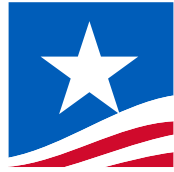




PEACE CORPS
Office of Inspector General



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Statement of Kathy A. Buller

Inspector General, Peace Corps
Chair, Legislation Committee
Council of Inspectors General for Integrity and Efficiency

before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

“Empowering the Inspectors General”

February 1, 2017

Introduction

Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee:

Thank you for inviting me to appear before you today to discuss the work of inspectors general to promote integrity and efficiency. I am here to share my perspective as both the Inspector General for the Peace Corps and the Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I want to express our appreciation for the years of bipartisan effort this Committee put toward passing the Inspector General Empowerment Act¹, and I look forward to our continued collaboration to help ensure that the Federal government operates free from fraud, waste, abuse, and mismanagement.

Inspectors general were created with the vision of a better, more efficient government. Our common mission is to detect and prevent waste, fraud, and abuse in the agencies we oversee, and to promote integrity and efficiency in government programs and operations. Our staff work to keep federal agencies accountable, protect whistleblowers, and shine a light on corruption and mismanagement within the Federal government and those that do business with it. In fiscal year 2015 alone, we identified over \$17 billion taxpayer dollars that could be put to better use and recovered over \$10 billion dollars.²

The CIGIE Legislation Committee is made up of 21 IGs and is responsible for providing regular communication on legislative issues and other matters of common interest between Congress and the CIGIE. We are dedicated to providing helpful and timely information about congressional initiatives to the IG community and soliciting the views and concerns of the community in response to congressional initiatives and requests. We also present CIGIE's views to Congress, the Government Accountability Office, and the Office of Management and Budget (OMB) on legislative issues that affect the IG community. We have enjoyed years of bipartisan support from Congress in our common effort to improve the operations that we oversee. The Inspector General Empowerment Act, which was passed in the last session of Congress and originated with this Committee, is a tremendous example of that support and collaboration.

Inspector General Empowerment Act of 2016

The Inspector General Empowerment Act was the most significant legislation to affect the Inspector General community since 2008. It was passed largely due to the notable bipartisan efforts of this Committee and its hardworking staff. This Act restored our right of unfettered access by reinforcing a core tenet of the Inspector General Act of 1978 (IG Act): that IGs have the right to access all materials and documents necessary to our oversight work. In addition, the Inspector General Empowerment Act provided several tools to ensure IG independence, help prevent and detect fraud and improper payments, and enhance our capacity to perform reviews that help the government work better.

Access

As I noted in my testimony before this Committee in 2015, members of the IG community found our work impeded by agencies blocking or delaying access to documents and other information that we needed to perform our oversight. A bedrock principle of the IG Act is that an Inspector General must have access to "all" agency records and information which relate to the programs and operations of the

¹ Inspector General Empowerment Act of 2016, Pub. L. No. 114-317 (Dec. 16, 2016).

² CIGIE Progress Report to the President for Fiscal Year 2015, *available at*: https://www.ignet.gov/sites/default/files/files/FY15_Progress_Report_to_the_President.pdf

agencies we oversee. This language had been seen as clear and unqualified. However, beginning in 2010, a number of Federal agencies, including the Department of Justice (DOJ), the Peace Corps, the Department of Commerce, the Chemical Safety and Hazard Investigation Board, and the Department of the Treasury challenged their respective IGs' right to access "all" such agency information.

During my testimony, I discussed the struggles my office faced in obtaining the information we needed to do our job. My office was unnecessarily compelled to confront this issue because the former General Counsel of the Peace Corps erroneously interpreted the law in a manner that effectively kept OIG, Congress, and the American public in the dark about the program to address sexual assault in the Peace Corps. I felt I had no choice but to enter into a memorandum of understanding with my own agency to avoid a blackout of critical information regarding the care that the agency provided to Peace Corps Volunteers who had experienced sexual assault. After years of arguments, congressional hearings, negative press, and a hold on the Senate confirmation of the former Peace Corps Director, we were at an impasse.

