

Oral Statement of
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Before the
Governmental Affairs Committee
United States Senate

Regarding
Legislative Proposals and Operational Issues Relevant to the
Inspector General Community

July 19, 2000

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss legislative proposals and issues relevant to the operations of the IG community. Joining me today is the Honorable Patrick McFarland, IG for the Office of Personnel Management, and the Honorable Kenneth Mead, IG for the Department of Transportation. Today, as Vice Chair of the PCIE, I am prepared to discuss some legislative items currently under consideration. My Testimony represents the views of the IGs and not necessarily that of the Administration.

First of all, we would like to thank the Governmental Affairs Committee for its longstanding, bipartisan support. Twenty-two years ago this Committee developed the IG concept into legislation that became the IG Act. While the Act has been amended several times over the years to add new IGs and clarify reporting requirements, the basic tenets of the Act's intended mission have remained constant and strong. The role of the IG is to protect the integrity of government programs through traditional audits to improve program effectiveness and through criminal investigations to prevent and detect fraud, waste, and abuse.

Over the years, we have worked with this Committee on a wide range of government management issues and stand ready to assist the Committee in carrying out its legislative and oversight functions. Of particular note is our ongoing financial statements work under the Chief Financial Officers (CFO) Act and our continuing work to report on agency compliance with the implementation of GPRA. Moreover, we were pleased to work closely with you on S.1993, the Government Information Security Act of 1999, to enhance the Federal government's ability to combat computer hacking and intrusions.

Our recently issued *Progress Report to the President for Fiscal Year 1999*, highlights the community's many accomplishments, including the pivotal role the IGs assumed in mitigating the risks associated with the Year 2000 (Y2K) computing problem. Through hundreds of independent and objective audits, evaluations, inspections, and investigations of Federal programs and activities, the 58 IGs effectively promoted financial management accountability,

helped ensure integrity, and minimized risks of fraud and abuse. The community as a whole identified potential savings of more than \$8.2 billion and was instrumental in over 13,000 successful prosecutions.

Today, we are here to discuss, among other issues, legislation that is critical to the IG community's ability to perform its mission.

Statutory Law Enforcement Authority

Mr. Chairman, the Department of Justice's proposal to amend the IG Act to authorize criminal investigators in the offices of 23 Presidentially-appointed IGs to exercise law enforcement powers is extremely important to the IG community. This proposal would do three things:

First, it would grant no new authorities, but would simply recognize in statute authorities that are already being exercised administratively.

Second, it would ensure consistency of law enforcement powers among OIGs.

And finally, it would enhance accountability and would offer greater oversight of the law enforcement authority by the Department of Justice.

I'd like to address each of these points individually. First, the proposed legislation will not broaden the authority of the IGs or expand the categories of those authorized to exercise law enforcement powers. Law enforcement authority can only be exercised by trained, qualified law enforcement officers who report to the Assistant IG for Investigations (auditors could not exercise these authorities), and only in connection with investigations that are already within the jurisdiction of the IG to conduct. Moreover, the bill would carry with it no additional costs because OIG agents are already fully trained and exercising these authorities.

The next point involves consistency among OIGs. Some IGs already exercise law enforcement powers under statutory authority unique to their offices (e.g., the OIGs at the Departments of

Defense and Agriculture, and the Treasury IG for Tax Administration). Pending bills would confer law enforcement authority on other specific OIGs. The proposal sent by the Justice Department would ensure that IGs operate under the same law enforcement authority and with the same accountability and oversight.

This last point deals with accountability and oversight. Under the bill, law enforcement powers must be exercised in accordance with guidelines promulgated by the Attorney General. Where an IG fails to adhere to guidelines for exercise of law enforcement authorities, the Attorney General is authorized to suspend or rescind such authorities. This legislation also requires that, for the first time, IGs would be subject to "peer reviews" of their exercise of law enforcement powers, to be conducted by another IG or committee of IGs. The results of each review would be communicated directly to the Attorney General.

Mr. Chairman, criminal investigators in the covered OIGs have exercised law enforcement powers for many years through deputation as Special Deputy U.S. Marshals. Beginning in the mid-1980's, the Department of Justice approved this deputation on a case-by-case basis. As the role of IGs evolved, the need for such appointments was so consistent and the volume of requests so large that blanket deputation also evolved. In 1996, OIG criminal investigators began exercising law enforcement authority under office-wide deputations.

We have learned that the Justice Department does not intend to renew OIG blanket deputation authorities after January 31, 2001. If blanket deputations were not renewed and statutory law enforcement was not enacted, literally thousands of open investigations of fraud against government programs, in the areas health care, federal procurement, telecommunications, federal construction, bribery of public officials, crimes in subsidized housing, corruption in highway construction, child support enforcement, and a host of other cases, would be jeopardized. These types of investigations would simply cease. Moreover, if we were forced to return to a process in which we sought deputation for each individual case, the administrative burden for both the Department of Justice and the IGs would, indeed, be enormous. On behalf

of the entire OIG community, I urge the Committee to endorse this proposal and seek its passage in this Congress.

Mr. McFarland, who chairs the PCIE Investigation Committee, is prepared to further discuss the need for statutory law enforcement.

