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LEGISLATIVE PROPOSALS AND ISSUES RELEVANT TO THE OPERATIONS OF THE INSPECTORS GENERAL

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

JULY 19, 2000

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LEGISLATIVE PROPOSALS AND ISSUES RELEVANT TO THE OPERATIONS OF THE INSPECTORS GENERAL

WEDNESDAY, JULY 19, 2000

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Collins, and Levin.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. Let's proceed. Thank you all for being here this morning.

It is not the easiest morning on any of us to deal with any regular business, but our friend and colleague, Senator Coverdell, would expect us to proceed.

This morning, the Governmental Affairs Committee is holding a hearing on two legislative proposals relating to agencies' Inspectors General. The IGs are the front-line troops in combating fraud, waste, and abuse, and improving the performance of Federal agencies.

A report released last week revealed that actions by the IGs resulted in the recovery of $4 billion in misspent funds last year and identified another $8.2 billion in additional savings. The report also revealed that IG investigations resulted in more than 13,000 successful prosecutions and 1,200 civil actions.

Inspectors General are also an important resource for congressional oversight. This Committee has come to rely on them more and more. For example, IGs regularly update us on the top-ten most serious management problems faced by their agencies. In fact, we just reported a bill that makes these top-ten reports statutory. Likewise, the IGs have been a great help to us in assessing their agencies' implementation of the Government Performance and Results Act.

Today, we will consider two legislative proposals designed to help make the Inspectors General even more effective. One is S. 870, a bill introduced by Senator Collins last year that would make a number of amendments to the Inspectors General Act of 1978. The other is the administration proposal to grant permanent law enforcement authority to some IGs.

Senator Collins' bill would establish a 9-year term of office for IGs, require periodic external management reviews of their operations, and change the current IGs' semiannual reports to annual reports. In addition, it would prohibit IGs from receiving cash awards from their agencies, raise the pay level of presidentially appointed IGs, and consolidate some of the smaller IG offices.

The administration proposal would authorize the Attorney General to delegate to presidentially appointed IGs and their investigators permanent authority to carry firearms, to make arrests without warrant in appropriate circumstances, and to seek and execute search warrants. They currently exercise these authorities under temporary deputations from the U.S. Marshals Service.

The IGs would be required to establish an external review process to ensure adequate safeguards and management procedures over the exercise of these authorities.

I look forward to exploring at today's hearing how we can strengthen and improve the IGs and their operations.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Mr. Chairman. I join the Chairman and, indeed, all of my colleagues in mourning Senator Coverdell today. He was an outstanding Senator, and it is very difficult to go forward with our business. But I, too, know, as the Chairman says, that that is exactly what he would want us to do. He was so devoted to the Senate and so energetic. We will miss him greatly.

Mr. Chairman, I do want to thank you for scheduling this important hearing today to examine a variety of legislative reforms and issues regarding the Inspectors General, including legislation that I have introduced. For more than 20 years, the Inspectors General have been the watchdogs for Congress and the taxpayers in the ongoing fight against government waste, fraud, and abuse.

I have been very active on issues pertaining to the IGs for a number of years and, most recently, in my position as Chairman of the Permanent Subcommittee on Investigations. For example, the Subcommittee has worked very closely with June Gibbs Brown, the Inspector General for the Department of Health and Human Services, in our ongoing investigation of Medicare fraud. Most recently, just a couple of weeks ago, Susan Gaffney, the Inspector General for the Department of Housing and Urban Development, testified before the Subcommittee about the efforts of her office to halt the proliferation of the nationwide phenomenon of property flipping, which is a kind of mortgage fraud. She brought to our attention the very lax controls by the Department in this regard.

Throughout all of my dealings with the Inspectors General, I have been impressed with the professionalism and commitment to public service that the hard-working members of the IG community have repeatedly demonstrated. There can be very little debate about the fact that the American people have been well served by the IG community's efforts over the past 22 years.

During this time, the IGs have put forward thousands of recommendations to Congress, which cumulatively have saved billions of dollars. In fact, during just the first 10 years after the original

IG Act was signed into law, it was estimated that the Inspectors General had identified a total of $100 billion in savings through their audits of government programs and procedures.

Furthermore, as Federal law enforcement personnel, Inspectors General have conducted countless investigations. Successful investigations have recovered billions of dollars for the Federal Government from unethical companies and individuals and have resulted in numerous criminal prosecutions, debarments, exclusions, and suspensions. Taken as a whole, therefore, the Inspectors General have a very strong record of accomplishment, and the American people have been the principal beneficiaries of their work.

The record of the IGs is not, however, without blemish. For example, the very successful overall record was tarnished by the activities of the Treasury Department's Office of Inspector General. After an extensive investigation, the Permanent Subcommittee on Investigations found that the Treasury Department IG had actually violated Federal law in her award of two sole-source contracts to people with whom she was acquainted. The Subcommittee concluded that the Treasury IG failed to meet the high ethical and performance standards expected of an IG, and shortly after our hearing, she did, in fact, resign.

I do want to emphasize, however, that problems like the ones that we found in the Treasury IG's office are the exception. They are certainly not the rule.

We have not found a widespread pattern of abuse by the IGs, and, indeed, just the opposite is the case. However, an Inspector General is not just like any other government manager. Inspectors General are the very officials in government responsible for combating waste, fraud, and abuse in Federal programs. As such, they have to be held to the very highest of standards.

Again, I want to stress that my experience with the IGs, with this one exception, has been a tremendous experience, and I think they serve the public very well.

I have introduced legislation that would make a number of changes in the IGs law. They were shaped by my experience with the IGs as well as the one unfortunate experience with the Treasury IG, as well as extensive consultations with the IG community, with GAO, with private sector organizations, and with the Department of Justice.

The key elements of my legislation are designed to enhance the accountability and the independence of the IGs. For this reason, the legislation includes a 9-year renewable term and a provision against accepting cash awards or bonuses. To offset that prohibition, my bill includes a proposed pay increase for the IGs to prevent situations which occur now, where in some agencies the deputy actually makes more than the IG due to cash awards and bonuses.

To give the IGs more flexibility in allocating resources, my legislation would streamline their semiannual reporting requirement, and, importantly, the bill also requires an external review of the Inspector General's operations by the General Accounting Office or another neutral third party periodically. That would help Congress make sure that someone is watching the watchdogs.

Finally, we will hear today testimony about the issue of granting statutory law enforcement authority to the presidentially appointed IGs. This is a very important issue, particularly in light of recent developments. From my work with the IG community and also with the IG office at DHHS, I know that increasingly IGs are called to investigate dangerous situations. On the other hand, we want to make sure that we strike the right balance in this area.

Again, Mr. Chairman, I thank you for convening this hearing today. I hope the Committee will act to approve S. 870 and other issues of concern to the IG community this year.

PREPARED STATEMENT OF SENATOR COLLINS

Mr. Chairman, I want to thank you for holding this important hearing today to examine a variety of legislative reforms and issues regarding the Inspectors General. For more than 20 years, the Inspectors General have been the "watchdogs" for Congress and the taxpayers in the ongoing fight against government waste, fraud, and abuse.

