets and applies Rule 4 in CMP cases as mandatory. Consequently, HHS OIG views the language “in any manner authorized by Rule 4...” in Section 1128A(c)(1) of the Social Security Act...and HHS OIG’s corresponding regulation, 42 C.F.R. § 1003.1500(a), as a clear requirement to serve process in CMP cases in accordance with Rule 4. HHS OIG does not interpret Rule 4 to permit the indiscriminate selection of any section within Rule 4 to perfect service of process. To the contrary, HHS OIG interprets Rule 4 as providing instructions on how different types of parties must be served.

Ex. 35 at 2. HHS OIG March 7, 2024, letter further reiterated the information he provided to the DOJ OIG during their February 16, 2024, telephone call—that in practice the HHS OIG rarely initiates proceedings under Section 1128A because most cases settle; that in the rare instances in which the HHS OIG serves process, it construes Section 1128A to mean that the service requirements of Rule 4 “must be adhered to”; that the HHS OIG serves process either by having a federal agent personally serve the individual or by serving the individual's counsel who has agreed to accept service; and that the HHS OIG does not accomplish service using certified mail or a commercial delivery service, but may use UPS in addition to fulfilling Rule 4’s service requirements. Ex. 35 at 2. HHS OIG also clearly stated that any description of the HHS OIG’s service of process—in the SSA OIG Response or the SSA OIG’s letters to OLC and the GAO—that differs from the information provided by the HHS OIG to the DOJ OIG did not accurately reflect the HHS OIG’s practices. Ex. 35 at 2.

I. The IC Provides the DOJ OIG Final Letter Recommending Corrective Action to the SSA Commissioner and Congressional Committees

On March 7, 2024, the IC Chairperson formally referred the DOJ OIG Final Letter recommending corrective action to the SSA Commissioner and four congressional

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18 When interviewed by DOJ OIG investigators, HHS OIG said she thought the SSA OIG was trying to write an internal process document; HHS OIG said she was not aware that the SSA OIG would be using the information she provided to describe the HHS OIG’s procedures in an IC investigation or to assert that the HHS OIG and the SSA OIG use the same process. Ex. 32 at 11, 18-19. HHS OIG said that if that had been clear, HHS OIG would have “formally referred” the inquiry to the HHS OIG branch responsible for Section 1128A proceedings. Ex. 32 at 18-19.
oversight committees for their “information/action as appropriate.” Ex. 11 at 1-3. The IC Chairperson characterized the DOJ OIG Final Letter as having “raise[d] concerns that American citizens may be subject to financial harm by SSA OIG’s past administration of its CMP program.” Ex. 11 at 1-2. The IC Chairperson also explained that the DOJ OIG Final Letter was discussed during meetings of the full IC on February 29, 2024, and March 5, 2024, and that the IC had concluded that “waiting to raise these issues until the end of its investigation would not be in the public’s interest.” Ex. 11 at 2.

J. March 8, 2024, Email to the HHS OIG CC

On March 8, 2024, contacted the HHS OIG CC to provide him with a copy of the IC’s referral to the SSA Commissioner of the DOJ OIG Final Letter. Ex. 36 at 1. In her email, stated that “this opinion means that HHS OIG, as well as every other agency who serves administrative notices, has also done so incorrectly.” Ex. 36 at 1. added that she hoped the HHS OIG CC and the HHS IG would “take appropriate steps to correct the actions of DOJ OIG, as your program and the continued employment of you and [the HHS] IG is now in grave jeopardy.” Ex. 36 at 1-2.

K. The HHS IG’s March 8, 2024, Letter to IG Ennis

Later in the day on March 8, 2024, the HHS IG sent a formal letter to IG Ennis stating:

I am alarmed and dismayed that a fellow Inspector General would take it upon herself to describe and characterize the process and procedure used by another Inspector General without so much as a phone call to discuss involving them in an ongoing investigation and in your attempt to dispute the interpretation of Rule 4.

Ex. 13 at 7. The HHS IG also stated that in communications between their respective offices, the SSA OIG employees “were not forthcoming about the reasons for asking about how HHS-OIG serves process, specifically that they intended to characterize SSA-OIG’s process as the same” as the HHS OIG’s process. Ex. 13 at 7. The HHS IG further stated that the SSA OIG’s “characterization of how HHS-OIG issues service of process in CMP cases is wrong.” Ex. 13 at 8. In fact, the HHS IG stated that the SSA OIG employee involved in the communications between the two offices had been advised that the HHS OIG usually obtains a waiver of service or has an HHS OIG agent serve process and that, “[d]espite this, [the SSA OIG’s] responses and requests still mischaracterize and misstate HHS-OIG’s procedures for effecting service of process.” Ex. 13 at 8. The HHS IG added that she was “sending letters today to the CIGIE Integrity Committee and to [OLC] providing information and an explanation of how HHS-OIG actually serves process in its CMP cases.” Ex. 13 at 8. The HHS IG also stated: “I ask that you cease and desist from referring to HHS-OIG’s process as the same as yours. The statements your office has made to this effect simply are not true.” Ex. 13 at 8.
Even though IG Ennis had been advised by the HHS IG that the statements IG Ennis made in the SSA OIG Response were “simply...not true,” Ex. 13 at 8, neither the IC nor the DOJ OIG received any communications from IG Ennis reflecting an effort to correct the statements she made to the DOJ OIG, the IC, the CIGIE Chairperson, OLC, or the GAO that mischaracterized the HHS OIG’s procedures for service of process.

L. The HHS IG Files an IC Complaint Against IG Ennis

On March 8, 2024, the HHS IG also wrote to the IC Chairperson to clarify the HHS OIG’s procedures for serving process in Section 1128A CMP cases and to file a complaint against IG Ennis. Ex. 13 at 1-3. In pertinent part, the HHS IG stated that the SSA OIG had “surreptitiously sought information from [the HHS OIG] without revealing that it was related to an ongoing [IC] investigation” and then “mischaracterized” the HHS OIG’s process for serving notice in the SSA OIG Response submitted to the IC. Ex. 13 at 2. The HHS IG also reported that she interpreted March 8, 2024, email to the HHS OIG CC as a request for the HHS OIG to intervene in the IC investigation and added that the HHS OIG has “no intention of acting on that request.” Ex. 13 at 2. The HHS IG then stated:

The actions of [IG Ennis]...call into question both the intent, reliability, and veracity of the statements made before this committee. I ask that the Integrity Committee consider whether there has been any potential misconduct on the part of the SSA IG...during the course of the Integrity Committee’s ongoing investigation concerning allegations of wrongdoing against current and former senior members of SSA-OIG.

Ex. 13 at 3.

M. Expansion of the Scope of the IC Investigation

Following this chain of events, the IC broadened the scope of its investigation to consider whether, among other issues, IG Ennis made incomplete, misleading, or inaccurate representations about the HHS OIG’s Section 1128A CMP program to other federal agencies; whether IG Ennis failed to cooperate in this investigation, obstructed or attempted to obstruct this investigation, or substantially participated in an official capacity in this investigation; and whether IG Ennis abused her authority or lacked the integrity reasonably expected of a senior official in the Inspector General community through such actions. Ex. 37. On March 13, 2024, the IC sent a letter to IG Ennis to notify her of the expanded scope of the investigation. Ex. 38. The IC’s March 13, 2024, letter to IG Ennis specifically reminded and admonished her of her obligation to recuse herself, stating:

As a subject of an IC investigation, the IC expects you to fully recuse yourself and avoid any official involvement in matters affecting your personal interests in this matter. Of note, in defining the term “recusal,” the Office of Government Ethics states, “[a]n employee should refrain, abstain, refuse, relinquish, forbear, forgo, hold off, keep away, give up, decline, desist,
discontinue, end, cancel, close, quit, terminate, stop, halt, cease, drop, stay away, shun, avoid participation in the matter before him or her. In other words, just don't do it.”

