



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

July 08, 2020

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

The Honorable Gary Peters, Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate

The Honorable Chuck Grassley,
United States Senate

The Honorable Rob Portman,
United States Senate

The Honorable James Lankford,
United States Senate

The Honorable Maggie Hassan,
United States Senate

The Honorable Thomas Carper,
United States Senate

The Honorable Mitt Romney,
United States Senate

The Honorable Jon Tester,
United States Senate

The Honorable Dianne Feinstein,
United States Senate

The Honorable Susan Collins,
United States Senate

Dear Senator Johnson, Senator Peters, Senator Grassley, Senator Portman, Senator Lankford, Senator Hassan, Senator Carper, Senator Romney, Senator Tester, Senator Feinstein, and Senator Collins:

We appreciate the bi-partisan effort to strengthen the independence of Inspectors General (IGs), and are writing today in response to a request for technical assistance on S. 3994, the “Securing Inspector General Independence Act of 2020,” which has been referred to the Homeland Security and Governmental Affairs Committee.¹ The Council of the Inspectors General on Integrity and Efficiency (CIGIE) believes that this bill will improve the institutional independence that is critical to IG oversight, and we look forward to its prompt consideration. While we remain available to continue to provide technical assistance as you consider this important legislation, a brief, section-by-section overview of the impact of key provisions appears below.

CIGIE has 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

¹ S. 3994, the “Securing Inspector General Independence Act of 2020” (116th Congress), as introduced on June 18, 2020.

(IG Act).² Those requirements provide a safeguard for the independence with which IGs must carry out an audit, investigation, or review, by guarding against that work being the reason for removing an IG. Section 2 would bolster the existing requirements for Congressional notification when removing or transferring an IG by requiring the notification include a more substantive rationale.³ 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.⁴ Section 2 of the bill would address that gap by requiring the appropriate authority provide substantive notice to Congress when placing an IG on nonduty status.⁵ 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.

As two of the co-sponsors of S. 3994 recently highlighted, “[t]o properly execute statutory responsibilities, IGs must maintain independence.”⁶ The U.S. Comptroller General recently emphasized that “IGs must be independent both of mind and in appearance” in order to meet Federal auditing standards.⁷ 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.⁸ While under the Federal Vacancies Reform Act of 1998 (Vacancies Act)⁹ the IG’s selected deputy typically assumes leadership of an OIG, the President may elect to direct a political appointee¹⁰ or a senior employee in the agency overseen by the OIG to temporarily serve as acting IG. The appointment of a political appointee from the administration or the appointment of a senior employee in the overseen agency risks creating both

² Pub. L. No. 95-452 (Oct. 12, 1978), 5 U.S.C. app. CIGIE is not the only body to highlight the importance of such protections. 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>).

³ The substantive rationale may include information related to ongoing inquiries.

⁴ CIGIE Legislative Priorities are legislative proposals that CIGIE considers of high priority to strengthen oversight of Federal programs or resolve challenges that IGs face under current law. CIGIE Legislative Priorities, issued at the start of each Congress, have included this issue since our 2015 CIGIE Legislative Priorities letter for the 114th Congress (available at: <https://ignet.gov/sites/default/files/files/committees/legislative/CIGIE%20Legislation%20Priorities%20-%20114th%20Congress%20Letter.pdf>).

⁵ CIGIE has also highlighted the positive effects on government oversight that would result from other, bi-partisan efforts to address this issue. For example, H.R. 1847, introduced by Ranking Member Hice and Representative Lieu, would similarly strengthen IG independence by ensuring Congress is appropriately notified when an IG is placed in a nonduty status.

⁶ Letter from Senators Portman and Lankford to President of the United States Donald J. Trump (April 14, 2020) (available at <https://www.portman.senate.gov/sites/default/files/2020-04/14April2020%20Letter%20to%20POTUS%20on%20IGs.pdf>).

⁷ GAO-20-639R Inspectors General Independence, at 3.

⁸ The importance of this issue has been recognized as bi-partisan and has been raised in both Houses of Congress. For example, H.R. 6689, the Accountability for Acting Officials Act, would similarly protect the independence of Offices of Inspector General (OIGs) by restricting individuals eligible to serve as acting IG to senior oversight officials within the IG community. See Section 2, H.R. 6689, 116th Congress.

⁹ See Pub. L. No. 105-277, Div. C, Title 1, § 151, 112 STAT. 2681-611, (codified at 5 U.S.C. §§ 3345-3349d).

¹⁰ 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.

actual and apparent conflicts that negatively affect the ability of the acting IG to maintain the required independence. 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 blow the whistle if they suspect a senior agency employee or political appointee will have access to their complaints and their identity. Section 3 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.¹¹ 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.

Finally, Section 4 of the bill would strengthen stakeholder trust in the independence and integrity of OIG leadership through requiring additional training of IG community personnel on the role of the CIGIE Integrity Committee (IC). CIGIE believes the IC serves a vital role in holding senior OIG officials, and those acting in those positions, accountable for serious misconduct by ensuring fair, consistent, timely, and impartial disposition of allegations that fall within the IC's statutory authority.¹² The IC has increased its outreach efforts to inform the IG community and other stakeholders about the role of the IC. However, CIGIE believes that the additional focus required under Section 4 of the bill on educating internal OIG whistleblowers, and the requirement for CIGIE to support such efforts, is appropriate.

CIGIE appreciates your continued support of CIGIE and its member IGs, and hopes that the brief overview of the bill above and its effects on government oversight will assist your legislative efforts to ensure the institutional independence of the IG community. We look forward to its 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.

Sincerely,



The Honorable Michael Horowitz
Chair, CIGIE
Inspector General, Department of Justice

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

¹¹ Jack Goldsmith, the former head of the Department of Justice's Office of Legal Counsel, recently 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>).

¹² The IC 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. In conducting its review, the IC applies its threshold standard for determining appropriate action which includes, in relevant part, whether an allegation against a senior OIG official, or someone acting in such position, concerns "conduct that undermines the independence or integrity reasonably expected" of the official. Section 7(A) of the Integrity Committee Policies and Procedures (2018).