I have been very active on issues pertaining to the Inspectors General for a number of years, most recently in my position as Chairman of the Permanent Subcommittee on Investigations. For example, the Subcommittee has worked very closely with June Gibbs Brown, the Inspector General for the Department of Health and Human Services, in our ongoing investigation of Medicare fraud. Most recently, Susan Gaffney, the Inspector General for the Department of Housing and Urban Development, testified before the Subcommittee about her efforts to halt the proliferation of the nationwide phenomenon of property flipping.

Throughout all of my dealings with the Inspectors General, I have been impressed with the professionalism and commitment to public service that the hardworking members of the IG community have repeatedly demonstrated. And there can be very little debate about the fact that the American people have been very well-served by the IG community's efforts over the last 22 years.

During this time, Inspectors General have put forward thousands of recommendations to Congress, which cumulatively saved literally billions of dollars. In fact, during just the first 10 years after the original Inspector General Act was signed into law, it was estimated that the Inspectors General identified a total of $100 billion in total savings through their audits of government programs and procedures.

Furthermore, as Federal law enforcement personnel, Inspectors General have conducted countless investigations. Successful investigations have recovered billions of dollars for the Federal Government from unethical companies and individuals, and have also produced numerous criminal prosecutions, debarments, exclusions, and suspensions. Taken as a whole, therefore, the Inspectors General have a very strong record of accomplishment, and the American people have been the principal beneficiary of their work.

The record of the Inspectors General is not, however, without blemish. For example, this successful record was tarnished by the activities of the Treasury Department's Office of Inspector General in 1997. After an extensive investigation, the Permanent Subcommittee on Investigations found that the Treasury Department Inspector General violated Federal laws in the sole-source award of two consulting contracts, engaged in a pattern of careless management, paid for work unauthorized, and subjected two U.S. Secret Service agents to an unwarranted investigation and negative publicity. The Subcommittee also found that the Treasury Inspector General misled Congress about the nature of this investigation and that official documents were destroyed. The Subcommittee concluded that the Treasury Inspector General failed to meet the high ethical and performance standards expected of an Inspector General. The Inspector General resigned shortly after our hearings were completed.

Let me stress that, in my view, problems like the ones in the Treasury Inspector General's office are not widespread in the Inspector General community. However, an Inspector General is not like any other government manager. Inspectors General are the officials in government responsible for combating waste, fraud, and abuse in Federal programs. And as such, Inspectors General should be held to a higher standard. To do their job effectively, Inspectors General must be above reproach, must set an example for other government managers to follow, and must not create situations where there is even the appearance of impropriety. Credibility and effec-

tiveness are lost when the office charged with combating waste and abuse engages in the kind of activity that the Inspector General is responsible for deterring.

It was with some of these principles in mind that in 1998, I sponsored legislation, S. 2167, that proposed a series of changes and reforms to the Inspector General Act of 1978. Last year, I introduced similar IG reform legislation, S. 870, which is one of the issues pending before the Committee this morning.

The key elements of my legislation are designed to enhance the accountability and the independence of the Inspectors General, such as the renewable 9-year term of office and a prohibition against accepting cash awards or bonuses. To offset the prohibition against accepting bonuses, my bill includes a proposed pay raise. To give Inspectors General more flexibility in allocating resources, my legislation streamlines their semiannual reporting requirement by requiring only annual reports to Congress. And, to increase accountability of the Inspectors General, the bill requires external review of OIG operations by the General Accounting Office or another neutral third party.

Finally, as I noted in 1998 when I introduced S. 2167, legislation to grant statutory law enforcement authority to presidentially appointed Inspectors General deserves careful consideration. The question of how best to provide Federal law enforcement professionals with the tools they need and deserve is important, and I look forward to hearing from our witnesses about this issue today.

In closing, again, Mr. Chairman, thank you for convening this hearing and I look forward to working with you on S. 870 and other issues of concern to the Inspectors General community.

Chairman THOMPSON. Thank you very much. Thank you for your longstanding leadership in this area.

Our panel today consists of Joshua Gotbaum, the Executive Associate Director and Controller at the Office of Management and Budget; Nicholas Gess, Associate Deputy Attorney General at the Department of Justice; Gaston Gianni, the Inspector General for the FDIC and the Vice Chair of the President's Council on Integrity and Efficiency. Mr. Gianni is accompanied by Kenneth Mead, who is the IG for the Department of Transportation, and Patrick McFarland, the IG for the Office of Personnel Management.

Mr. Gotbaum, do you have an opening statement?

TESTIMONY OF JOSHUA GOTBAUM,[1] EXECUTIVE ASSOCIATE DIRECTOR AND CONTROLLER, ACTING DEPUTY DIRECTOR FOR MANAGEMENT, U.S. OFFICE OF MANAGEMENT AND BUDGET

Mr. GOTBAUM. Yes, Mr. Chairman, I do. I will be brief. I made the main points in the written statement, which, with your permission, I would ask be included in the record.

Chairman THOMPSON. It will be made part of the record.

Mr. GOTBAUM. First of all, Mr. Chairman and Senator Collins, I want to just say thank you. Like you, we appreciate and consider extremely important the activities of the IGs. We consider it extremely important that periodically those activities be reviewed, by the IGs, by the rest of the administration, and by the Congress, to see what we are doing that works and what we need to make it work better. And that is the spirit in which we take your consideration of our proposal regarding law enforcement authority and Senator Collins' bill, S. 870.

If I may speak first on the issue of our law enforcement proposal. To be honest, Mr. Chairman, after you very graciously confirmed me as controller, this is an issue which I then came to understand. This is an issue which has been around for a very long time.

[1] The prepared statement of Mr. Gotbaum appears in the Appendix on page 29.

I want to start by saying what this is not. This is not an issue of whether or not IGs should work in law enforcement. They do and they have for 22 years, ever since you created them. Senator Collins was gracious enough to mention June Gibbs Brown and the work at HHS in terms of Medicare fraud. There are other equally impressive activities: Child support enforcement, food stamps, work at the border on border control that involves money laundering and drug enforcement, etc. So the issue here is not whether the IGs should work in law enforcement. They do. We are not proposing any expansion of their activities in law enforcement. Nor is the issue whether or not this law enforcement activity should be under the supervision of the Attorney General, the supreme law enforcement officer of the land. It should be. It is. It has been. Under our proposal it would continue to be.

We think the issue instead is whether or not the process by which the Attorney General exercises oversight can, in fact, be streamlined. We view this as a good government, nonpartisan issue.

Historically, IGs who work on law enforcement issues get deputized on a case-by-case basis. They went to the Marshals Service and said: Can Mr. X or Ms. X working on the following case get authority? And the Marshals Service would review it and grant it.

That became sufficiently cumbersome so that several years ago the Department of Justice, the Deputy Attorney General said, "Why don't we do this on a year-by-year basis?" And so what the Department of Justice does now is they give blanket authority on a year-by-year basis to individual IG agencies.

What we would like to do now, and what we have proposed, is to take the next step and to turn the presumption the other way. If those agencies that have received this blanket authority by the Department of Justice, let them have that authority now on a permanent basis; but, one, let us keep it under the supervision of the Attorney General, who can revoke it; and, two, let us supervise and make sure that we have an ongoing professional peer review process of how the IGs use this authority.