Ex. 38 at 2-3 n.1 (emphasis in original).

N. IG Ennis’s Actions Following Expansion of the Investigation

Following receipt of the IC’s March 13, 2024, letter, IG Ennis did not comply with the IC’s directive and withdraw from involvement in decision making for the SSA OIG regarding the IC investigation. Additionally, the SSA OIG did not resume its cooperation with the IC investigation. On March 15, 2024, OLC informed IG Ennis that it would not provide the opinion she had requested. Ex. 39. Nevertheless, on March 22, 2024, IG Ennis, through her personal counsel, again declined a request from a DOJ OIG investigator to schedule an interview because IG Ennis’s request to the GAO was still pending.19 Ex. 40.

In addition, IG Ennis continued to use her official authority in connection with making decisions for the SSA OIG concerning the IC investigation even after she received the letter from the IC reminding and admonishing her of her recusal obligations. IG Ennis’s directive to her staff to not cooperate with the IC investigation remained in place after the IC’s recusal admonition; the SSA OIG POC was not permitted to provide documents; and, through his counsel, refused to schedule an interview with DOJ OIG investigators on that basis. Ex. 41; Ex. 42.

On March 21, 2024, the lead DOJ OIG investigator received emails from two SSA employees who had represented the SSA OIG in the MSPB whistleblower retaliation case referenced above. These SSA employees declined to schedule interviews with the DOJ OIG investigator because they said IG Ennis had informed them that “at this time, as the agency head for SSA OIG,” she would not “waive any and all applicable privileges, to include confidential, privileged or protected information.” Ex. 43; Ex. 44.

O. Communications Between the DOJ OIG and IG Ennis Regarding Recusal

On March 22, 2024, after learning of the direction that IG Ennis had given to the two SSA witnesses, the DOJ OIG GC sent a letter to IG Ennis’s personal counsel to confirm the DOJ OIG’s understanding that IG Ennis has not fully recused herself from this investigation, has not directed that other SSA OIG subjects of this investigation be fully recused from it, and has not appointed a conflict-free Acting Inspector General for purposes of this

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19 In responding to the request for an interview, IG Ennis’s personal counsel notified the lead DOJ OIG investigator that the “GAO has agreed to analyze the matter and provide a legal decision and assured IG Ennis that they would prioritize this inquiry,” and stated that “IG Ennis continues to assure that she will participate and direct SSA OIG to participate in the IC inquiry in accordance with GAO’s legal decision once issued.” Ex. 40.
investigation. Rather, Inspector General Ennis continues to play a substantive decision-making role on behalf of SSA OIG in connection with this investigation and has allowed other SSA OIG subjects of this investigation to do the same.

Ex. 45 at 2. The DOJ OIG GC requested that IG Ennis’s personal counsel advise DOJ OIG in writing whether IG Ennis intended to comply with the IC’s recusal admonition. Ex. 45 at 3.

In response, IG Ennis’s personal counsel sent a letter on March 27, 2024, stating that the SSA OIG’s requests for legal review from OLC and the GAO and the SSA OIG’s decision not to participate in the investigation “are official actions of the SSA OIG itself. IG Ennis has no personal interest affected by this matter.” Ex. 46 at 1. The DOJ OIG GC replied with a letter later that day stating that since there was no “substantive response” to the letter regarding recusal sent on March 22, 2024, the DOJ OIG “can only assume that Inspector General Ennis has not taken the foregoing actions and we will proceed with our investigation accordingly.” Ex. 47.

**P. IG Ennis’s Letter to IC Chairperson and CIGIE Chairperson Regarding Recusal**

On March 27, 2024, IG Ennis sent a letter to the CIGIE Chairperson and the IC Chairperson in response to the March 22, 2024, letter from the DOJ OIG GC to IG Ennis’s personal counsel. In that letter, IG Ennis stated her view that the concerns she raised about the IC investigation are “not personal” to her. Ex. 48 at 1. IG Ennis further stated that she had, “at all times...communicated about [her] substantive legal and process concerns with CIGIE, the IC, DOJ OIG,...[OLC], and GAO in [her] official capacity as the [Inspector General] for SSA.” Ex. 48 at 2. IG Ennis also questioned the authority of CIGIE, the IC, and the DOJ OIG to demand that she recuse herself and argued that the IC investigation is not a “matter affecting [her] personal financial interest” that would require recusal under applicable ethics regulations. Ex. 48 at 4. IG Ennis added that she viewed it as “overreach for CIGIE, the IC, or DOJ OIG to demand that another [Inspector General] cease managing their office with respect to an official proceeding.”

20 In her May 30, 2024, response, IG Ennis reasserted this argument, stating that she was required to participate in the IC investigation “in an official capacity precisely because the allegations relate[d] to official actions of [her] office.” Ex. 57 at 2. IG Ennis’s response drew an analogy to civil litigation against federal agencies and agency heads in their official capacities and claimed that applying the provisions of 5 C.F.R. § 2635.402 in the manner described in Section IV.B. of this report “would require any agency head to be ‘uninvolved’ in addressing any allegation against the agency” including “negotiating payment of agency funds to settle...claims, making decisions regarding litigation, etc.” Ex. 57 at 2-3. Such an analogy is wholly inapplicable. This matter concerns a misconduct investigation into the actions of individuals, not civil litigation against any agency and agency head in their official capacities. IG Ennis is personally the subject of misconduct allegations that are being investigated. Ex. 5; Ex. 38. Like any other federal employee on notice that they are being investigated for alleged misconduct, the provisions of 5 C.F.R. § 2635.402 unambiguously required IG Ennis to disqualify herself from official participation in the investigation into whether she personally engaged in wrongdoing. No Inspector General would find it acceptable for an agency head under investigation for wrongdoing...
receipt of IG Ennis's March 27, 2024, letter, the DOJ OIG GC made additional inquiries to IG Ennis's personal counsel on April 19, 2024, and April 22, 2024, respectively, seeking written confirmation as to whether IG Ennis had taken any of the following actions: (1) fully recused herself from the IC investigation, (2) directed that all SSA OIG subjects of the IC investigation do the same, and (3) appointed a conflict-free Acting Inspector General for purposes of the IC investigation. Ex. 49; Ex. 50. No confirmation that IG Ennis had taken any of those actions was provided. Ex. 50.

