

Background Documents on the Council of Inspectors General on Integrity and Efficiency (CIGIE) and the History of Inspectors General and the Paperwork Reduction Act

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The CIGIE Annual Report, A Progress Report to the President, Fiscal Year 2010, has been submitted separately and is available on the CIGIE website at <http://www.ignet.gov/randp/fy10apr.pdf>.



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

April 2, 2010

The Honorable Darrell Issa
Ranking Member
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

**Re: CIGIE Legislation Committee
FY 2010 – Legislative Initiatives to Improve the work of Inspectors General**

Dear Representative Issa:

This is in response to your letter of March 24, 2010, requesting any legislative suggestions to further improve the Inspector General Act of 1978, as amended. As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am providing you this summary of our current legislative initiatives to improve the work of Inspectors General (IG).

The CIGIE Legislation Committee (Committee) is dedicated to providing helpful and timely information about Congressional initiatives to the IG community; soliciting the views and concerns of the community in response to Congressional initiatives and requests; and presenting views and recommendations to Congressional entities and the Office of Management and Budget (OMB) on issues and initiatives of interest.

The Committee has been actively advancing several pro-active initiatives, among them:

- Paperwork Reduction Act
- Computer Matching Act
- Testimonial Subpoena Authority
- Technical Amendments to the Inspector General Reform Act of 2009

Brief summaries of these initiatives are provided below.

1. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) requires a lengthy and burdensome approval process for the collection of information by a Federal agency.¹ The CIGIE has recommended that the PRA be amended to exempt the Federal IG offices from its requirements. It should be noted that the Government Accountability Office, which performs audits and investigations for Congress, is exempted from PRA requirements.

¹ 44 U.S.C. § 3501 *et seq.*

Senator Grassley introduced S. 976 which would exempt from the PRA information collected by a Federal IG during the conduct of any investigation, audit, inspection, evaluation, or other review. S. 976 fully addresses the concerns of the IG community and the Committee has expressed its support thereof. S. 976 awaits action by the Senate Committee on Homeland Security and Governmental Affairs.

2. Computer Matching and Privacy Protection Act

The Computer Matching and Privacy Protection Act requires a protracted review and approval process before computer matching can be performed between agencies that house data to identify improper or fraudulent disaster or other assistance payments to individuals.² The timely use of computer matching to identify those who improperly received Federal assistance, and subsequently removing them from the program after verification, improves program efficiency and enables the government to focus resources on eligible applicants. Moreover, under optimum conditions, timely computer matching can prevent improper payments from occurring in the first instance and, even following payments, usually leads to enhanced recovery of improper payments. The Committee has recommended that the IG community be exempt from the provisions of the Computer Matching and Privacy Protection Act to facilitate review and identification of fraud.

3. Testimonial Subpoena Authority

The IG community supports expanding the IG subpoena authority to include compelling the attendance and testimony of non-Federal agency witnesses. This proposed expansion of authority would enhance the IGs' ability to conduct thorough audits and investigations, particularly in procurement fraud matters dealing with Government contractors or grantees. IGs have cited examples of problems obtaining cooperation from private contractors, former employees, and other parties in their audits or investigations. This lack of cooperation either led to incomplete audits or closed investigation cases.

Congress has begun to address the issue and has passed legislation to grant the expanded authority to the Department of Defense IG. Several bills now pending before Congress offer a variety of solutions to the issue; however, they do not offer a uniform, consistent approach for all IGs. The Committee is working with OMB and the Department of Justice to develop an appropriate legislative proposal to grant this authority to all IGs.

4. Technical Amendments to the Inspector General Reform Act of 2009

The Committee has proposed certain amendments to the Inspector General Reform Act of 2008 (Reform Act) and has referred a final draft of the recommendations to staff of the Senate Homeland Security and Governmental Affairs and House Oversight and Government Reform Committees. The recommendations include those proposals that are technical in

² 5 U.S.C. § 552a(o) *et seq.*

The Honorable Darrell Issa
April 2, 2010
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nature and that affect multiple CIGIE members. The proposed amendments seek to accomplish the following:

- Codify the following provisions from the Reform Act in the Inspector General Act of 1978: (a) the designated Federal entity IG pay provisions set forth in section 4(b) of the Reform Act; (b) pay provisions for career Senior Executive Service personnel that become inspectors general set forth in section 4(c) of the Reform Act, and (c) the authority of the Integrity Committee to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel provided in section 7(b) of the Reform Act;
- Authorize all executive OIGs to fund or participate in CIGIE activities (the current language “department, agency, or entity of the executive branch” does not include certain designated Federal entities);
- Replace “agency” with “Federal agency, establishment or designated Federal entity” so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints;
- Clarify that reports that OIGs must post on their web-sites include audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements; and
- Correct various typographical errors.