So, Mr. Chairman, Senator Collins, we view this as a good government measure, a measure which respects the professionalism of the IGs, reduces what is, frankly, an administrative burden on the Department of Justice, and lets the IGs continue to do the work that we all recognize and think is extremely important.

We hope that you would consider this proposal expeditiously because the Department of Justice, as I think Mr. Gess will testify, was hoping that we might reduce the administrative burden on them by arranging such a procedure. So I hope you will consider this legislation and hope you consider this expeditiously this year.

Turning to the broader question, Mr. Chairman, I think it is important that we commend and thank Senator Collins for her work. It is extremely important that we review the activities of the IGs because although we support them, but there is no institution that shouldn't be reviewed, that you shouldn't ask questions about. And so we view S. 870 as a very good start to that review.

There are provisions in it we support. We agree with Senator Collins and the IG community agrees that there ought to be limitations on bonuses by agency heads. It is simply undermining the no-

tion of independence to do that. And we agree that there ought to be some recognition that limiting bonuses has an effect on IG compensation.

We have concerns about the 9-year fixed term. We just don't think that that is something which is necessary to guarantee IG independence, and we think that, paradoxically, it might have the effect of making it harder to recruit quality people if you create an expectation that you have got to be in the job for 9 years. And so we hope that we can have an ongoing discussion.

The last point I hope to make about this is that since this kind of legislation doesn't come along very often, we hope that the Committee would, also take the opportunity to address some issues that the bill does not address. We have found working with the IGs that there is not clarity with regard to the role of the IG vis-a-vis the agency head in terms of involvement in agency management.

When I was Assistant Secretary of Defense, the then-IG of the Department of Defense, Eleanor Hill, came to me and said, we can be helpful to you because we know a lot about program management, and you are trying to improve the management of the Department of Defense, and we can work together. And I said to her then a question which I know every agency head asks, which is: Fine, I accept that. If I work with you and don't follow everything that you recommend, what then?

And so what we have found is that different IGs have different answers to that question. Some IGs take the view that their independence requires them to step back from agency management, from making suggestions about improving agency management, from involvement in the agency, because that is how they are independent. Other IGs say no, that is my job.

And so one thing we would hope is that before the Committee turns out a final bill, you would consider this issue and address whether or not it makes sense to provide greater guidance to IGs as to what their ongoing role ought to be with the agency head.

My time is limited, I understand, and there are going to be plenty of folks to have this opportunity, but I just wanted to say in closing: One, thanks; second, if it is not possible to have the more sustained debate on S. 870 that we think it deserves, we hope the Committee could find a vehicle this session to enact the proposed streamlining of the law enforcement authority into law.

With that, thank you very much.

Chairman THOMPSON. Thank you very much.

Mr. Gianni, did you have an opening statement?

TESTIMONY OF GASTON L. GIANNI, JR.,[1] INSPECTOR GENERAL, FEDERAL DEPOSIT INSURANCE CORPORATION, AND VICE CHAIR, PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY; ACCOMPANIED BY PATRICK E. MCFARLAND, INSPECTOR GENERAL, U.S. OFFICE OF PERSONNEL MANAGEMENT, AND KENNETH M. MEAD, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION

Mr. GIANNI. Yes, Mr. Chairman, thank you.

[1] The prepared statement of Mr. Gianni appears in the Appendix on page 34.

Mr. Chairman, first of all, before I start, I just want to let you know that we share your loss of the Senator, the fine Senator from the State of Georgia. And I know it is difficult to proceed under those circumstances, but we certainly appreciate your leadership and the Committee's and Senator Collins' leadership in bringing these hearings today.

I am pleased to be here to discuss legislative proposals and issues relevant to the operations of the IG community. Kenneth Mead, to my left, is the Chairman of the PCIE's Legislative Committee, and Patrick McFarland, to the far left, is a Chair of our Investigations Committee, and that is why I have asked them to accompany me today.

My testimony represents the views of the IGs and not necessarily the administration, and I would ask that my full testimony be submitted for the record.

Chairman THOMPSON. It will be made part of the record.

Mr. GIANNI. First of all, we would like to 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. Of particular note is our ongoing financial statement work under the Chief Financial Officers Act and our continuing work to review agency compliance with the implementation of the Results Act. Moreover, we were pleased to work closely with you on the Government Information Security Act to enhance the Federal Government's ability to combat computer hacking and intrusions.

Certainly, you have referred to our accomplishments over the years, and we are quite proud of those accomplishments and stand ready to continue our service to the Federal Government.

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

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 the IGs.

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

We have learned that the Department of Justice does not intend to renew the OIG blanket deputation authority after January 31, 2001. If blanket deputation were not renewed and statutory law enforcement was not enacted, literally thousands of open investigations of fraud against government programs, in the areas of health care, Federal procurement, telecommunications, Federal construction, bribery of public officials, crimes in subsidizing housing, corruption of highway construction programs, child support enforcement, and a host of others, 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 in each individual case, it would be burdensome both to the Department and to the IG community. On behalf of the entire OIG community, I urge the Committee to endorse this proposal and seek its passage in this Congress.

Second, I will turn to Senator Collins' bill, which is 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.

While there is a general consensus within the IG community in support of the underlying principles embodied in this proposed 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 is distinct minority viewpoints with suggestions that are worthy of consideration.

Generally there is support for all of the provisions put forth in the bill with some advice or suggestions for making some change.

We recently provided your staff with the results of an updated survey on the revised bill; our specific comments are included in my written statement. I would 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.[1] 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.

I'd like to turn next to the other suggested areas that we would like the Committee to consider. 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 regulated entities 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 knowingly or intentionally to deceive their agency. Fortunately, the Congress saw fit to clarify this matter as it related to the DOT IG under the Motor Carrier Safety Act. We are asking the Committee to revisit a provision that they passed several years ago and enact language that would extend that interpretation to the whole community.

The other area that we raise for consideration is the Paperwork Reduction Act and how it is being implemented. We are working with OMB to try to work out some procedural matters to make it more efficient, but still, there is a difference in the interpretation as far as the authority of the IGs and the independence of the IGs and how the Paperwork Reduction Act plays out. We would like to

[1] The letter to Senator Collins from Kenneth A. Konz, Focal Point for the DFE OIGs, dated March 21, 2000, submitted by Mr. Gianni appears in the Appendix on page 72.

work with the Committee to make some improvements in that area.

We are also suggesting that the Committee may want to encapsulate into legislation the PCIE and the ECIE concept, somewhat like the current codification of the CFO Council and the CIO Council. We think that codifying the two councils would provide more accountability, more efficiency, and more opportunities to work closer with the Congress.

Last, 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 our IG Auditor Training Institute.

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. We look forward to working together to maximize government's 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.

Thank you in advance for your efforts, and we would be happy to respond to any questions.

Chairman THOMPSON. Thank you very much.

Do any of you other gentlemen have comments? Mr. Gess, do you have an opening statement?

TESTIMONY OF NICHOLAS M. GESS,[1] ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. GESS. Thank you. Mr. Chairman, Senator Collins, good morning. Let me join in expressing my deepest sympathies to you. I can only imagine how hard it must be this morning after the loss of a colleague.

Let me start by simply asking that my prepared statement be made a part of the record.