Q. IG Ennis Rescinds the Directive but Continues to Direct SSA OIG Personnel to Not Fully Comply with DOJ OIG Document Requests

On April 18, 2024, IG Ennis received the GAO's response to her request for an opinion. Ex. 51. The GAO informed IG Ennis that the SSA OIG's involvement in the IC investigation did not violate the Purpose Statute, 31 U.S.C. § 1301(a), improperly augment the SSA OIG's appropriations, or violate the Anti-Deficiency Act, 31 U.S.C. §§ 1341 & 1342, and that the SSA OIG could use its appropriations for cooperating with the IC investigation. Ex. 51. Later that same day, the SSA OIG POC notified the lead DOJ OIG investigator that, in light of the GAO opinion, IG Ennis was “rescinding her directive” regarding suspension of work on the IC investigation. Ex. 52. IG Ennis's April 18, 2024, instructions to the POC stated that the POC “should resume any work related to the investigative efforts by the CIGIE IC or DOJ OIG, including responding to DOJ OIG's requests for documentation or interviews.” Ex. 53. However, IG Ennis placed restrictions on the POC's ability to fully comply with the DOJ OIG's document request. Specifically, IG Ennis's instructions stated:

Please note, however, that you are not authorized to provide to the CIGIE IC or DOJ OIG any privileged documents or information or any information protected by the Privacy Act, unless permitted by law, including a routine use. The legal questions regarding our ability to disclose and their ability to access such documents and information is not yet resolved. Should you need guidance on this, please consult with [b] (6), (b) (7)(C).

Ex. 53.\(^{21}\)

R. IG Ennis's Response to Additional Requests for an Interview

Following the April 18, 2024, issuance of the GAO opinion and IG Ennis's decision to rescind her directive, a DOJ OIG investigator attempted to schedule an interview with IG

\(^{21}\) IG Ennis's instructions to the SSA OIG POC regarding privilege and Privacy Act protected documents and information stated that it was “in accordance with 5 U.S.C. § 2302(b)(13).” Ex. 53. However, IG Ennis once again omitted required statutory language concerning the right of employees to report wrongdoing to the Office of Special Counsel. Compare Ex. 53 with 5 U.S.C. § 2302(b)(13)(A).
Ennis during the week of April 22-26, 2024, regarding the allegations at issue in this report. Ex. 54 at 4. IG Ennis, speaking through her personal counsel, advised the DOJ OIG investigator that, for a variety of work-related reasons contained in counsel's communications to the DOJ OIG, which the DOJ OIG did not consider to be compelling, IG Ennis would not be able to make herself available during that time frame, and she would not be available until May 10, 2024, to speak with DOJ OIG investigators. Ex. 54 at 1-3.

In light of the seriousness of the issues presented by IG Ennis's continuing efforts to interfere with the IC investigation, including IG Ennis's instructions to the SSA witnesses that she was “unable” to waive privileges to allow for their testimony, instructions to the POC to withhold documents based on assertions of privilege, and instructions for the POC to seek guidance from (who is a subject in the IC investigation) on the production of documents for the IC investigation, the DOJ OIG concluded that the issues addressed in this report required resolution without further delay.

IV. Analysis

A. IG Ennis Abused Her Authority and Engaged in Conduct that Undermines the Integrity Reasonably Expected of an Inspector General by Including Inaccurate Representations about the HHS OIG in the SSA OIG Response and by Failing to Correct Those Inaccuracies After Being Notified of Their Falsity by the HHS IG

In this section, we analyze whether IG Ennis engaged in an abuse of authority, within the meaning of ICP&P, Appendix A, and engaged in “conduct that undermines the...integrity reasonably expected” of senior officials in the Inspector General community, within the meaning of ICP&P § 7.A, when she made inaccurate representations in the SSA OIG Response regarding the HHS OIG's procedures for serving process under Section 1128A of the Social Security Act and when she failed to correct those inaccurate representations after being contacted directly by the HHS IG.22

Consistent with the CIGIE Quality Standards for Investigations and the DOJ OIG’s usual practice when it identifies potentially serious programmatic issues in an ongoing investigation, the DOJ OIG raised concerns regarding the manner in which the SSA OIG had been providing written notice of the SSA OIG's initiation of Section 1129 CMP actions. DOJ OIG’s practice also encompasses providing the affected component with an opportunity to review a recommendation for corrective action to determine whether anything contained in it is factually inaccurate or too sensitive for public release. Consequently, the DOJ OIG provided the SSA OIG POC with electronic access to the DOJ OIG Draft Letter and, pursuant to the POC’s request, provided electronic access to other SSA OIG employees, including IG

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22 In her May 30, 2024, response to the draft of this report, IG Ennis did not contest any of the findings made in Section IV.A. of this report. See Ex. 57.
Ennis. Because the DOJ OIG Draft Letter addressed programmatic issues with a program that SSA OIG managed during the relevant time period, but that SSA suspended in January 2023 until further notice, we determined that it was appropriate to allow IG Ennis an opportunity to provide the DOJ OIG with accuracy and sensitivity comments and that doing so did not implicate the federal conflict of interest provision found at 5 C.F.R. § 2635.402.23

Inspectors General exist to provide a crucial check on the administration of federal programs and the expenditure of taxpayer funds. Because, among other duties, Inspectors General are charged with “protecting the integrity...of the Federal government and its programs, activities, and operations,” ICP&P § 1, their own integrity, in both words and actions, is essential. Indeed, “[t]o maintain public trust, all Inspector General community members must adhere to high standards of official conduct and...[be] accountable in the event that they fall short.” ICP&P § 1. As explained below, we determined that IG Ennis fell far short of these standards by abusing her authority and engaging in conduct that undermines the integrity reasonably expected of an Inspector General.

First, IG Ennis asserted in the SSA OIG Response that the SSA OIG's process for serving notice under Section 1129 was precisely the same as the HHS OIG's process for serving notice under Section 1128A without having anyone from the SSA OIG seek to determine—from the HHS IG who administers the Section 1128A program or her executives—whether that was true. Indeed, in the SSA OIG Response, IG Ennis wrote authoritatively about the SSA OIG and the HHS OIG programs, despite the fact that no one from the SSA OIG conferred with the HHS IG or her executives at all.

Second, rather than having the SSA OIG contact the HHS IG or her executives about the issue, IG Ennis appears to have sought to confirm her understanding of the HHS OIG's program by having an SSA OIG staff member make inquiries to an HHS OIG staff member without being clear about the intended use for the information. The sole contact between the SSA OIG and the HHS OIG about the service issue was made by a member of SSA OIG staff, an SSA OIG [b] (6), (b) (7)(C), who sought and obtained information from the HHS OIG through an email exchange with HHS OIG [b] (6), (b) (7)(C). The email from the SSA OIG [b] (6), (b) (7)(C) contained no information about the intended use of the requested information and did not clearly articulate the pertinent question. Specifically, the SSA OIG [b] (6), (b) (7)(C) inquiry did not reference the Section 1129 statute or its language, but instead it obliquely asked about “how HHS OIG serves notices.” Nothing about this informal email exchange provided any notice that HHS OIG [b] (6), (b) (7)(C) response would be characterized as an affirmation of the “HHS OIG’s legal interpretation of the service requirements for HHS CMPs,” as portrayed in the SSA OIG Response, or would be used to argue to other federal entities that the HHS OIG and the SSA OIG interpret Rule 4

23 The review the DOJ OIG requested is the equivalent of inviting a subject or witness to an interview, presenting the individual with a draft document, and asking the subject or witness whether there is anything in the document that is factually inaccurate or too sensitive for public release.
the same way and use the same methods for service. HHS OIG \[^{\text{(b) (6), (b) (7)(C)}}\] told DOJ OIG investigators that if the purpose of the inquiry had been clear, HHS OIG would have “formally referred” the inquiry to the HHS OIG branch responsible for Section 1128A proceedings. Although we are unaware of how office provided the information about the HHS OIG’s process to IG Ennis, it is apparent that IG Ennis did not seek to confirm whether the information was accurate before including it in the SSA OIG Response.

