



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

September 30, 2021

The Honorable Gary Peters, Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Rob Portman, Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Peters and Ranking Member Porter:

We appreciate and support the bi-partisan effort to strengthen the independence of Inspectors General (IGs) and provide additional tools to improve oversight of the federal government. We are writing today in response to a request for our views on S. XXXX, the “Inspector General Independence and Empowerment Act of 2021,” which has been referred to the Homeland Security and Governmental Affairs Committee. As the Chair, Vice Chair and Legislation Committee Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), we believe that this bill will improve the institutional independence essential to IG oversight and provide critical authorities, such as testimonial subpoena authority, that will enable IGs to better address fraud, waste, and abuse. Further, this bill provides important support for the role and mission of CIGIE. We look forward to the bill’s prompt consideration and remain available to continue to provide technical assistance as you consider this important legislation. Below are our views on some of the most significant provisions of the bill.

CIGIE and oversight partners, such as the U.S. Government Accountability Office, have long advised Congress of the benefits of requiring Congressional notification when an IG is removed or transferred under Sections 3(b) and 8G(e) of the Inspector General Act of 1978, as amended. (IG Act).¹ Those requirements provide a safeguard for the independence with which IGs must carry out an audit, evaluation, inspection, investigation, or review, by guarding against that work being the reason for removing an IG. Section 102 of this bill would bolster the existing requirements for Congressional notification when removing or transferring an IG by requiring the notification to include a more substantive rationale.² Additionally, since the 114th Congress, CIGIE has expressed concern that the safeguard can be circumvented when an IG is placed on nonduty status, effectively sidelining the IG without triggering the notice requirement. The bill would address that gap by requiring the appropriate authority to provide substantive notice to Congress when placing an IG on nonduty status. Together, those changes will strengthen the institutional independence of IGs by creating a means by which Congress receives timely, relevant information about the substantive rationale for the removal, transfer, or placement of an IG on nonduty status.

¹ Pub. L. No. 95-452 (Oct. 12, 1978), 5 U.S.C. app. The Comptroller General of the United States, whose auditing standards IGs must follow by law, highlighted such legal protections as one of the “necessary protections to allow IGs to be structurally independent” if implemented appropriately. GAO-20-639R Inspectors General Independence (June 8, 2020) (available at: <https://www.gao.gov/assets/710/707412.pdf>).

² The substantive rationale may include information related to ongoing inquiries.

IG independence is a cornerstone of the IG Act. Moreover, under federal auditing standards, IGs must be independent both of mind and in appearance.³ The requirement to be independent is no less important for individuals temporarily serving in an acting capacity, or performing the duties of, an Inspector General. While under the Federal Vacancies Reform Act of 1998 (Vacancies Act) the IG's selected deputy typically assumes leadership of an OIG upon the departure of the IG, the President can also elect to direct a political appointee or a senior employee in the agency overseen by the OIG to temporarily serve as acting IG. The appointment of a political appointee⁴ from the administration or the appointment of a senior employee in the overseen agency risks creating both actual and apparent conflicts that negatively affect the ability of the acting IG to maintain the independence necessary to do their job. For example, a critical function of IGs is protecting the identity of whistleblowers who disclose fraud, waste, and abuse in Government. Agency employees will be reluctant to bring their concerns to the OIG if they suspect a senior agency employee or political appointee will have access to their complaints and their identity.

Section 103 of the bill would preclude such appointments by limiting who is eligible to temporarily serve as acting IG to the IG's designated deputy or another senior oversight professional from within the IG community. Doing so would prevent the conflicts inherent in asking individuals to serve in a managerial or political role in their agencies while also exercising independent oversight, and ensure the institutional independence required by the IG Act.⁵ Indeed, agencies themselves benefit when an acting IG is independent in both fact and appearance. That independence allows IGs to be a critical, credible source for answers when controversial allegations of mismanagement or wrongdoing arise.