Chairman THOMPSON. It will be made a part of the record.

Mr. GESS. Thank you, Mr. Chairman. I do not intend to offer anything from that prepared statement because I think it speaks for itself. I do, however, want to address three very quick matters that I think may assist the Committee in its business.

First, is the issue of timing on the part of the Department of Justice. I want to assure the Committee that approximately 1 year ago we advised the IG community that we needed to move forward and that effective January 31, 2001, we would no longer offer blanket deputations. We fully recognize the practical reality of the fact that it is now the end of July, that there are 16 days left in this legislative session. I want to assure the Committee—because we think it would be grossly inappropriate for a co-equal branch of government to push at that level—that we will work with the IG community and the Committee on timing issues. We will not jeopardize the

[1] The prepared statement of Mr. Gess appears in the Appendix on page 46.

lives of agents or investigations. I can assure the Committee of that.

Second, there are two particular parts of the proposed legislation that deserve very brief comment. The first is that under our proposal there would be limited occasions where the Attorney General could confer law enforcement authority for acts taken by an Inspector General outside of the Inspector General Act. And while that is potentially controversial, I want to assure the Committee—I want to give you two very brief examples.

Chairman THOMPSON. Would you state that again?

Mr. GESS. We have proposed that, as a general matter, IGs would have law enforcement authority when they are conducting their business under the Inspector General Act. We have also proposed that there would be limited occasions when an Inspector General could undertake law enforcement activities at the request of the Attorney General, and, obviously with the concurrence of the Inspector General, when that act falls outside the IG Act.

The two very brief examples I can give you of where this has occurred are child support, in which we recognized that we needed to do something—in fact, there was a resolution of the Senate that passed 99–0, frankly condemning the Justice Department's inaction several years ago. The Attorney General took that to heart, immediately, quite frankly.

In order to get the investigative resources we needed, she asked the Inspector General of HHS to help out. The IG agreed. However, his investigative authority for child support cases is not included in the IG Act. We would not want to lose that authority in the future.

Second, the Health Care Portability Act, which was passed by a bipartisan majority, a substantial majority of Congress, confers certain law enforcement authority on the Inspector General of HHS. As a matter of drafting, that authority falls under the Health Care Portability Act, not the IG Act. We would not want to face a situation where an Inspector General had to choose statutory authorities for a prosecution by which one gave him law enforcement authority.

Let me conclude by simply saying that we do not suggest that law enforcement authority be expanded for Inspectors General. We simply suggest that the first and primary responsibility for supervising that law enforcement authority ought to be in the chain of command of the agent who has that authority. In this case, it should be the Inspector General of an agency.

We fully intend and our proposal provides for Attorney General regulatory authority to assure that there are proper hiring, training, and conduct standards and that there is the possibility of sanctions should a problem occur.

With that, I would simply suggest that I am here to answer the Committee's questions, and I appreciate the opportunity to appear.

Chairman THOMPSON. All right. Mr. Mead or Mr. McFarland, you didn't have any opening comments?

Mr. MCFARLAND. I have no prepared testimony.

Mr. MEAD. No, Mr. Chairman.

Chairman THOMPSON. Well, thank you very much. I hope the fact that we are having this hearing today, in light of the increasingly

cramped schedule that we have of Senate business and all the other things that we are involved in, it attests to how important we feel this issue is, and the fact that we need to move the ball down the field as much as we can before recess and during this session. This is something Senator Collins has been urging for a long time, and it is primarily due to her leadership that this issue is among the things that this Committee wants to seriously consider in the near future.

Mr. Gotbaum, thank you for your comments. You reminded me of several things that I think are important, and that is, the nature of the Inspectors General and their job, how important they are to us. They have been extremely important to Congress. But they have an inherently difficult job. They have a tightrope to walk. They have not a built-in conflict of interest as such, but certainly a built-in conflict, even those who are presidentially appointed. They are trying to help the agencies on the one hand, and some of them, most of them have worked well in that regard in trying to assist. I think that is the way the IGs look at themselves, as somebody there not to wreak havoc but to try to assist to do a better job, give ideas and suggestions and so forth. You have seen it from both sides now.

At the same time, they are the cop also, and how do you balance that? Well, it is hard to write that down on a piece of paper in a memo. It has to do with sound judgment.

We have run into a couple of situations with regard to HUD, with regard to TVA, one presidentially appointed, one not presidentially appointed that I think should be, and we have legislation to that effect for TVA, where I think the Inspectors General were abused in those cases. They were not cooperated with. And we had this great conflict between the appointing authority in one case or the head of HUD in the other and the IGs. And we were never able to resolve those problems.

So it gets back initially to your office, really. Frankly, I don't think your predecessor was able to effectively resolve some of these issues. I know that your position as Chairman of PCIE is not a statutory one. It is under executive order. And one of the things I think we ought to look at is whether or not it ought to be statutory, because I think somebody within the administration ought to have the authority to resolve these issues and to balance the legitimate position of these agency heads who say, after all, we were elected and we ought to be able to carry out our policies, whether you agree with them or not, we will have another election in 4 years, versus the IGs who are seeing things done that are clearly not within the purview under any normal objective reading of the situation.

And when you have that, there ought to be something short of a congressional hearing or a lawsuit or something to really work that out and resolve that, and I am not sure where that is going to lie, except in your office.

You have been very cooperative with us, and I think you understand what I am saying. And I know that, as I say, you have limited authority. But I would urge you to stay in the middle of all that and not let these situations get out of hand. Be fair and just apply some common-sense standards.

Obviously, you are part of the administration. I guess you have a bit of a conflict yourself. But that is, I think, your responsibility, and if more authority is needed there, perhaps we need to look at that.

With regard to the statutory criminal law enforcement authority—and I want to make sure that I understand it correctly—that what you are suggesting here basically is that we put in statutory form what is already in practice; that is, every 2 years, the Marshals Service deputizes all these people, and there are hundreds of them. It sounds to me like it has gotten to be more of a pro forma thing. Obviously, they don't have a chance to do a lot of reviewing. I don't know if there is any background checks or additional checks or anything of that nature. You are already there. We are already into these areas. Every one of these offices has an investigative side, and statutorily it sounds like here and there we have given these IGs additional authority that other IGs in other departments don't have.

It has become kind of a mill, and what you are suggesting here is that we—first of all, I guess you would take the Marshals Service out of it, and we would——

Mr. GOTBAUM. And the Attorney General.

Chairman THOMPSON. And we would statutorily institutionalize that. Now, is that an oversimplification or is that basically what we are talking about?

Mr. GOTBAUM. I think with one addition, Mr. Chairman. You are right that this is, in a lot of respects, a proposal that we are making to ratify a practice that already goes on. But the distinction I would make is that in the law enforcement proposal, we have proposed something which we don't do now, which is a peer review process, an automatic, periodic, peer review process. That is not something we do right now. And what we propose in this is that the IG community would, through the PCIE, develop some sort of peer review process, and that proposed procedure would be itself reviewed by the Attorney General. That process would provide an ongoing basis for review. We think this provides, in effect, a better form of oversight than the one that the Justice Department has been able to provide currently, given their resources.