Third, IG Ennis made misleading statements in the SSA OIG Response about the information received from the HHS OIG. IG Ennis’s statement that the “SSA OIG recently received information from HHS OIG that they determine the method of service on a case-by-case basis, including continuing to serve by certified mail, return receipt requested” does not accurately reflect the content of the emails from HHS OIG. For example, IG Ennis’s statement misreported the information as if it was an official position of the HHS OIG when HHS OIG emails reflected that she did not personally know the answer, had to “ask around,” and was conveying limited information received from an unidentified “colleague.” IG Ennis’s statements in the SSA OIG Response also failed to incorporate the portions of HHS OIG email stating that the HHS OIG rarely serves process under Rule 4, that due to contact with opposing counsel, service is often waived, and that the HHS OIG has used agents in the past for personal service. Rather, in the SSA OIG Response, IG Ennis entirely omitted the HHS OIG’s use of agents and construed the ambiguous phrase “and sent letters via certified mail as well” to mean instead of using agents rather than in addition to using agents. By obscuring this information, the SSA OIG Response falsely insinuates that the HHS OIG engaged in the same widespread, programmatic reliance on certified mail as the SSA OIG and that they both interpret Rule 4 as authorizing that type of service, when those statements misconstrue the information the SSA OIG received.

Fourth, IG Ennis provided these misleading statements to multiple federal agencies. She sent the SSA OIG Response—and the inaccurate representations about the HHS OIG’s Section 1128A program contained in it—to the IC, the DOJ OIG, OLC, the GAO, and the CIGIE Chairperson as part of communications seeking determination of legal issues and attempting to halt the IC investigation. IG Ennis’s argument to each of these federal entities was that the SSA OIG and the HHS OIG were correct about their shared interpretation of the law, and that the IC and the DOJ OIG had exceeded their legal

\[^{24}\] As was made clear by the March 7, 2024, letter from HHS OIG, copying the HHS OIG CC, to the DOJ OIG GC, the HHS OIG views compliance with Rule 4 “as mandatory” and in the rare instances where the HHS OIG has served process on subjects of Section 1128A actions, they accomplished service “either by having a federal agent directly deliver the written notice to the respondent or by serving the respondent’s counsel who has agreed to accept service on the respondent’s behalf.” Ex. 35 at 2. The HHS OIG “does not perfect service of a written notice of a proposed determination by using certified mail or a commercial delivery service. However, in addition to fulfilling Rule 4’s service requirements, HHS OIG may also send written notice of a proposed determination in multiple ways, including Federal Express and United Parcel Service.” Ex. 35 at 2.
authority in suggesting otherwise. As one example, IG Ennis’s February 23, 2024, letter to OLC sought to sway OLC’s view of the Section 1129’s notice requirements by raising the specter that “[i]f SSA OIG has wrongly interpreted the language and failed to provide effective service since 1995, then so has HHS OIG since 1982.”

Fifth, even after the HHS IG directly advised IG Ennis on March 8, 2024, that IG Ennis’s characterization of the HHS OIG’s service of process was not true and asked IG Ennis to “cease and desist” from mischaracterizing the HHS OIG’s process, IG Ennis did not withdraw or retract her incorrect statements to the IC, the DOJ OIG, OLC, the GAO, or the CIGIE Chairperson concerning the HHS OIG procedures for serving process. IG Ennis’s failure to be forthright with OLC and the GAO was especially glaring in light of the fact that OLC and the GAO were still in the process of considering official requests from IG Ennis that incorporated her incorrect statements.

IG Ennis’s actions constitute an abuse of authority because she exercised her power in an arbitrary manner that sought and resulted in a personal advantage or benefit to her. See ICP&P, Appendix A. When IG Ennis recognized that the service issue identified in the DOJ OIG Draft Letter also could affect an HHS OIG program, she acted arbitrarily by not seeking to have HHS OIG confirm the accuracy of her statements in the SSA OIG Response through direct and transparent communications with the HHS IG or other HHS OIG executives. IG Ennis continued to act arbitrarily when she submitted, under her name, the SSA OIG Response that incorporated some, but not all, of the information obtained from HHS OIG \( \text{(b) (6), (b) (7)(C)} \) and then provided the inaccurate information to the IC, the DOJ OIG, OLC, the GAO, and the CIGIE Chairperson. Perhaps one of her most egregious arbitrary actions was failing to correct her inaccurate representations after the HHS IG emphatically implored IG Ennis to “cease and desist from referring to HHS-OIG’s process as the same as [SSA OIG’s process]” because those statements “simply are not true.” IG Ennis’s actions personally benefited her because her inaccurate representations about how the HHS OIG serves notice made it appear as if IG Ennis was not the only Inspector General who administered a CMP program that was potentially violating the due process rights of many individuals over the course of years. In addition, these inaccurate representations benefited IG Ennis because they required the DOJ OIG to conduct additional investigative efforts, thereby delaying the IC investigation of IG Ennis.

IG Ennis’s actions also undermined the integrity reasonably expected of a senior official in the Inspector General community. Indeed, her actions were antithetical to the scrupulous regard for the truth at the core of federal oversight. The position of Inspector General not only requires, but demands, honesty as a baseline for exposing waste, fraud and abuse, and IG Ennis’s actions and statements fell far short of those standards.
B. IG Ennis's Continued Substantial and Personal Participation in the SSA OIG's Decisions Concerning the IC Investigation into Her Conduct Violated Section 2635.402 of the Standards of Ethical Conduct for Employees of the Executive Branch

We next examine whether IG Ennis's continued participation in the SSA OIG's decisions concerning the IC investigation violated 5 C.F.R. § 2635.402, the conflict of interest regulation that governs disqualifying financial conflicts of interest. As described above, Section 2635.402(a) prohibits an employee “from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he...has a financial interest, if the particular matter will have a direct and predictable effect on that interest.” Section 2635.402(c) requires disqualification by “not participating in the particular matter” unless the employee has obtained a waiver or exemption. We found that IG Ennis violated Section 2635.402(a) and Section 2635.402(c) by participating personally and substantially in an official capacity in the SSA OIG's decisions regarding the IC investigation and by failing to disqualify herself from participating in an official capacity in the IC investigation.

First, the IC investigation clearly constitutes a “particular matter,” which is defined by Section 2635.402(b)(3) to encompass matters “that involve deliberation, decision, or action that is focused upon the interests of specific persons.” The IC investigation is focused on making a decision regarding allegations that IG Ennis and other senior officials of the SSA OIG abused their authority, grossly mismanaged the Section 1129 CMP program, otherwise managed the CMP program in violation of applicable laws, rules, or regulations, or lacked the integrity or independence reasonably expected of senior officials in the Inspector General community. Therefore, the IC investigation involves deliberation and decision regarding allegations that implicate the interests of specific persons, including IG Ennis.

Second, IG Ennis participated “personally and substantially” in the SSA OIG's decisions concerning the IC investigation. Section 2635.402(b)(4) defines personal participation as participating directly, including “active supervision of the participation of a subordinate in the matter.” Section 2635.402(b)(4) also defines substantial participation as meaning that the “employee's involvement is of significance to the matter.” IG Ennis's personal participation was demonstrated by her direction to her subordinates to suspend any work related to the IC investigation; her direction to witnesses that they cannot testify as to certain matters; her subsequent direction to subordinates that they cannot produce all responsive records requested by the DOJ OIG; and writing letters in her capacity as SSA IG to the CIGIE Chairperson and asking him to use his official authority as CIGIE Chairperson to intervene in the IC investigation to impose an immediate stay. IG Ennis's participation violated Section 2635.402(a) and Section 2635.402(c) by participating personally and substantially in an official capacity in the SSA OIG's decisions regarding the IC investigation and by failing to disqualify herself from participating in an official capacity in the IC investigation.