Title III makes a series of reforms to the operations and reporting of the CIGIE Integrity Committee.⁶ We appreciate Congressional efforts to help strengthen and support the Integrity Committee. In particular, we support changes in the Integrity Committee's authorities, which help further its investigative authorities with the existing authorities available to OIGs. We believe that these changes will assist the Integrity Committee's efforts to further Inspectors General accountability.

Title IV of the bill would authorize IGs to subpoena the attendance and testimony by certain witnesses, as necessary, in the performance of the functions of the IG Act. For several Congresses, CIGIE has advised Congress that obtaining testimonial subpoena authority is a legislative priority of the IG community. OIG oversight can be substantially hampered by the inability to compel the testimony of witnesses who have information that cannot be obtained by existing IG authorities. An example of where this authority is especially important is in cases where a federal employee resigns or retires. Without testimonial subpoena authority, that employee's resignation or retirement can limit or

³ GAO-20-639R Inspectors General Independence, at 3.

⁴ Under 5 U.S.C. § 3345(a)(2), this is an individual who has been appointed by the President, by and with the advice and consent of the Senate.

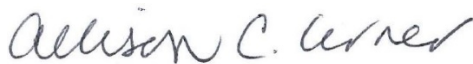
⁵ Jack Goldsmith, the former head of the Department of Justice's Office of Legal Counsel, wrote that amending the Vacancies Act to prohibit political appointees and agency officials from serving as an Acting IG was an effective, "clearly constitutional" way to promote IG independence (June 10, 2020) (available at: <https://www.lawfareblog.com/constitutional-response-trumps-firings-inspectors-general>).

⁶ The Integrity Committee was established to "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and [designated] staff members of the various Offices of Inspector General . . ." Section 11(d)(1) of the IG Act.

preclude an IG audit, evaluation, inspection, investigation, or other review into matters pertaining to that individual's former responsibilities. IGs can also face difficulty accessing key information during an inquiry into certain individuals or entities with whom the federal government does business. Examples include subcontractors or subgrantees that have no direct contractual relationship with the Federal government but are suspected of defrauding a federally funded program; in these cases, IGs have limited recourse if employees of subcontractors or subgrantees refuse to provide information to the IG during an audit or investigation. This authority would significantly enhance access to testimonial evidence, which is often a critical component of IG oversight.

We also believe the provision in the bill that authorizes an appropriation for CIGIE will enhance CIGIE's ability to fulfill its mission. Acting as the collective body of IGs, CIGIE fulfills its twin mission to (1) address integrity, economy, and effectiveness issues that transcend individual Government agencies and (2) increase the professionalism and effectiveness of IG community employees. While CIGIE has steadily increased the amount and scope of its work over its 10 years of existence, this independent agency is still primarily funded through an inefficient and complicated process of interagency collections individually deposited into a revolving fund. In contrast, CIGIE has leveraged to great effect limited, one-time appropriations for enhancements to Oversight.gov. Title VIII provides a direct funding mechanism for CIGIE through an authorization of an appropriation for the organization. The establishment of a more direct funding stream is not intended to change the overall funding amount to the organization, rather it will help CIGIE better plan its expenditures and resource needs. It will also provide Congress with a more direct avenue to provide direction on its funding priorities for CIGIE. In our view this is a positive development that will facilitate further discussion with OMB and Congressional appropriators.

We appreciate your continued support of CIGIE and its member IGs and hope that the brief overview of the bill above will assist your legislative efforts to ensure the institutional independence and support of the IG community. We look forward to the bill's prompt consideration and remain available to continue working with you on the important issues addressed in this legislation. If you have any questions, please do not hesitate to contact us.



Allison C. Lerner
Chair, CIGIE
Inspector General, National Science Foundation



The Honorable Mark Greenblatt
Vice Chair, CIGIE
Inspector General, Department of the Interior



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

CC: The Honorable Carolyn Maloney
Chairwoman, House Committee on Oversight and Reform
The Honorable James Comer
Ranking Member, House Committee on Oversight and Reform