So you are right, this is in a lot of respects enabling us to streamline what we are already doing, but we do think that it recognizes the professionalism of the IGs and puts in place some additional safeguards as well.

Chairman THOMPSON. And the Attorney General, as I recall, would have the authority to withdraw this authority if circumstances arose justifying it?

Mr. GOTBAUM. Yes.

Chairman THOMPSON. You are familiar, of course, with the Commission on the Advancement of Federal Law Enforcement, the Webster report, that basically has a different view. They are concerned about the growth and role of the functions of the Inspector General, and, actually, they propose consolidating some offices, and perhaps limiting them to the audit side of things and giving the investigative functions to someone else.

In fact, it seems like they are going in the opposite direction of what you are suggesting or where we have been going. They talk

about the proliferation of law enforcement agencies, and they talk about an inherent conflict between the program review evaluation role of the IGs and their law enforcement role.

Any of you who would like to comment on that?

Mr. GOTBAUM. Mr. Chairman, may I? There are times in life when being at OMB puts you on the hot seat because your life is always a set of conflicting issues. From my perspective, from OMB's perspective, we disagree quite fundamentally with the Webster report. And I think it would be worthwhile getting the Department of Justice's view as well.

It is very easy to say as a theoretical matter law enforcement ought to be in one place and to try to parse out this very complex thing that IGs do into law enforcement and program management, etc.

But I think this Committee recognizes—it is very clear that Senator Collins recognizes and that the IG community recognizes and the administration recognizes that it is not that simple. The fact is that we tried to appoint good people, tried to improve the professionalism and the quality, and have succeeded, in our view, in creating in the IGs a function of government that is really very helpful. It helps you and it helps us.

That doesn't mean that other parts of the government won't grumble from time to time, as they will: You know, I should be doing that. And we at OMB get that all the time, and that is the reason why I think it is important to say to this Committee that I am not an IG. I am not speaking on behalf of the IGs. I am speaking on behalf of the administration. We don't think and we wouldn't propose centralizing all law enforcement authority within the Justice Department.

We do think it is important in our proposal that the Justice Department be recognized as the preeminent law enforcement authority, so that when they say go one way and somebody wants to go another way, we go the way the Justice Department says.

So with respect to Mr. Webster, who is obviously an important and distinguished American, we don't agree with his notion. We think what we have got is something that is worth strengthening.

Chairman THOMPSON. Mr. Gess, what do you say about that?

Mr. GESS. Mr. Chairman, we deeply appreciate the work of Judge Webster and, in fact, are in the process of implementing some of his recommendations or the Commission's recommendations respecting training and coordination in training because we think it is important.

However, on this particular issue, we frankly disagree. We think that these are issues that were dealt with roughly 20 years ago when the IG authority was expanded and has expanded over the years. We don't think that it is necessary, given the way that we do our law enforcement business, which is establishing partnerships at the local level between the U.S. Attorney, with the Federal, State, and local law enforcement agencies, to centralize everybody in one place. And we don't think that it would be good practice, but, more importantly, practical at this point 20 years down the road.

Chairman THOMPSON. Let me ask you one more final question in this round. It has to do with, I guess, a broader view of law enforcement.

I was somewhat surprised at the breadth of the investigative work that IGs do. You mentioned child support and all the other. Some of it is statutory and pertains to particular departments.

You say that this proposal does not expand the jurisdiction of the IGs, and I am seeing—I think of myself as a graduate of the U.S. Attorney's Office, and I am wondering how all this works. You have all these Inspectors General doing all these things. You have the FBI doing a lot of the same things, it sounds to me like. And I am wondering how that is coordinated.

As I understand it now, there comes a point where the IGs, if they reach a certain level in their investigation, are supposed to report to Justice or to the FBI, are they not?

Mr. GESS. That is correct, Senator.

Chairman THOMPSON. And that would not change.

Mr. GESS. Absolutely not.

Chairman THOMPSON. It looks to me like quite a coordinating job. I am not sure what to do about it or if there is anything that should be done about it. But if I was the FBI, I would be mindful of that and make sure that there is a firm understanding.

Are there any interoffice procedures or understandings as to how those lines are drawn? I don't think there is anything statutory.

Mr. GESS. Mr. Chairman, there is nothing statutory, but, for instance, the Inspector General for HHS and the FBI, who would share health care fraud investigative responsibilities, have a written memorandum of understanding.

I can also speak to this issue based on my prior hat as an Assistant U.S. Attorney in Portland, Maine, where, in fact, there are few investigative resources. Anything major means bringing everybody under the sun to the table and begging for help.

I can assure you, Mr. Chairman, that it is a challenge. It is hard to do. But the reality is that I don't think particularly in smaller States we could get the job done if we didn't basically have everybody at the table contributing a little bit. And I know that it sounds hard from a management perspective, but the reality is it seems to work around the country because everybody at that table really is committed to doing good law enforcement.

Chairman THOMPSON. Let me finish with one note of concern with our little love fest we have got going on here today. We reached out to the FBI to get their views about this, and before we got very far, it was closed off. And I don't know why, but I suspect that the Justice Department wanted to speak with one voice on this issue. And I understand that, but you need to understand that before I do anything, I am going to hear the best candid assessment from the FBI's vantage point, because we have got everybody singing from the same sheet of music here today, but there may be some other viewpoints and some things that I haven't thought of or maybe others haven't thought of. So I would not be too careful about trying to hold this thing—I mean, too adamant in trying to hold this thing close, because we are not going to do anything until we make sure we understand the ramifications of this from a law enforcement standpoint.

Mr. GESS. Mr. Chairman, I can assure you that that would be, among other things, I think, bad law enforcement practice. Our sole goal here with the FBI is that we be at the table. We would not try to restrict what anybody would say. To be quite frank, I think that would be folly.

Chairman THOMPSON. Well, you have a right to set policy. I mean, I understand that.

Mr. GESS. Absolutely.

Chairman THOMPSON. You are the Justice Department. But we have a right to get the views of the major players involved.

Mr. GESS. And we don't question that, Mr. Chairman, I can assure you.

Mr. MEAD. Mr. Chairman, I would like to make a point about the relationship of the IGs to the FBI, and I would like to use the Department of Transportation as an example because I can speak to that one more credibly.

I think things work well with the FBI. I have enormous respect for that institution. I think part of the reason they work so well is because of the U.S. Attorneys and the Justice Department. Before a case gets too far down the road on the investigative side, you have got to get buy-in from the U.S. Attorney, which operates, as a matter of fact, as a very important internal control, a check and balance.

In some instances, we investigate cases that are highly specialized. They are not really "high profile." You may not read about them in the paper. They may involve something where a motor carrier, a trucker, has been lying to the Department about the hours that they are driving, for example, or whether they are carrying hazardous materials. These are areas where you need a great deal of specialization. In those cases, we work with the U.S. Attorney, and largely at the U.S. Attorney's direction, and the FBI may not even get involved.

On the other hand, not too long ago we were involved with a highway transit construction fraud case, very high profile, involving a couple of organized crime families. There, we teamed with the FBI but still operated largely under the direction of the U.S. Attorney.

As to your question earlier about whether there is some sort of conflict here because you have program review responsibilities and you also have criminal investigative responsibilities, in fact——

Chairman THOMPSON. What Webster actually suggested he thought of that report?