25 On April 27, 2024, the Public Integrity Section informed the IC that it had concluded that this matter may proceed for additional IC review.

26 The issues that IG Ennis raised with respect to this finding in her May 30, 2024, response are addressed in footnote 20 above.
participation was substantial (i.e., “of significance to the matter”) because her request to the CIGIE Chairperson, if granted, would have formally stayed the IC investigation, her directive to her staff to suspend work effectively accomplished such a stay by discontinuing the cooperation of the SSA OIG employees in the IC investigation, and her subsequent instructions to the SSA OIG POC regarding withholding documents posed an ongoing challenge to the full development of facts in the IC investigation.

Third, it is axiomatic that an individual’s employment, and corresponding salary, is a financial interest.27 If the IC investigation had substantiated the misconduct allegations against IG Ennis prior to her resignation of her position as SSA Inspector General, the President may have removed her from her position. See 5 U.S.C. § 403(b). Therefore, the IC investigation had a “direct and predictable effect” on the financial interests of IG Ennis. See 5 C.F.R. § 2635.402(b)(4). For these reasons, IG Ennis violated 5 C.F.R. § 2635.402(a).

Moreover, IG Ennis did not recuse herself from participating in the SSA OIG's decisions involving the IC investigation, as required by 5 C.F.R. § 2635.402(c).28 It is patently obvious that an investigative subject cannot control or be in charge of the flow of information to, or cooperation with, investigators examining that subject's conduct. In passing the IG Act, Congress expressly acknowledged “the inherent conflict of interest which exists when...investigative operations are under the authority of an individual whose programs” are being investigated. Committee on Governmental Affairs, Inspector General Act of 1978, 5th Cong. (Aug. 8, 1978) S. REP. 95-1071 at 7 (emphasis added). Additionally, as an Inspector General, IG Ennis was fully aware of the need to avoid not only conflicts of interest, but even the appearance of any type of impropriety, in order to preserve the credibility of her office.

Yet, even after receiving the March 13, 2024, letter from the IC stating that “as a subject of an IC investigation, the IC expects you to fully recuse yourself and avoid any official involvement in matters affecting your personal interests in this matter,” IG Ennis continued to participate personally and substantially in an official capacity in the SSA OIG’s decisions concerning cooperation with the IC investigation. (Emphasis in original). In fact,
in a March 27, 2024, letter to the CIGIE Chairperson and IC Chairperson, IG Ennis left no
doubt she would not be recusing herself from official involvement in the SSA OIG decisions
regarding the IC investigation and expressed her view that it was “overreach for CIGIE, the
IC, or DOJ OIG to demand that another [Inspector General] cease managing their office with
respect to an official proceeding.” By failing to recuse herself, IG Ennis clearly violated 5
C.F.R. § 2635.402(c).

C. IG Ennis Failed to Cooperate in the IC Investigation and Engaged in Conduct
that Undermines the Integrity Reasonably Expected of an Inspector General
Through Her Failure to Cooperate

As described above, Congress expressly acknowledged that access to all relevant
information is “obviously crucial” for conducting effective, credible oversight of federal
agencies, S. REP. 95-1071 at 33, and embodied that core principle in the IG Act by providing
“timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials” necessary for the audits and investigations
Inspectors General conduct. 5 U.S.C. § 406(a)(1)(A). As Senator Grassley explained at the
Senate Judiciary Committee hearing titled “All’ Means ‘All’,” this provision means what it
says: “If the Inspector General deems a document relevant to do his job, then the agency
should turn it over immediately, without hesitation or review.”

The ICP&P authorizes the same broad access to information contained in the IG Act
when Inspectors General or their staff members are under IC investigation. It contains a
requirement to “provide and direct the staff of the OIG to provide the IC or its designated
investigators with full and timely access to all OIG records, documents, witnesses, and
other information that the IC or its designee deems necessary.” ICP&P, Addendum A, § A.
The ICP&P permits the IC to make an independent finding of wrongdoing against an
Inspector General for failure to cooperate in an IC investigation if an Inspector General
“fails to respond fully and in a timely fashion to an IC request for OIG records, documents,
witnesses, or other information.” ICP&P, Addendum A, § E.

We determined that IG Ennis failed to cooperate in this IC investigation, in violation
of ICP&P, Addendum A, § E. IG Ennis, despite her obligation, as described above, to recuse
herself pursuant to 5 C.F.R. § 2635.402(c), directed her staff to “suspend any work related
to the investigative efforts by the IC or DOJ OIG, including responding to DOJ OIG’s requests
for documentation or interviews.” IG Ennis, as a subject of the IC investigation, never
should have made such a decision on behalf of the SSA OIG. However, IG Ennis failed to

29 In addition, IG Ennis’s conduct, using her official position, title, and authority, with the CIGIE Chairperson, the
IC Chairperson, the DOJ OIG, OLC, the GAO, and with members of her staff regarding suspending their efforts to
cooperate with the IC investigation, implicated 5 C.F.R. § 2635.702(a) and was conduct that undermines the
integrity reasonably expected of an Inspector General.

30 Senate Judiciary Committee, Prepared Statement of Senator Charles “Chuck” Grassley.
recuse herself and issued the directive, which blocked DOJ OIG investigators’ timely access to SSA OIG documents; was cited as the reason for the cancellation and subsequent refusal to reschedule the interview of [Redacted]; and was IG Ennis’s reason for declining to schedule her interview with DOJ OIG investigators during her self-imposed stay of the IC investigation.

When IG Ennis eventually rescinded her stay of the IC investigation, following receipt of responses from OLC and the GAO, she continued to take steps to impede the investigation’s progress. In fact, on April 18, 2024, IG Ennis informed the POC: “[Y]ou are not authorized to provide to the CIGIE IC or DOJ OIG any privileged documents or information or any information protected by the Privacy Act,” in clear contravention of the access requirements of ICP&P, Addendum A. Additionally, IG Ennis established [Redacted] as the individual to consult if the POC “need[ed] guidance” on asserting privileges and withholding documents, despite IG Ennis’s knowledge of [Redacted] status as a named subject of the IC investigation. To the knowledge of the IC and DOJ OIG, IG Ennis never modified her position that, “as the agency head for SSA OIG,” she was “unable to waive any and all applicable privileges, to include confidential, privileged or protected information” to allow the testimony of the two SSA employees who declined to speak with DOJ OIG investigators on that basis. IG Ennis’s continued failure to recuse herself from such decisions and her efforts to hinder the progress of the IC investigation likely would have prevented, if left unchecked, the DOJ OIG from fully developing the facts necessary to complete the IC investigation. Inspectors General cannot accomplish effective oversight when the entity or person they are investigating seeks to limit the participation of witnesses or endeavors to produce some, but not all, records that investigators deem relevant to completing their work.32

31 The issues that IG Ennis raised concerning her assertion of privilege in her May 30, 2024, response are addressed in footnote 7 above.