Amendments to the IG Act

A second issue that I would like to discuss today involves S. 870, IG Act Amendments of 1999, which was sponsored by Senator Susan Collins and under consideration by this Committee. In introducing this legislation, Senator Collins referred to the IGs as "an already invaluable program" and noted our performance and many accomplishments over the years. She also challenged her colleagues and the IG community as a whole to build on its strengths and remedy its weaknesses. I fully subscribe to this strategy and look forward to working with her and her staff to respond to this challenge.

The Chair of the PCIE's Legislation Committee, Ken Mead, surveyed the community and provided written testimony on the previous version of Senator Collins' legislation in September 1998.

While there is a general consensus within the IG community in support of the underlying principles embodied in the legislation, I must note that consensus is different from unanimity. Our community consists of nearly 60 individuals, each with their own background and experience, interacting with agencies performing a wide variety of missions. On most matters, there are distinct minority viewpoints with suggestions that are worthy of consideration.

At this time, I would like to briefly discuss the community's views on each section

- **Renewable 9-year Term for PAS IGs:** There is general support throughout the IG community for some sort of fixed term, although there was no consensus as to the most desirable duration of that term.

- **Prohibition of Cash Bonus or Awards:** This section met with strong support from community members.
- **External Reviews:** There is general support for the concept of external reviews in the areas identified so long as they did not overlap existing external audits and peer reviews, employed objective criteria, and would not be used primarily as a means to “second guess” an IGs mission-related decisions.
- **Annual Reports:** Most IGs favored moving to annual reports instead of the current semiannual framework; however, some IGs voiced concerns that annual publication would make the reports stale and less useful to Congress.
- **Elevation to Executive Level III Salary:** The IGs strongly supported this provision to address the imbalances.
- **Consolidation of Certain OIG Functions:** This portion of the bill was the least well received and most controversial.

In addition to recently providing your staff with results of an updated survey on the revised bill, our specific comments are included in my written statement. I would also like to include for the record a letter sent to Senator Collins from my colleagues in the ECIE regarding their concerns related to the consolidation provision. We would welcome the opportunity to work further with your Committee and Senator Collins' staff to share proposed technical changes that could improve our ability to better perform our mission.

Other Significant Issues Needing Legislative Action

Finally, I would like to heighten your awareness on other issues needing legislative action. While the community has remained steadfast in accomplishing the responsibilities entrusted to us by the IG Act, the environment in which the IGs operate has changed dramatically since the passage of the Act. Over the past several years, the government has undergone change that has affected the IGs' ability to fully perform these responsibilities in the most efficient and effective manner.

Clarifying the Scope of IG Authority

One area needing attention involves the scope of the IGs' authority. Contrary to the plain language of the statute, some courts have narrowly construed the IG Act's grant of authority to allow investigations of a regulated entity only when they are direct recipients of federal funds, such as contractors or grantees. Under this view, IGs may not investigate criminal conduct of regulated entities, even if the subject has engaged in criminal conduct to knowingly and intentionally deceive the agency. This could arise in situations where entities have received certificates or permits to operate-- but no direct agency funds-- in return for agreeing to abide by and periodically report on compliance with law and agency regulations. Fortunately, Congress saw fit to clarify this matter last year and ensure that the DOT Inspector General has such authority as part of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159).

Though it never was enacted into law, this Committee passed such a clarification, S.2608, several years ago. The exact language is included in my written statement. We request that the Committee revisit this issue again to resolve it for the rest of the IG community. We would be pleased to work with you to advance this effort.

Paperwork Reduction Requirement Regarding Surveys

Numerous IGs are concerned that the review process requirements under the Paperwork Reduction Act (PRA) compromise the statutory mandate of an IG to be independent and nonpartisan. The PRA requires that "collections of information" be subject to review and approval initially from a "senior official" of the agency and later from OMB. Many IGs feel that these requirements impair their ability to carry out audits and evaluations required by Members of Congress, through law or by requests, in a timely and effective manner. While we certainly appreciate OMB's offer to work with us to create a practical solution to resolve our procedural concerns, the basic conflict between the two underlying laws still exists. To that end, we hope that this Committee would consider a legislative clarification. My written statement elaborates on these concerns.

Codification of Integrity and Efficiency Councils

The Committee may wish to consider establishing the PCIE and ECIE in legislation similar to that of our affinity councils, such as the CFO and CIO Councils. While we are certainly grateful to the support from OMB and various resources from the IGs, such a provision would allow the PCIE and ECIE to more effectively perform its administrative and internal operations. With such a structure, the PCIE and ECIE would be held accountable for their operations and provide better access for the Congress to focus attention on areas of particular interest.

IG Academies and Forensic Lab

We appreciate your continued support on a bipartisan basis to advance legislation to provide authorization for the IG Criminal Investigator Academy and the Forensic Laboratory. We would like to work with you to expand any further legislation to authorize funding for the Inspectors General Auditor Training Institute. The Institute, which has been offering entry-level and specialized audit training for OIG audit and audit-related staff, is supported solely by its tuition revenue and has at times been unable to expand its curriculum due to funding concerns.

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Mr. Chairman, this concludes my prepared statement. We again appreciate the opportunity to share with you this information and hope it will be useful to the Committee as it considers ways for improving the operations of the IG community. We are grateful for the Committee's past support of the IG community and look forward to working together to maximize governmental efficiency and effectiveness.

We realize that this is a short legislative session. But the issues we cited, especially statutory law enforcement authority, are ones we hope the Congress may be able to consider before adjournment. We thank you in advance for your efforts and would be happy to respond to any questions that you or other Members of the Committee may have.