Thank you for the opportunity to present this summary of important issues for the IG community. We would appreciate the opportunity to meet with you or your staff to discuss these initiatives in further detail and look forward to working with you to advance these legislative initiatives.

Should you have any questions or need more information, please do not hesitate to contact me directly at 202-512-2288.

Sincerely,



J. Anthony Ogden
Inspector General
United States Government Printing Office

c: The Honorable Edolphus Towns



July 10, 2009

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Subject: S. 976 – Amending Provisions of the Paperwork Reduction Act

Dear Chairman Lieberman:

As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am writing to convey the support of the Inspector General (IG) community for S. 976. This legislation would exempt from the Paperwork Reduction Act (PRA) information collected during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by a Federal Office of Inspector General. S. 976, as introduced by Senator Grassley, has fully addressed the concerns of the IG community expressed in previous correspondence.

S. 976 will exempt the IGs from the PRA's burdensome and intrusive requirements thereby ensuring that the independence of IGs is not compromised while collecting information during the conduct of an investigation, audit, inspection, evaluation. In turn, information surveys and data collection tools will be more readily available to IGs in their efforts to deter and detect waste, fraud and abuse. Given the increased oversight requirements over stimulus funding, these tools are becoming increasingly important.

We are pleased with the introduction of S. 976 by Senator Grassley, and stand ready to help move this legislation forward in order to improve the operations of the IG community. We are also conveying our comments to Ranking Member Collins. Please do not hesitate to contact me with any questions or for additional information.

Sincerely,

A handwritten signature in blue ink that reads "J. Anthony Ogden".

J. Anthony Ogden
Inspector General
United States Government Printing Office

Chair, Legislation Committee
Council of the Inspectors General on Integrity and Efficiency

c: The Honorable Charles Grassley



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

July 22, 2009

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

**Subject: Amendment #1679 to the Department of Defense Authorization Bill
(S.1390) Amending Provisions of the Paperwork Reduction Act**

Dear Chairman Lieberman:

As Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), I am writing to convey the support of the Inspector General (IG) community for Amendment #1679. This amendment would exempt from the Paperwork Reduction Act (PRA) information collected during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by a Federal Office of Inspector General. Amendment #1679, as introduced by Senator Grassley, has fully addressed the concerns of the IG community expressed in previous correspondence.

Amendment #1679 will exempt the IGs from the PRA's burdensome and intrusive requirements thereby ensuring that the independence of IGs is not compromised while collecting information during the conduct of an investigation, audit, inspection, or evaluation. In turn, information surveys and data collection tools will be more readily available to IGs in their efforts to deter and detect waste, fraud and abuse. Given the increased oversight requirements over stimulus funding, these tools are becoming increasingly important.

We are pleased with the introduction of Amendment #1679 by Senator Grassley, and urge support of its passage. We are also conveying our comments to Ranking Member Collins, as well as Chairman Levin and Ranking Member McCain of the Armed Services Committee. Please do not hesitate to contact me with any questions or for additional information.

Sincerely,

J. Anthony Ogden
Inspector General
United States Government Printing Office

Chair, Legislation Committee
Council of the Inspectors General on Integrity and Efficiency

c: The Honorable Charles Grassley



President's Council on Integrity and

For Release on
Delivery Expected for
July 19, 2000

**Testimony of
Honorable Gaston L. Gianni, Jr.
Vice Chair, President's Council on Integrity and
Efficiency**

**Before the
Committee on Governmental Affairs
United States Senate**

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

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. I am the Inspector General (IG) of the Federal Deposit Insurance Corporation (FDIC) and currently the Vice Chair of the President's Council on Integrity and Efficiency (PCIE). 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. We thank the Governmental Affairs Committee for its longstanding, bipartisan support. 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.