32 In her May 30, 2024, response, IG Ennis alleged that the findings against her in this report are based on her political affiliations and that she is being persecuted…[and] would not be treated in this manner if [she] had greater political patronage.” Ex. 57 at 1, 5 n.6. To the contrary, as IG Ennis well knows, the IC’s findings in this report regarding IG Ennis’s misconduct are consistent with findings made by the IC in 2021 regarding similar misconduct by the then-Federal Housing Finance Agency (FHFA) Inspector General, an appointee of a different Presidential Administration. The findings in this report reflect the position of the IC, articulated by former CIGIE Chairperson Michael Horowitz to the Senate Committee on Homeland Security and Governmental Affairs, “that Inspectors General have the same obligations and responsibilities to cooperate with Integrity Committee investigations as agency officials have when they are subject to an investigation by their agency Inspector General” and that “a refusal by an Inspector General to cooperate with a CIGIE Integrity Committee investigation should...subject the IG to a possible finding of wrongdoing.” See Senate Committee on Homeland Security and Governmental Affairs Hearing at 258, available at https://www.congress.gov/117/chrg/CHRG-117shrg47980/CHRG-117shrg47980.pdf (accessed June 4, 2024). At this Senate hearing, IG Horowitz supported the letter Senator Charles Chuck Grassley and Senator Ron Johnson sent to President Biden on April 28, 2021, which IG Horowitz characterized as “reinforc[ing] this important principle in calling on the President to remove the then-FHFA Inspector General [appointed by former President Obama] for, among other things, her willful (Cont’d.)
IG Ennis's continued involvement in making decisions on behalf of the SSA OIG that impeded the IC investigation was also “conduct that undermines the...integrity reasonably expected” of an Inspector General. ICP&P § 7.A. Instead of embodying the values of transparency and accountability, which are central to credible oversight, IG Ennis actively sought to delay and impede investigative efforts regarding a program she administers. She did so with full knowledge, as an Inspector General herself, that complete and unfettered access to information is a core tenet of both the IG Act and ICP&P. Inspectors General would never condone that type of investigative interference by the heads of the agencies they oversee. To have engaged in such conduct, and continued to engage in such conduct, was unbecoming of an Inspector General and demonstrated a lack of integrity reasonably expected of an Inspector General.

V. Conclusion

As described above, IG Ennis abused her authority and engaged in conduct that undermines the integrity reasonably expected of an Inspector General by including inaccurate representations about the HHS OIG in the SSA OIG Response and by failing to correct those inaccuracies after being notified of their falsity by the HHS IG. IG Ennis also violated 5 C.F.R. §§ 2635.402(a) & (c), which govern disqualifying financial conflicts of interest, and persisted in taking steps to impede the progress of an IC investigation into her conduct and the conduct of other current and former SSA OIG officials. Because IG Ennis refused to recuse herself from this investigation in which she was a subject, despite the direction of the IC and her obligations under federal ethics regulations, and continued to instruct subordinates and witnesses to limit access to information in the investigation, we promptly issued this report so that her conduct could be addressed without delay. Her conduct raised serious questions about her fitness to lead an office tasked with oversight of federal programs and a mission to prevent waste, fraud, and abuse. IG Ennis announced her resignation on May 31, 2024, the day after submitting her response to a draft of this report.

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Exhibits


2. May 23, 2022 email from (b) (6), (b) (7)(C), SSA OIG, to the IC email address.

3. May 25, 2022 IC letter from Kevin Winters, IC Chair, to Gail Ennis, SSA IG.

4. May 31, 2022 IC letter from Kevin Winters, IC Chair, to Michael Horowitz, DOJ IG.

5. May 31, 2022 IC letter from Kevin Winters, IC Chair, to Gail Ennis, SSA IG.

6. November 10, 2008 DOJ letter from OLC to the National Science Foundation Deputy Director.

7. December 19, 2023 DOJ OIG draft letter from Michael Horowitz, DOJ IG, to Kevin Winters, IC Chair.

8. December 20, 2023 DOJ OIG letter from the DOJ OIG (b) (6), (b) (7)(C) to the SSA OIG POC for the IC investigation.


10. February 22, 2024 DOJ OIG letter from Michael Horowitz, DOJ IG, to Kevin Winters, IC Chair.

11. March 7, 2024 IC letter from Kevin Winters, IC Chair, to Martin O'Malley, SSA Commissioner. Attachment 1: February 22, 2024 DOJ OIG letter from Michael Horowitz, DOJ IG, to Kevin Winters, IC Chair.

12. March 7, 2024 IC letter from Kevin Winters, IC Chair, to Senator Gary Peters, CHSGA Chair, Senator Rand Paul, CHSGA Ranking Member, Representative James Comer, COA Chair, and Representative Jamie Raskin, COA Ranking Member. Attachment 1: February 22, 2024 DOJ OIG letter from Michael Horowitz, DOJ IG, to Kevin Winters, IC Chair.

13. March 8, 2024 HHS OIG letter from (b) (6), (b) (7)(C), HHS IG, to Kevin Winters, IC Chair. Attachment 1: March 7, 2024 HHS letter from HHS OIG (b) (6), (b) (7)(C), to the DOJ OIG General Counsel. Attachment 2: March 8, 2024 HHS OIG letter from (b) (6), (b) (7)(C), HHS IG, to Gail Ennis, SSA IG.

14. January 20, 2023 SSA letter from the SSA Commissioner to Gail Ennis, SSA IG.
15. December 20-21, 2023 email exchange between the DOJ OIG[(b) (6), (b) (7)(C)] and the SSA OIG POC for the IC investigation.

16. January 22, 2024 SSA OIG letter from Gail Ennis, SSA IG, to Kevin Winters, IC Chair and Mark Greenblatt, CIGIE Chair.

17. February 5, 2024 SSA OIG letter from Gail Ennis, SSA IG, to Mark Greenblatt, CIGIE Chair.

18. February 20, 2024 SSA OIG letter from Gail Ennis, SSA IG, to Mark Greenblatt, CIGIE Chair.

19. February 21-22, 2024 email exchange between a DOJ OIG Attorney Advisor and HHS OIG[(b) (6), (b) (7)(C)].

20. February 23, 2024 SSA OIG letter from Gail Ennis, SSA IG, to the DOJ OLC Assistant Attorney General.

21. February 23, 2024 SSA OIG letter from Gail Ennis, SSA IG, to the GAO Managing Associate General Counsel.

22. February 23, 2024 email from Gail Ennis, SSA IG, to SSA OIG, and the SSA OIG POC for the IC investigation.[(b) (6), (b) (7)(C)]

23. March 18-19, 2024 email exchange between a DOJ OIG Investigative Counsel and the SSA OIG POC for the IC investigation.

24. January 10, 2024 partial transcript of the DOJ OIG interview of[(b) (6), (b) (7)(C)].

25. November 9, 2023 partial transcript of the DOJ OIG interview of[(b) (6), (b) (7)(C)].

26. February 14, 2024–March 1, 2024 email exchange between a DOJ OIG Investigative Counsel and Counsel for Gail Ennis, SSA IG.

27. March 4, 2024 email exchange between a DOJ OIG Investigative Counsel and Counsel for[(b) (6), (b) (7)(C)].

28. March 5, 2024 email exchange between a DOJ OIG Investigative Counsel and the SSA OIG POC for the IC investigation.

29. March 5, 2024 email exchange between a DOJ OIG Investigative Counsel and the SSA OIG POC for the IC investigation, and an email exchange between[(b) (6), (b) (7)(C)]. SSA OIG and a DOJ OIG Investigative Counsel.