Mr. MEAD. Yes. In fact, the auditors do not get involved in the investigations, and the investigators do not get involved in the audit. But, in fact, the criminal investigators do develop expertise in a particular program area. For example, in airline safety, it takes a great deal of specialization to understand how those maintenance logs have to be filled out and when you have "pencil whipping."

So it is important that you have that reservoir of expertise in the various agencies of government. Thank you.

Chairman THOMPSON. Well, I appreciate that, and I think most U.S. Attorneys want all the help that they can get from whatever source they can get. And I don't think the FBI is too jealous about

some of these things, but I understand also that there could be some territorial concerns there, and you may be concerned that the FBI might come in and say, no encroachment on our territory.

But we can figure that out. I mean, we know how that works, and we just need everything on the table.

Mr. GOTBAUM. Mr. Chairman, can I just make two points on this?

Chairman THOMPSON. You are going to have to let me quit.

Mr. GOTBAUM. I will be fast, I promise. One is, again, the side effect of being in OMB and trying to develop an administration position, is that we see this. You are, of course, right that you should hear the FBI's view. All we would ask is that since the person who best explained to me why, notwithstanding the FBI's view, he thought the administration proposal was right was Nick Gess. I would hope that you would also hear the Justice Department's response to those concerns.

Chairman THOMPSON. He is here. He is getting his shot.

Mr. GOTBAUM. OK.

Chairman THOMPSON. Senator Collins.

Senator COLLINS. Thank you very much, Mr. Chairman. I want to follow up on exactly some of the issues that you were raising with regard to the statutory law enforcement authority.

Mr. Gess, I first want to welcome you from Maine. I know you are on detail here from the U.S. Attorney's Office, and I think it was a clever move of the Justice Department to send you here today, because some of the questions that I was going to ask I now have to discard. [Laughter.]

I will pass them right over to my colleagues.

Nevertheless, I must say that I find the Department's position on granting statutory law enforcement authority, to put it kindly, to have evolved. And I want to take you back and try to understand exactly what the Department's position currently is and how it has changed.

In 1998, when I introduced the first version of Inspectors General reform legislation, I put in statutory law enforcement authority. The Justice Department objected to my doing so, and thus, when I redrafted the bill with the new Congress and introduced it in 1999, I left that provision out, even though the IGs were virtually unanimous in urging me to include it and gave me several very compelling examples of the delays and the paperwork involved in the process.

Then, in March of this year, I received a letter from Deputy Attorney General Holder urging me to sponsor statutory law enforcement authority for the IGs. Then the latest development, which I learned of from an IG just yesterday, is that the Department of Justice has decided that the current deputation process is unduly burdensome for the U.S. Marshals Service and, in fact, has reached such a crisis point that DOJ apparently has threatened to revoke the deputation authority for the IGs effective next year.

So I think given these events, you can understand why I am a little bit concerned and perplexed as to what the Department's position is and why it seems to have evolved or changed dramatically.

Mr. GESS. Senator, I think that your words are perhaps kind, very kind in their view. I think the simplest answer to this is that

the IG community did a very good job of coming to us approximately 18 months ago, and then over the next 6 months spending a significant amount of time with Eric Holder walking through proposals that might work. There then ensued what I would term "high level"—including both the Attorney General, the Deputy, the other senior staff at the Department—consideration and our decision ultimately that the IG community was right.

At the time that we struck this—I don't want to call it a "deal," but effectively this law enforcement comity approach, we also made the decision approximately a year ago that statutory law enforcement authority needed to replace these blanket deputations.

Our selection of the January 2001 date contemplated an entire legislative session moving through. As I said in my opening statement, while we very, very much would hope that there would be rapid action here, we have no intention of using that date as a hammer in any way, shape, or form. It was simply seen to be a reasonable date when we set it a year ago.

Senator COLLINS. But if, in fact, legislation granting the statutory authority does not make it all the way through into law, you will not revoke the authority? I mean, the threat is out there, and that is very disturbing.

Mr. GESS. It was part of—I mean, to be frank, it was—as this approach was agreed to around Eric Holder's conference table with representatives of the IG community, we actually had initially thought that it would be at the end of this legislative session, but for a variety of administrative reasons pushed it off.

What I can assure the Committee of, and you personally, Senator, is no agent will be endangered, no case will be endangered. We will explore with the IG community and the Committee ways in which, if we have to, we can make this more effective and efficient given the fact that we have a system now in which the Marshals Service has two to three employees, frankly, doing administrative paperwork processing, not law enforcement review. And that is our concern.

But we certainly have no intention of—I mean, we are the lead law enforcement agency. We would never do anything to hurt law enforcement.

Senator COLLINS. Mr. McFarland, would you like to add something?

Mr. MCFARLAND. Yes, Senator. I would like to just respond. My recollection is quite different than Mr. Gess' recollection. I for one, and the other IGs that I have talked to, did not hear that stated at that meeting. If we had, we would have been in turmoil ever since. We have only been in turmoil for a few days.

My concern is that if, in fact, we acknowledge that the blanket deputation is working—and I certainly do—it is working. It is cumbersome to the Marshals, I am sure. But everybody has administrative problems, every office. And if somehow that is revoked, then probably the alternative is to go back to case-by-case deputation, and that is a horrible scenario.

Using the Department of Labor IG's office as an example, the DOL processing costs per case was $500. And you know the amount of work that comes out of that Labor IG office. It is staggering. And the different processes that it had to go through to get

to that point was just so time-consuming and costly that I hope that, first of all, legislation is passed, and, of course, that is why we are here; but, second of all, I would hope that it wouldn't be just a working-it-out-later-type situation with the Department of Justice.

This is a critical thing, and it is critical because—well, just take HHS as an example. The day that happens that we lose something in our deputation, 2,400 of their cases cease and desist. They just come to a stop. Not one of us is going to send an agent out in harm's way under any circumstances.

So it is a dilemma, and I hope it can be resolved.

Senator COLLINS. Thank you.

Mr. GIANNI. Senator, if I might?

Senator COLLINS. Mr. Gianni.

Mr. GIANNI. Two points. First of all, I think as you said, it is an evolving process. It has evolved and it has grown. And the reason it has evolved and grown to this point is that the Inspectors General have taken their responsibilities seriously and have carried them out dutifully. We all have entered into an agreement with the Attorney General, so we each have entered into a responsible agreement and made some commitments.

Second, I think the important issue is—and why we in the community would like to see our law enforcement authority in statute—that it could very easily change from one administration to another administration. And all of the work that we have invested in showing this administration how we are able to perform and why it makes good sense may not be accepted with another set of leaders, no matter what party they might be coming from. And so that is why we are pushing for it. We think it makes sense. We have proven that we are able to accept these responsibilities and carry them out in a way that coordinates with the other law enforcement communities, and at the same time are willing to undergo additional oversight—which I might say that many of us do at the present time.

Senator COLLINS. I want to ask Mr. Mead a question about the training that the IG staff undergoes in order to make sure that they understand the proper use. For example, it is my understanding—well, why don't you tell us what kind of training the IGs who do receive the deputations undergo?

Mr. MEAD. Well, they have to go to FLETC.

Senator COLLINS. Which is?