By way of background, I assumed the role of the PCIE Vice Chair in May 1999. The PCIE was created by Executive Order in 1981 to provide a forum for the Presidentially appointed (PAS) IGs and others to work together and coordinate their professional activities. The Council is chaired by the Deputy Director for Management at Office of Management and Budget (OMB). Other members include the Controller of the Office of Federal Financial Management at OMB, the Special Counsel of the Office of Special Counsel (OSC), the Director of the Office of Government Ethics (OGE), the Deputy Director of OPM, and a representative of the Director of the Federal Bureau of Investigation (FBI).

Over the years, the PCIE has established various committees and other mechanisms to better accomplish the needs of its community. Today, the PCIE has six standing committees, which include Audit, Inspections and Evaluations, Investigation, Integrity, Legislation, and Professional Development, and two roundtables to stay apprised of government-wide issues. Both the Government Performance and Results Act (GPRA) Roundtable and the Information Technology Roundtable provide opportunities for the IG community to stay abreast of pertinent issues and share best practices on these two enormous initiatives aimed at improving government programs and initiatives.

Mr. McFarland chairs the PCIE Investigation Committee and is prepared to discuss the need for statutory law enforcement and any other investigation issues. Mr. Mead heads up the PCIE Legislation Committee and has worked extensively with your Committee staff over the past 2 years on legislative matters affecting the IG community on IG Act amendments and other proposed pieces of legislation.

Background and Accomplishments

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 Act charges IGs to independently (1) conduct and supervise audits and investigations relating to the programs and operations of their agencies as well as reviewing related legislation and regulations; (2) provide leadership for activities designed to promote economy, effectiveness, and efficiency and

statutes relating to the programs and operations of the agency or its operating administrations, or the laws and regulations administered or applied by the agency or its operating administrations."

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. Further, many IGs feel strongly that these requirements affect 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.

In passing the IG Act, Congress charged IGs with the mission to "conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the host agency." The purpose of such audits and investigations is to "promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations." By law, an IG must keep "the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action."

IGs are to be appointed by the President and confirmed by the Senate "without regard to political affiliation" solely on the basis of professional expertise. Moreover, IGs "shall not report to, or be subject to supervision by, any other officer" of the agency other than the head of the agency or the next senior officer, usually the Deputy. Significantly, agency heads shall not "prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."

The PRA requires that "collections of information" by a Federal agency, or the soliciting or obtaining of identical information from ten or more persons, be subject to review and approval initially from a "senior official" of the agency and later from OMB. The 1995 Amendments broadened the Act to ensure that all such "collections of information" were subject to this review process, except those conducted by independent regulatory agencies. *An exception exists for OIG investigations, but not for OIG activities generally.* Furthermore, although our auditing and evaluation roles are comparable in many respects, the Act does not apply to GAO.

The IG community remains sensitive to the issue of burdens on the public, as it has increasingly had to be receptive to numerous concerns by its many public constituencies and customers of its work product. There are, however, both process and substance implications involved for the Congress and the IG community.

For example, Congress often requires IGs, through law or by formal request, to conduct specific audits of agency programs in a very short timeframe. Part of the audit process may involve gathering information or other data from surveys of agency contractors, grantees, those entities subject to agency regulation, or the public. Subjecting such surveys to the review and approval process, even in the best of cases, could impact our ability to meet the tight deadlines required by Congress so it may conduct its legislative and oversight responsibilities in a timely fashion.

The substantive issue involves whether Congress intended that either departmental officials or OMB have authority over the OIG information collection efforts that are key to the performance of a successful audit. IGs recognize that OMB has an extensive wealth of knowledge in the formulation and conduct of surveys, and our community may wish to informally seek advice in the areas of survey formats, techniques, and methodologies. However, it is quite another matter for either the agency head or OMB to have the authority to either withhold approval of a proposed survey or alter its contents and questions. It allows these Offices to exercise some control over the type of audits an IG may perform, from whom an IG may collect information, and exactly when this may be accomplished. As I mentioned earlier, we are conversing with OMB to arrive at solutions to work within the confines of this statutory conflict. However, the conflict is real. As it stands, PRA could implicate the statutory independence of the IGs and subject them to the political considerations this Committee intended to insulate them from over 20 years ago.