31. March 5, 2024 email exchanges between SSA OIG and the HHS OIG Chief Counsel.

32. April 10, 2024 partial transcript of the DOJ OIG interview of HHS OIG.

33. April 12, 2024 transcript of the DOJ OIG interview of an HHS OIG Senior Counsel.

34. January 11-18, 2024 email exchanges between the SSA OIG and HHS OIG.

35. March 7, 2024 letter from HHS OIG to the DOJ OIG General Counsel.

36. March 8, 2024 email exchange between SSA OIG, and the Chief Counsel, HHS OIG, and a March 8, 2024 email forwarding this exchange to the DOJ OIG General Counsel.

37. March 14, 2024 IC letter from Kevin Winters, IC Chair, to Michael Horowitz, DOJ IG.

38. March 13, 2024 IC letter from Kevin Winters, IC Chair, to Gail Ennis, SSA IG.

39. March 15, 2024 DOJ OLC letter from the DOJ OLC Assistant Attorney General to Gail Ennis, SSA IG.

40. March 18-22, 2024 email exchanges between a DOJ OIG Investigative Counsel and Counsel for Gail Ennis, SSA IG.

41. March 18-19, 2024 emails from a DOJ OIG Investigative Counsel to the SSA OIG POC for the IC investigation and a March 19, 2024 email from SSA OIG, to a DOJ OIG Investigative Counsel.

42. March 18-22, 2024 email exchanges between a DOJ OIG Investigative Counsel and Counsel for SSA OIG.

43. November 15, 2023–March 21, 2024 email exchanges between a DOJ OIG Investigative Counsel and the SSA.
44. November 15, 2023–March 21, 2024 email exchanges between a DOJ OIG Investigative Counsel and the SSA.

45. March 22, 2024 DOJ OIG letter from the DOJ OIG General Counsel to Counsel for Gail Ennis, SSA IG.

46. March 27, 2024 letter from Counsel for Gail Ennis, SSA IG, to the DOJ OIG General Counsel.

47. March 27, 2024 DOJ OIG letter from the DOJ OIG General Counsel to Counsel for Gail Ennis, SSA IG.

48. March 27, 2024 SSA OIG letter from Gail Ennis, SSA IG, to Kevin Winters, IC Chair and Mark Greenblatt, CIGIE Chair.

49. April 19, 2024 DOJ OIG letter from the DOJ General Counsel to Counsel for Gail Ennis, SSA IG.

50. March 22-April 22, 2024 email exchange between DOJ OIG General Counsel and Counsel for Gail Ennis, SSA IG.

51. April 18, 2024 GAO letter from the GAO General Counsel to SSA OIG.

52. April 18, 2024 email from the SSA OIG POC for the IC investigation and a DOJ OIG Investigative Counsel.

53. April 18, 2024 email from SSA IG Ennis to the SSA OIG POC for the IC Investigation and SSA OIG.

54. April 22–23, 2024 email exchange between a DOJ OIG Investigative Counsel and Counsel for Gail Ennis, SSA IG.

55. May 23, 2024 SSA Motion to Reopen MSPB Matter.

56. May 14, 2024 email exchange between a DOJ OIG Investigative Counsel and Counsel for Gail Ennis, SSA IG.

57. May 30, 2024 SSA OIG letter from Gail Ennis, SSA IG, to Kevin Winters, IC Chair.

58. May 31, 2024 email from Gail Ennis, SSA IG, to all SSA OIG employees.

59. May 30, 2024 email exchange between a DOJ OIG Investigative Counsel and Counsel for SSA IG.
Enclosure 2
May 30, 2024

Kevin H. Winters, Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency

Re: Response to Draft Report of Investigation for Integrity Committee Case No. IC 22-048
(Ennis, Gail)

Dear Integrity Committee Chairperson Winters:

Please accept this letter in response to the Draft Report of Investigation for Integrity Committee (IC) Case No. IC 22-048 (“Draft Report”).

I disagree with the findings of the Draft Report. This investigation and reporting constitute retaliation for disclosing what I and my office reasonably believed to be violations of law and policy by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and the Office of Inspector General (OIG) for the Department of Justice (DOJ), led by former CIGIE Chair Inspector General (IG) Michael Horowitz. Each step I and my office have taken to discuss our concerns in good faith has been met with further retaliation. The process has exhausted and disheartened me, as was likely intended.

The IG community has become politicized under the influence of IG Horowitz and his handpicked CIGIE leadership, who have abused CIGIE investigatory authority to consolidate power and influence within the community. Once IG Horowitz became CIGIE Chair, he abused its investigative powers and suppressed dissent through such investigations. He and CIGIE leadership became “Super IGs” who could accept or reject any allegation for investigation at its discretion, strip the authority of the IG it places under investigation, transfer the authority to the OIG that CIGIE selects at its discretion to investigate the matter, accuse any objecting IG(s) of obstructing its investigation(s), and ensure defamatory reporting that leads to the removal of any dissenting IG.

I spoke up against CIGIE overreach, opposing one of these abusive policies IG Horowitz implemented. In fact, I advocated against following the very policy that the Draft Report now accuses me of violating—“ICP&P Access Addendum.” Unfortunately, I was appointed by a Republican president, and I cannot match the political patronage wielded by IG Horowitz and CIGIE leadership.

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1 I prepared this response with the assistance of counsel.
In response, IG Horowitz and CIGIE leadership unleashed the entire arsenal of abusive CIGIE policies and practices against me, including:

- accepting an unsupported allegation for investigation,
- assigning IG Horowitz to investigate the matter (hardly the “rotational” and unbiased assignment required by law, to enable his retaliation against me),
- issuing a defamatory and unauthorized “Interim Report,”
- refusing to expand the investigation to include officials responsible for implementing the alleged improper practices or other OIGs who may have used similar practices,
- demanding that I recuse myself from participating in an official capacity after I and my office raised concerns to the Office of Legal Counsel (OLC) and the Government Accountability Office (GAO),
- demanding privileged and confidential information, and
- drafting a report before interviewing me.

These steps provide a blueprint for retaliating against any IG who dissents against IG Horowitz’s political takeover of the IG community.

This response process is a sham. You have already ignored the concerns I and my office have raised regarding these abuses, and IG Horowitz has characterized the very attempts of my office to address such abuse as misconduct in this Draft Report. This Kafkaesque process belies any underlying concern regarding any supposed “mismanagement” of the civil monetary penalty program. These abuses reveal that you are more interested in consolidating political power within the IG community by working to remove me from my position than conducting appropriate investigations into allegations of misconduct or mismanagement.

I nevertheless want to further memorialize the hypocrisy and abuse related to three issues: the demand for my recusal from “participation” in the matter, coercing the production of privileged and confidential information, and drafting a report before interviewing me.

First, characterizing my participation as misconduct is unsupported and hypocritical. IG Horowitz asserted that I committed misconduct because I engaged in “personal and substantial participation in an official capacity in this investigation.” His purported basis is the fact that allegations in this matter include references to my official conduct, these allegations could theoretically lead to my loss of employment, and therefore I have a financial interest that requires recusal from “participation” in the matter. The position is nonsensical, as I am required to “participate” in the matter in an official capacity precisely because the allegations relate to official actions of my office.