In August 2014, 47 Inspectors General signed a letter to Congress noting that meaningful oversight depends on complete and timely access to all agency materials and data, and that agency actions that limit, condition, or delay access thus have profoundly negative consequences for our work. The letter noted how such actions make OIGs less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

The issue of access came to a head for the IG community in July 2015, when DOJ's Office of Legal Counsel (OLC) issued a legal opinion that threatened the independence of all Inspectors General and challenged our collective ability to have timely and independent access. The 2015 OLC opinion turned a decades long understanding of that bedrock principle of access on its head by allowing officials whose agencies are under review to decide what documents an IG can and cannot have. It became clear to the IG community that only an act of Congress could restore the Inspector General's broad right of access. The Inspector General Empowerment Act did just that. The act further strengthened the access provision and reiterated Congress's intent for Inspectors General: that our access to "all" agency records really means "all." Further, the IG Empowerment Act made clear that such access must be provided in a timely fashion.

The IG Empowerment Act finally resolved this matter by making clear that only an explicit act of Congress can limit an IG's right of access to information. In the Peace Corps, the Inspector General Empowerment Act has had an immediate impact. We are now working with the Agency to fully restore our access to the agency's sexual assault risk reduction and response program, and hope this outcome will further a culture of openness and transparency between agency staff and my office. This not only ensures that my office receives the unfiltered information we need to provide effective oversight, it also supports whistleblowers, promotes an open and transparent Peace Corps for the American taxpayer, and ensures that Congress is fully informed of the programs and operations of the Peace Corps.

Computer Matching Act

The Inspector General Empowerment Act also exempted IGs and agencies working in a matching program with us from the requirements of the Computer Matching and Privacy Protection Act of 1998 (CMPPA).

The CMPPA generally prevents unregulated access to personal records for purposes unrelated to the reasons for which the records were collected. However, computerized matching of data from two or more information systems is a proven method of data analysis that can detect and prevent fraud, waste, and

abuse in government programs. Computer matching of data sets is commonly used to identify improper payments and potential fraud, especially in Federal benefit programs and activities.

CMPPA had required OIGs to obtain the approval of the agency's data integrity board to implement a computer matching agreement, potentially undermining IG independence. Though IGs are represented on the board, agency officials on the board could decide whether to prevent the match or to impose undue restrictions on the match. The board approval process also risked providing agency officials not on the board advance notice in cases where the IG was conducting sensitive work.

Further, the CMPPA required IGs to submit to a protracted review process that could take more than a year to complete. The time and effort associated with appealing a data integrity board decision to OMB in some cases effectively precluded IGs from carrying out a match in a timely fashion.

By exempting IGs from the CMPPA, Congress has ensured that our computer matching activities will be performed more efficiently, independent from potential undue burdens or restrictions by agencies.

Paperwork Reduction Act

The Inspector General Empowerment Act similarly exempted the IG community from the Paperwork Reduction Act (PRA), a reform which the IG community had recommended for over a decade.

The IG community expressed concern that the PRA required that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. This conflicted with our statutory mission to be independent. Furthermore, the PRA also requires a lengthy and burdensome approval process for the collection of information by a Federal agency. The protracted approval process affected our ability to carry out work required by members of Congress, through law or by request, in a timely and effective manner. In many cases, by the time the survey was approved, the character of the issue under review had changed. In some cases IGs discontinued using surveys and gathering information that would enhance the effectiveness and quality of a review.

Providing this exemption ensures that IGs will be able to conduct surveys and other information collection with the requisite independence, and to do so without unnecessary delay or burdens.

Legislative Priorities

The IG community looks forward to working with Congress to further improve our ability to perform the oversight mission that Congress and taxpayers expect from us. We are interested in engaging Congress on a range of issues. While not an exhaustive list, four of the issues the IG community has expressed particular interest in are:

- Protecting cybersecurity vulnerability information from public disclosure
- The appropriate use of paid or unpaid, non-duty status in cases involving an IG
- Testimonial Subpoena Authority for those IGs who do not already possess the authority
- Amendments to the Program Fraud Civil Remedies Act (PFCRA)

Protecting Cybersecurity Vulnerability Information from Disclosure

The IG community appreciates the need to keep the public and Congress informed about the programs and operations we oversee. That being said, since 2011, we have raised serious concerns that information related to our agencies' information security may be unprotected from disclosure. Without adequate protection, such information can be a roadmap for someone attempting to exploit agency cybersecurity vulnerabilities. Although classified information and documents compiled for law enforcement purposes can be protected from public disclosure, no single exemption specifically addresses protection of detailed information on the security vulnerabilities of Federal agencies. As cybersecurity threats become ever more present, the need to protect information that can be used to exploit identified weaknesses is greater than ever.