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. 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. These activities could include annual report preparation, strategic planning, various crosscutting projects, and oversight, and possibly funding, of training functions, to name a few.

The CFO Council and the Chief Information Officer (CIO) Council have statutory responsibilities and some access to Federal funds, through government credit card rebates, to carry out their operations. The PCIE and ECIE lack an OIG institutional presence. It is akin to most volunteer groups, whereby the effectiveness of the organization is dependent on the goodwill and efforts of its members to dedicate resources within their own shops to carry out the responsibilities and initiatives of the organization.

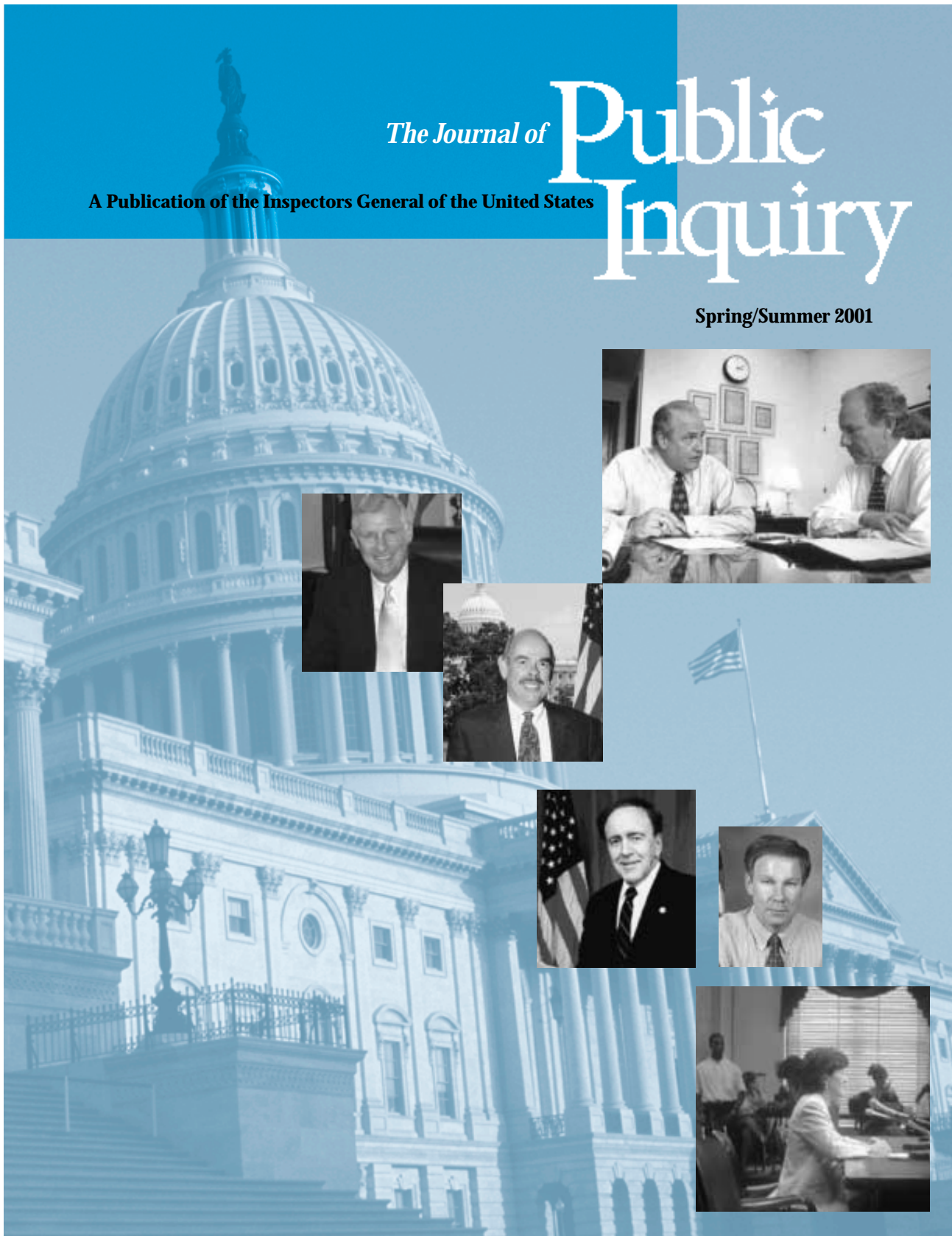
Further, since we report to both the Executive and Legislative branches, it may be time to consider carefully how best we can fulfill both roles through some sort of statutory codification. With such a structure, the PCIE and ECIE would be held accountable for their operations and provide better access for the Congress to focus attention on areas of particular interest.