This position would require any agency head to be “uninvolved” in addressing any allegation against the agency, as the agency head could theoretically be removed due to such allegations. Yet, management officials routinely engage in “personal and substantial participation in an
official capacity” in matters involving allegations against them, negotiating payment of agency funds to settle such claims, making decisions regarding litigation, etc. For example, I doubt that you exhibited concern over “participating in an official capacity” in the recent lawsuit against you, Fredricks v. Council of the Inspectors Gen. of Integrity & Efficiency.² I am unaware of you appointing an independent “Acting IG” to participate on your behalf with respect to any aspect of this litigation. To the contrary, you undoubtedly participated in an official capacity even though the allegations stated in the lawsuit could theoretically lead to your removal.

Moreover, this position required you, IG Horowitz, and other officials to recuse yourselves from participating in this investigation. I and my office have disclosed our concern that you, IG Horowitz, and others involved in this matter have committed wrongdoing. You, in turn, rejected our claims and retaliated against us. You and IG Horowitz had no issue continuing your “personal and substantial participation in an official capacity in this investigation” even though the matter now involved allegations against you (allegations that could theoretically lead to your loss of employment). Thus, this continued participation by you and IG Horowitz illustrates the hypocrisy of the demand that I recuse myself from participating in an official capacity.

Further, if my participation constituted misconduct, you must expand the investigation to include all officials who facilitated and perpetuated this misconduct, including you, Chairperson Greenblatt, Counsel to the CIGIE IC, CIGIE General Counsel, and others who repeatedly participated with me in my official capacity during this investigation. No official demanded such recusal from “participation” until after I sought legal opinions from GAO and OLC.³ As previously described in detail, you and other officials communicated with me and my staff on multiple occasions in our official capacities prior to my seeking these legal opinions.⁴ If it was misconduct for me to have “participated in an official capacity,” you and these officials should have refrained from participating in such discussions and advised me that I should not “participate” in such manner. To the contrary, you all repeatedly participated with me in my official capacity, and Chairperson Greenblatt specifically advised me that we “should keep talking.” If such “participation” were misconduct, Chairperson Greenblatt advised me to commit it. He, you, and all other officials involved in such participation should therefore be under investigation and should recuse yourselves from this investigation.

Second, IG Horowitz’s demand that our office disclose privileged and confidential information is unsupported and inconsistent with his conduct. According to IG Horowitz, an OIG appointed by CIGIE is entitled to any information it demands, including privileged and confidential information

² Civil Action No. 1:23-cv-442 (RDA/LRV).
³ Prior to when I made referrals to OLC and GAO, DOJ OIG corresponded with my personal attorney only as it related to scheduling of an interview.
⁴ Further, asserting that I was acting in my “personal capacity” during these prior communications would also require reporting CIGIE General Counsel and Counsel to the CIGIE IC for violating the Rule 4.2 of the D.C. Rules of Professional Conduct (“During the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so.”). CIGIE has not responded to this assertion while continuing to insist that I was acting in my personal capacity when corresponding with it and DOJ OIG.
held by the OIG it is investigating. His position is that a CIGIE investigation transfers the authority an IG has over the agency to which she is appointed to the authority of the OIG that CIGIE appoints. This position is legally unsupported, as Congress conspicuously omitted providing CIGIE-appointed IGs with such authority, and IG Horowitz does not truly believe it. If he did, he would have demanded this information from the officials who have it—Social Security Administration (SSA) counsel. I do not supervise SSA Counsel, and I understand that they stated I would have to provide a waiver for them to share such information with IG Horowitz. If IG Horowitz’s position is accurate, no such waiver would be required. In fact, these SSA counsels would have obstructed the investigation and violated their ethical obligations by refusing to provide it to DOJ OIG. IG Horowitz’s pearl clutching for my alleged interference, so purportedly horrific that it requires an immediate report to the President, should be heaped two-fold upon these SSA counsels for having the audacity to improperly decline to provide such information.

Any protest that I did not provide a “waiver” undermines this position and only serves to highlight IG Horowitz’s hypocrisy. If a “waiver” from my office is required (as SSA counsels have stated and IG Horowitz has demanded I provide), then IG Horowitz’s position that he is legally entitled to this information is false. Further, his demand is an abuse of authority and an attempt to violate the attorney-client privilege. IG Horowitz’s allegations should therefore be directed at SSA counsel. Yet, little political value exists in attacking SSA counsel, while I am a target ripe for retaliation.

Finally, the refusal to interview me prior to issuing this report demonstrates that this entire process is a sham. After OLC declined to provide an opinion and GAO responded to our request, I immediately directed our office to resume cooperation with the investigation as promised. On April 22, 2024, DOJ OIG requested to interview me, demanding that the interview be held within one week. Through counsel, I agreed to sit for an interview and explained that I was available to do so on May 10 or a mutually convenient date thereafter. I also detailed several responsibilities and circumstances that prevented devoting an entire day to interviewing with DOJ OIG prior to May 10. The DOJ OIG refused to wait until May 10 to interview me on the matters in this report but wanted me to hold that date for questioning related to the CMP program, essentially bifurcating the investigation into two—one on the underlying CMP program and one on my alleged misconduct in responding to the investigation. When I expressed concern as to this unnecessary bifurcation and reiterated that I was available from May 10 onwards, the DOJ OIG claimed that I had refused to be interviewed. Had the DOJ OIG proceeded in a reasonable manner, I would have responded to each of the issues under investigation in detail and answered their questions. Yet, DOJ OIG refused to do so.

DOJ OIG’s characterization of my inability to interview with them before May 10 as “refusing” to interview me is absurd. Mr. Horowitz simply did not want to interview me. He wants to rush the publishing of this report with his predetermined, defamatory findings and ensure its publication

5 I merely declined to waive privilege with respect to privileged and confidential information.
in advance of the election. DOJ OIG is uninterested in obtaining a full and complete understanding of my position regarding any of the issues in the Draft Report, and you likewise permitted them to end this investigation without interviewing me. The record is clear that I was available to be interviewed at a reasonable date—several weeks ago—and DOJ OIG refused to interview me on these allegations of misconduct. Worse, DOJ OIG has continued its investigation regarding the underlying allegations relating to the civil monetary penalty (CMP) program, proving that no rush exists to end this investigation and publish the report on the CMP program.

The fact that you have authorized them to close this portion of their investigation and report on it without interviewing me demonstrates that you are likewise uninterested in obtaining a complete record but rather ensuring the speedy publication of a derogatory report. I do not see how providing any further information at this stage is appropriate if you are unwilling to follow standard, reasonable processes for an investigation in the first place.

IG Horowitz and CIGIE leadership effectively control the IG community through abusing this investigative and reporting process. Such control incentivizes the IG community to favor whichever political party holds political power, defeating the purpose of their creation. IGs will shift their investigative priorities according to the winds of politics, transforming them from independent watchdogs to hounds sniffing for politically safe positions.

I respectfully request that you decline to issue this report and curtail these abusive practices. Again, however, I do not expect you to admit being complicit in this abuse, expand the investigation to include yourself and other officials as subjects, or “fully recuse” yourself and them from further participation in this matter, as you should if indeed you truly believed my actions in response to this investigation to be misconduct as alleged in the Draft Report.

Sincerely,

(b)(6)

Gail Ennis

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6 It will be more politically challenging to instigate my removal closer to the election, and potentially far harder after the election. In that sense, I am being persecuted for being appointed by the Trump Administration. Pretending as if the nature of my political appointment is irrelevant is absurd—I would not be treated in this manner if I had greater political patronage, which brings us full circle to the core problem.