Mr. MEAD. Which is the investigative academy that is also used by other law enforcement agencies, and they get the standard portfolio of training. We are very proud of them. In fact, that is a tradition for the current deputization, and I assume that would be carried over to the statutory provisions being proposed here today.

Senator COLLINS. I think that is an important point because some of the people who have been opposed to granting the statutory authority are wrongly assuming that the IG agents are not trained, that they are just handed a gun, a badge, et cetera. And I want to get on the record exactly the point that you have just made.

Mr. MEAD. And I have made it a point also to attend recurrent specialized training of our agents done under the supervision of

senior managers, where they would go through the various exercises that a law enforcement agent can be expected to face, such as presenting *Miranda* warnings and all that, as well as how to use a weapon.

I don't know if my colleagues here would like to amplify on that.

Mr. MCFARLAND. Yes, I would, Senator Collins. The Department of Treasury Federal Law Enforcement Training Center that Ken was talking about is in Glynnco, Georgia, and it is a 10-week course, and it services 70 agencies of government. It is big and it is effective. And it is something that every one of us in the community is very proud of, proud of being able to go to that school.

After that, then our agents in the IG world go to the IG Academy, which is also at the same location, for 4 weeks—not necessarily right after but within a period of time. So we have our own academy.

And in recent months, that academy is what I would consider now a model academy because we had the good fortune of being able to join with the Treasury Tax Administration Academy that was already in existence, along with our own academy, and we have got a dynamic force down there, a dynamic curriculum. And it stands alone.

Senator COLLINS. Thank you. My time is fast running out, so I want to just touch on two other points very quickly. Mr. Gotbaum, I was disappointed this morning to hear you repeat the administration's opposition to a 9-year renewable term for the IGs. This provision is intended to help improve recruitment of IGs and also to give them some sense of security and to avoid a situation that happened, frankly, in the Reagan Administration where the IGs were fired, which I thought was inappropriate. Thus, we chose a 9-year term to try to overlap administrations, although I am certainly flexible on the number of years. It is more the concept that I was trying to advocate for.

I am puzzled by the administration's opposition because the President signed into law a 5-year term of office for the Inspector General for Tax Administration and a 7-year term of office for the Inspector General for the U.S. Postal Service. So, clearly, the administration has found terms of offices for Inspectors General acceptable in some situations. I don't understand why the administration thinks that the Postal Service Inspector General should have a term, the Inspector General for Tax Administration should have a term, but that other presidentially appointed IGs should not have terms.

Mr. GOTBAUM. Senator Collins, this is an important question. When you are a Presidential appointee subject to the appointment of the President, at the end of an administration you become extremely conscious of when you are working for government beyond the current administration. I view all of the things that we are talking about today as not having any consequence for the current administration. And so when I talk about them, we really are taking views that we think are of service to the next administration, of whatever party. And I want to be very clear about that because our support for law enforcement authority, for example, whether you legislate this or not, is not going to change our ability in the

next 6 months. What it will do is it will enable IGs in the next administration.

Getting to the specific proposal about fixed terms, I think I should say that we don't feel that a long term is necessary to preserve the independence of the IGs. I can't speak for the beginning of the Reagan Administration, but since then we think the history has been pretty clear that IGs have been independent under the current structure and——

Senator COLLINS. Is there anything to stop a new President from firing all of the IGs?

Mr. GOTBAUM. Only the fact that that President would have to explain to the entire world why he should or would do it.

Senator COLLINS. It has been done before.

Chairman THOMPSON. How about all the U.S. Attorneys?

Mr. GOTBAUM. Right. But if I may, Senator Collins, the other issue is that if you start making this a job that when you take it you have to commit for almost a decade, you are going to affect the kind of people that you can get to take that job.

Now, the fact is that this President has signed and other Presidents have signed legislation that provides for fixed terms for some IGs and other folks. But I want to be clear: I am expressing the administration's preference or view. Our preference is that we not constrain IGs in this way. This is not a statement about IGs. This is a statement on behalf of the Executive Branch, on behalf of the next administration, which isn't here yet to take this argument: There ought to be some ability in the Executive Branch to pick the people who work particularly in things that, involve agency management. And that is the reason why we have resisted the notion, and we hope that you would reconsider.

Senator COLLINS. Mr. Mead, I want to give you a chance to respond to that, and then I am going to yield because I know that I have used a considerable amount of time. I have many other questions, but I am going to submit them for the record.[1]

Mr. MEAD. This is a very central issue, and I want to respond directly and explicitly to the question on removal because it is of concern to the Inspectors General.

There is considerable support for some sort of term limit. I think the reason there is considerable support for some sort of term limit is because of the removal issue. The law does require the President, when removing an Inspector General, to communicate to Congress and explain the reasons therefor. It is quite different, materially so, from a "for cause" removal. Now, the President could communicate with the Congress and say "I think I want a new team." That statement would satisfy the law. But you do not want an Inspector General in the last year of an administration or in the beginning of a new administration to be pulling any punches.

The law requires very clearly that Inspectors General report to the Congress and to the Secretary and keep them currently and fully informed. And I believe that the Congress would do a service to the Inspectors General if they did address this removal issue.

[1] The questions for the record submitted by Senator Collins and responses from Mr. McFarland appears in the Appendix on page 27.

I think I am trying to fairly reflect the views of this community, which is not always unanimous, but I think if there is any one issue besides law enforcement that there is some consensus, it is this one.

Mr. GIANNI. And we might be able to take care of that by just putting in a for-cause provision in the act rather than just a notification provision in the act. The cause is poor performance, and that is the reason for removal. And that might solve the problem.

Senator COLLINS. Thank you, Mr. Chairman.,

Chairman THOMPSON. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman.

First, let me thank you for scheduling this hearing. It is a hearing on kind of a dry and complex subject, and it is particularly difficult, obviously, today when our thoughts are elsewhere. We have lost an esteemed colleague who was a very important part of this family, a very kind and a gentle and a good man. And all of us in this room are thinking about that, I am sure, more than this. But, nonetheless, our work must go on, and that is what Senator Coverdell would want us to be doing, I am sure.

I also want to thank Senator Collins for taking on this subject. It is important that we have this kind of review. These issues are complex. They don't attract a great deal of media attention so that we just have to be doing our work free of that, which is a big plus, frankly, but, nonetheless, sometimes not as attractive or glamorous as some of the other things in which we might be involved. This is sort of the grunge work.

But this subject, the Inspector General Act, is really one of the true feathers in the cap of this Committee over the last 25 years. The Inspectors General Act has really saved billions of dollars. We have gone after waste and abuse, and our Chairman has been one of the leaders in that. Again, I want to thank him and Senator Collins for their leadership in taking on this review.

I just have a few questions in the areas which have been discussed. First, on the 9-year term, we have a 5-year term for the head of the Office of Government Ethics, as I understand it, and there are two IGs that have terms, I believe one is 7 years and one is 9 years. And so in two of those three cases, at least, the term of office is less than the 9 years proposed here, for the IGs. That is a significant grant of a term of office for a large number of Executive Branch appointees.