The Journal of

A Publication of the Inspectors General of the United States

Public Inquiry

Spring/Summer 2001



HEARING regarding
Legislative Proposals and Issues
Relevant to the Operations of the Inspectors General

Wednesday, July 19, 2000
10:00 a.m.
SD-342 Dirksen Senate Office Building

WITNESS LIST

THE HONORABLE JOSHUA GOTBAUM
Executive Associate Director and Controller
United States Office of Management and Budget

THE HONORABLE GASTON L. GIANNI, JR.
Inspector General, Federal Deposit Insurance Corporation
Vice Chair of the President's Council on Integrity and Efficiency

Accompanied by:

THE HONORABLE PATRICK E. McFARLAND
Inspector General
United States Office of Personnel Management

THE HONORABLE KENNETH M. MEAD
Inspector General
United States Department of Transportation

MR. NICHOLAS M. GESS
Associate Deputy Attorney General
United States Department of Justice



S. Hrg. 106-350
The Inspectors General Report on the Export-Control
Process for Dual-Use and Munitions List Commodities

HEARING BEFORE
THE COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS FIRST SESSION
JUNE 23, 1999

COMMITTEE ON GOVERNMENTAL AFFAIRS
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Curtis M. Silvers, Professional Staff Member
Joyce A. Rechtschaffen, Minority Staff Director and Counsel
Laurie Rubenstein, Minority Chief Counsel
Darla D. Cassell, Administrative Clerk

Witnesses

Donald Mancuso, Acting Inspector General, Department of Defense.
Johnnie E. Frazier, Acting Inspector General, Department of Commerce
John C. Payne, Deputy Inspector General, Department of State
Gregory H. Friedman, Inspector General, Department of Energy
Lawrence W. Rogers, Acting Inspector General, Department of Treasury
L. Britt Snider, Inspector General, Central Intelligence Agency



Fraud and Waste in
Federal Government Programs

February 10, 1999

House Committee on Government Reform
Dan Burton, Chairman

PANEL I

The Honorable Roger Viadero
Inspector General
Department of Agriculture

The Honorable Susan Gaffney
Inspector General
Department of Housing and Urban Development

The Honorable June Gibbs Brown
Inspector General
Department of Health and Human Services

PANEL II

The Honorable David Walker
Comptroller General
U.S. General Accounting Office

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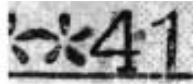
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KENNETH M. MEAD

*Inspector General, U.S. Department of Transportation*¹

A Non-Random Act of Kindness

Congress and the Inspectors General

Evolution of the Inspector General Role

When the Inspector General Act (IGA) was first proposed in the late 1970's, skeptics abounded. The novel concept—of having an independent, non-partisan voice within an agency reporting to both its head and to Congress—would never work. It would infringe on traditional presidential prerogatives, undermine the authority of cabinet secretaries, and balkanize criminal investigations. Further, we were told, it would be impossible for an inspector general to be responsive to 535 different members of congress. Fortunately, experience has proven otherwise.

As we enter the third decade following passage of the IGA (Public Law No. 95-452), inspectors general have become an integral component in efforts to improve government efficiency and integrity. We are no longer best identified by the moniker of a certain Danny Kaye movie. With a new administration and Congress settling in, we are in a good position to make high impact contributions by focusing attention on federal management challenges and recommending constructive solutions. By virtue of our independent and nonpartisan status, we provide a measure of continuity and offer a wealth of institutional knowledge and expertise. We note that key members of Congress urged President Bush to recognize this vital role by adhering to established practice in retaining the services of presidentially-appointed inspectors general at the start of his administration. We appreciate knowing their trust and support, as well as that of the President.