Appropriate Use of Paid or Unpaid, Non-duty Status in Cases Involving an IG

The IG Act provides specific processes for removing or transferring an IG, and requires congressional notification not later than 30 days before any such removal. These standards provide a critical safeguard to protect the independence of IGs to carry out our work. However, this safeguard does not apply when an IG is placed in a paid or unpaid, non-duty status.

The IG community supports an amendment to the IG Act to establish a congressional notification requirement for use of either paid or unpaid, non-duty personnel actions involving an IG, as well as a framework for the use of the authority.

Testimonial Subpoena Authority

An authority which was included in the predecessor version of the IG Empowerment Act that was also passed by the House of Representatives³ would have authorized those IGs that do not already have such authority to subpoena the attendance and testimony by certain witnesses, including any former Federal employee, as necessary in the performance of oversight functions described in the IG Act. While the final version of the Inspector General Empowerment Act did not include that authority, we are encouraged by this Committee's consideration and bipartisan support of the benefits to OIG oversight that this authority would bring.

In the absence of such authority, the resignation of Federal employees has in some instances substantially hampered an audit, investigation, or other review into matters within the scope of that individual's responsibilities. This authority would also allow an IG to access information during the course of an inquiry into entities with whom the Federal government does business. Examples include where subcontractors or subgrantees have no direct contractual relationship with the Federal government, with employees of contractors who refuse to provide information to the IG, or interviewees who have destroyed important documents and have knowledge of the matter they tried to cover-up.

The new authority would be most effective if it mirrored the existing documentary subpoena authority set forth in the IG Act.

Program Fraud Civil Remedies Act Amendments

The PFCRA⁴ is often referred to as the "mini False Claims Act" because it provides administrative civil remedies for false claims of \$150,000 or less and for false statements in cases DOJ does not accept for prosecution. PFCRA cases are adjudicated before Administrative Law Judges. Unlike False Claims Act cases, only double damages are available under the PFCRA. The PFCRA permits a \$5,000 recovery for

³ Inspector General Empowerment Act, H.R. 2395, 114th Congress (2015).

⁴ 31 U.S.C. Chapter 38.

each false claim. PFCRA also authorizes civil money penalties for false statements even if there has been no claim for payment of money. Though individual recoveries may seem low, when taken together, PFCRA reform promises to make this a significant tool to recover fraudulent expenditures for the benefit of taxpayers.

Use of Administrative Law Judges can make the PFCRA a potentially faster and lower-cost alternative to recovering damages in smaller dollar fraud cases. However, the statute remains a relatively underutilized tool as noted in a 2012 report from the Government Accountability Office (GAO).⁵ According to the report, many agencies were not using the PFCRA for reasons including: a lack of familiarity with the statute; insufficient resources; cumbersome and time-consuming procedures; availability of alternate remedies; and the absence of Administrative Law Judges in certain agencies that could hear PFCRA cases. A subsequent CIGIE-conducted survey of the IG community revealed that a number of the GAO concerns remain, thus underscoring the continuing challenges that inhibit widespread use of the PFCRA to combat fraud.

Since then, CIGIE has proposed several statutory changes developed in consultation with key stakeholders such as the Armed Services Board of Contract Appeals and Boards of Contract Appeals. We look forward to pursuing how this authority can be reformed to provide the IG community a more effective tool in combatting fraud, waste, and abuse.

Conclusion

The Inspector General community is grateful for the steadfast, bipartisan support it has received from Congress, and looks forward to our future cooperation in ensuring the integrity and efficiency in the Federal programs and operations that we oversee. The confirmation of our broad right of access has had a tremendous impact on our community, as has our additional authorities to more independently and effectively undertake IG surveys and participate in computer matching activities. We also look forward to continuing our collaboration with this Committee on future legislative proposals to enhance our oversight authorities and the operations of the agencies we oversee.

⁵ *Program Fraud Civil Remedies Act: Observations on Implementation*, "GAO-12-275R (January 27, 2012).