The fruits of our work will not blossom, however, unless we, as a community, actively reach out to help new officials understand how we may assist them in confronting the management problems landing on their desks. Indeed, there are some 3,000 political appointment slots to fill in the executive branch, and many of these offi-

¹Brian A. Dettelbach, Senior Counsel for Legislative and External Affairs and Paul M. Feeney, Legislative Counsel, contributed greatly to the writing of and research for this article. Disclaimer: The views of the authors are their own. They do not reflect the views of the PCIE or its Legislation Committee.

Multi Agency Efforts to Improve Program Integrity

The work performed by every inspector general varies since it is based largely on the programs, operations, and priorities of each agency. However, it can be generally grouped into four different themes: Disbursement of Federal Funds; Financial Management and Information Technology; Public Health, Safety, and the Environment; and, Employee Misconduct and Program Integrity. Moreover, particularly in the investigative realm, inspectors general serve on many federal interagency law enforcement task forces to combat fraud and crime. A few examples suffice.

Child Support Enforcement—HHS OIG is part of a federal and state team that, with the assistance of local law enforcement agencies, tracks down and prosecutes chronic delinquent parents owing large sums of child support.

Operation "Safe Home"—In conjunction with other federal, state, and local authorities, HUD OIG launched "Operation Safe Home" to identify and combat violent crime and drug trafficking in public and assisted housing, fraud in the administration of public housing authorities, and equity skimming by owners and managers of FHA-insured multi-family housing.

Food Stamp Felons—The USDA OIG has spearheaded "Operation Talon", in conjunction with other federal and state authorities, to identify, locate, and apprehend dangerous and violent felons who may also be illegally receiving benefits through the Food Stamp program.

Highway and Airport Construction Fraud—DOT OIG has designated a national contract and grant fraud coordinator to help direct fraud prevention, detection, and investigation efforts within DOT. The coordinator also works closely with state Departments of Transportation and grantees managing billions of dollars in highway, airport, and transit projects. Last year, OIG sponsored a major conference on construction fraud attended by federal and state auditors, criminal investigators, and state highway agencies and inspectors general offices nationwide.

Agency-Specific Priorities

Finally, in addition to the IGA and other general management laws, there is another source by which some Inspectors General may exercise their authority. That is, through legislation such as an authorization or an appropriation measure specific to the agency itself. For instance:

- The Health Insurance Portability and Accountability Act (HIPAA) of 1996 established a national program whereby the HHS OIG, the Secretary of HHS, and the Attorney General coordinate federal, state and local law enforcement activities with respect to health care fraud and abuse. This effort provides

authority to fight fraud committed against all health plans, private and public, such as Medicare and Medicaid.

- To address the threat posed to the traveling public by motor carriers and their drivers who falsify log books to circumvent federal regulations governing the number of hours they can be on the road without rest, Congress passed the Motor Carrier Safety Improvement Act of 1999. That law, in part, recognized the efforts of the DOT OIG and clarified its authority, working with other federal, state, and local officials, to conduct investigations for violations of federal criminal law and help keep unsafe and fatigued drivers off the road.

Recent Legislation and Outlook

The 106th Congress

There were some significant congressional activities involving the inspector general community during the last session of Congress.

Elevation of TVA OIG, Criminal Investigator Academy and Forensics Lab—Legislation (Public Law No. 106-422) was enacted to elevate the Office of Inspector General at the Tennessee Valley Authority from a DFE position to one appointed by the President and confirmed by the Senate. As part of that law, Congress also authorized the Inspector General Criminal Investigator Academy, which provides training and development for OIG special agents, and the Inspector General Forensic Laboratory, to perform forensic services for the community.

Oversight Hearing on Law Enforcement Authority and IG Act Amendments—The Senate Committee on Governmental Affairs held an oversight hearing on issues facing inspectors general, focusing primarily on the question of statutory law enforcement authority and the provisions of S. 870, the Inspector General Act Amendments, introduced by Senator Collins. That bill would have required management reviews of OIG operations, changed current reporting requirements, and mandated a study by the General Accounting Office of options for potential consolidation of DFE Offices of Inspector General.

Fraud Recovery Audit Legislation—The OIG community provided extensive input during House consideration and passage of the Government Waste Corrections Act of 2000, sponsored by Representative Dan Burton, Chairman of the House Committee on Government Reform. This legislation would have required federal agencies to conduct audits on major program activities to recover any erroneous payments made to contractors.

OIG agents have earned the trust and respect of law enforcement colleagues in all levels of government. We certainly will do our part to support Chairman Thompson's efforts, work with other members, and the administration to make statutory law enforcement a reality.

Clarifying the Scope of IG Authority—The IGA provides very broad authority, imposing a duty to conduct “audits and investigations relating to the programs and operations” of agencies, and “to make such investigations and reports relating to the administration of the programs and operations . . . as are in the judgement of the IG, necessary or desirable.” Congress explicitly granted IGs the authority to issue subpoenas for the production of records and empowered IGs to take sworn testimony. Finally, Congress mandated that IGs are to expeditiously report to “the Attorney General whenever the IG has reasonable grounds to believe there has been a violation of federal criminal law.”

Despite what appears to be a rather unambiguous grant of Congressional authority, decades old Justice Department Office of Legal Counsel Opinions³ and certain decisions of federal courts⁴ construe the IGA in ways narrowing this authority. Courts are divided on the question of whether IGs can investigate false statements made to federal agencies by third parties that do not receive direct federal funds but nonetheless are subject to agency regulation.

Some courts have 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 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.

At DOT, we have been challenged extensively on this particular issue. Courts are split as to whether we have authority under the IGA to conduct criminal investigations of motor carriers subject to DOT regulations and registration requirements, including the number of hours they are permitted to be on the road each day. Fortunately, with bipartisan support of Congress and the administration, Congress clarified that we had such authority as part of the Motor Carrier Safety Improvement Act of 1999.

Other inspectors general, particularly those whose agencies regulate financial institutions or engage in protect-

ing public health, safety, and the environment, have indicated an interest in having Congress clarify this discrepancy. We note that the Senate Committee on Governmental Affairs favorably reported such legislation several years ago. If the community believes it is time to revisit this matter in earnest, we must first work to lay a sound foundation with specific case examples.

Paperwork Reduction Act Requirement and OIG Audits—

Many IGs believe that being subject to the review process requirements of the Paperwork Reduction Act (PRA) conflicts with their statutory mission to be independent and nonpartisan. They assert that these requirements affect our ability to carry out audits and evaluations required by members of Congress, through law or by requests, in a timely and effective manner.

While agency heads may generally supervise inspectors general, they are not to “prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation.” Yet the PRA requires that information collections, such as OIG surveys, be subject to approval from a “senior official” of the agency and then from OMB. While the 1995 PRA Amendments specifically exempted independent regulatory agencies from these requirements, and continues to exempt GAO, they were silent on the question of application to inspectors general.

We recognize OMB's wealth of knowledge in the formulation and conduct of surveys. Indeed, our community may wish to informally seek its advice in the areas of survey formats, techniques, and methodologies. However, application of the PRA to OIGs has both process and substance implications.

Congress increasingly requires IGs, through law or by formal request, to conduct specific audits of agency programs in a very short time. Part of the audit process may involve gathering information or other data from surveys of agency contractors, grantees, those entities subject to agency regulation, or the public. Subjecting such surveys to the review and approval process could impact our ability to provide an accurate and professional produce under the tight deadlines required by Congress.

The substantive issue is whether Congress intended that either departmental officials or OMB have authority over OIG information collection efforts that are key to the performance of a successful audit. Questions will arise should an agency head or OMB withhold approval of, or order modifications to, a proposed OIG survey. Again, it will be up to the community to present its case for clarification of this potential conflict between the IGA and the PRA.

Codification of Integrity and Efficiency Councils—Congress may also wish to consider whether PCIE and ECIE should be put on a par with our affinity Councils, the Chief Financial Officers (CFO) and Chief Information Officers (CIO),

³The so-called *Kmiec* and *Barr* Opinions. March 9, 1998 opinion of Douglas Kmiec, Deputy Attorney General, 13 U.S.Op. O.L.C. 54; July 17, 1990 opinion of William P. Barr, Acting Deputy Attorney General.

⁴Notably the Fifth Circuit's decision in *Burlington Northern Railroad Co. v. Office of Inspector General, Railroad Retirement Board*, 983 F.2d 631 (5th Cir. 1993).