So what is the logic in a 9-year term, instead of, for instance, a 5-year term, as we give to the Director of the Office of Government Ethics? And, second, what does it really add when the IGs still serve at the pleasure of the President? Because I assume we are not eliminating that language in this proposal. They still would serve at the pleasure of the President, but have a 9-year term. It seems to me there is an inconsistency in that.

But two questions: Why a 9-year term, when we have a 5-year term for the OGE Director and a 5-year term for one of those other Inspectors General who have a specific term? And, second, since this bill would maintain serving at the pleasure of the President, what does this really add? Mr. Gianni?

Mr. GIANNI. Senator, from the standpoint of the IG community, I don't think that we are wed to any specific number of years. The idea is to set up a situation that goes beyond one term of an administration. The expertise and knowledge of an agency should increase the longer an IG is in position. This should result in better service to the agency and the Congress. In my opinion, a longer period of time rather than a shorter period would be better for the government.

As far as the differences between other types of—well, my two colleagues, one from the Postal Service and one from the Tax Administration, I must admit I wasn't aware of the term for my colleague at the Tax Administration. But, again, it is probably something we would want to look into to make sure that there is some degree of consistency if we move in that direction.

Mr. MEAD. And, in fairness, Senator Collins, when constructing her legislation, asked the views of the Inspectors General, and they ranged the gamut. And I did not envy the position she was in. What she was trying to do—not to speak for her, but my understanding—was to give the position some security, to inject almost an expectation that you do not remove an IG at the end of a particular administration regardless of the party that is in power.

There was also consideration given to the Comptroller General's term, which, of course, is 15 years, and everybody thought, my God, that is a long time. And I think the idea was to span at least one full administration, 8 years. But, again, there is no magic in that number.

I personally think you do want Inspectors General to commit to stay for a good period of time. Now, whether that is 5 years or 7 years or 9 years, I do not know. I think a core underlying issue is that you should not have Inspectors General leaving at the end of an administration.

Senator LEVIN. Well, there is no commitment on the part of the Inspectors General in this proposal.

Mr. MEAD. No, sir.

Senator LEVIN. The commitment is—to the extent there is a commitment, and there still is a removal without cause.

Mr. MEAD. Yes.

Senator LEVIN. So they are still serving at the pleasure of the President.

Mr. MEAD. The provision does not technically change the requirements for removal. That is correct.

Senator LEVIN. Has there been an unusually large turnover in Inspectors General since they were all removed in 1981.

Senator LEVIN. Since then, has there been a particularly large turnover?

Mr. GIANNI. Since I came into the community 4 years ago, I believe we had, at one point in time, seven vacancies, which would indicate that seven of my colleagues had decided to leave for one reason or another. I don't view that as a large number. There seems to be some continuity, and certainly both the Bush Administration and the Clinton Administration on two occasions have chosen not to remove the IG and basically listened to the advice that it was getting from this particular Committee.

Senator LEVIN. What is the average length of service of the IGs since 1980?

Mr. GIANNI. Senator, I do not have that. We certainly could get it and provide it for the record.[1]

Senator LEVIN. I think it might be an interesting statistic.

On the consolidation issue, do we have any example of an IG serving a free-standing agency, but also serving another agency, or a department?

Mr. GIANNI. I am not aware of one. There might be, but I am just not aware if that is the case. At the State Department, I believe that there was an attempt—the Congress was trying to achieve some consolidation, and I believe at the State Department there might have been a consolidation of one of the——

Senator LEVIN. Wasn't that within the State Department?

Mr. GIANNI. Consolidation within the State Department.

Senator LEVIN. No, I am not referring to that. I think the Agency for International Development had an IG that was within the State Department.

Mr. GIANNI. Right.

Senator LEVIN. I am talking about a free-standing entity.

Mr. GIANNI. I am not aware of any.

Senator LEVIN. OK. On the law enforcement issue, I was very happy to hear about the training that is provided. Is there some kind of a certificate that is granted at the end of that training? Do you have to pass a course? Is it that specific?

Mr. MCFARLAND. Yes, Senator, absolutely.

Senator LEVIN. OK. What is it called when you pass that course, both the Treasury academy and yours?

Mr. MCFARLAND. Well, I don't know what it is called, but there is a certificate given at both FLETC and the academy to acknowledge successful completion.

Senator LEVIN. That is all I have, again, unless others wanted to comment on any of those questions that I asked. I should have offered you, Mr. Gotbaum, or anybody else the opportunity to comment.

Mr. GOTBAUM. Senator Levin, on the consolidation issue, part of the reason why we view S. 870 as an important start for conversation is that it raises the sort of issues that you raised on consolidation. It is not that we don't believe that smaller IG offices shouldn't find ways to work with each other or develop some sort of cross-servicing. We think that is something which makes sense. But the bill in its current form directs particular consolidations—and we thought that was a case of a good intention that deserved some discussion before we went further.

Senator LEVIN. What are the criteria, Mr. Gianni, that are used in establishing these particular consolidations or proposing these? What are the criteria that were used? Or since you support it, what criteria do you think we should use?

Mr. GIANNI. Well, I think I communicated that, in general, there was some agreement, but there was also some disagreement. I believe the jury is still out.

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[1] Letter to Senator Levin from Mr. Gianni, dated August 7, 2000, appears in the Appendix on page 76.

I believe what was put forth were some areas where efficiencies could be acquired because many of my ECIE colleagues are not in large Inspector General offices compared to those IGs from departments and larger agencies. But at the same point in time, there is a trade-off. There is the other side of the picture. When you consolidate this responsibility into a larger agency, there is the question of whether oversight of the smaller agency would receive resources to show some degree of monitoring. Loss of expertise and knowledge of that specific agency could also occur.

So there are pros and cons. I think, as I looked at the agencies that were identified, it appears that they might have been trying to match up those agencies with like-minded larger departments or agencies.

Senator LEVIN. Like-minded being similar types of functions?

Mr. GIANNI. Yes, similar types of functions.

Senator LEVIN. And if you applied those same criteria to all of the IGs, would others fall in that same category?

Mr. GIANNI. I think certainly so. One could conduct an exercise of saying "do we want to have some sort of a reorganization and consolidation and mergers," and certainly that process could take place. Now, whether that is going to result in the end of having the degree of oversight both for the agency and for providing the information that the Congress needs to carry out its oversight, that is an open question.

Senator LEVIN. Thank you.

Mr. MEAD. We did a survey of the Inspectors General, and found that this is probably the most controversial component of the entire proposal. I think it was a strongly held view that it is important to have a presence at the smaller entities. But when there are problems, you need the critical mass. And at many of these agencies, there are just two or three people there, which is not enough to undertake a comprehensive investigation or audit.

On your question about the criteria, I think it was by functionality. Just as an example, FLRA, the Federal Labor Relations Authority, would have gone to OPM, the Pension Benefit Guaranty Corporation into the Department of Labor, the Federal Maritime Commission to us at DOT.

You are quite right that if you were to apply that criteria government-wide, you could identify other opportunities for consolidations. But there is a lot of disagreement over this particular proposal.

Mr. GIANNI. Senator, if I might, just a point of clarification.

On the training for our agents at the academy, this is the same academy that members from the ATF and the Secret Service attend, and we receive the same certificates as they do. There is a grading of their performance during that training.

Chairman THOMPSON. Gentlemen, thank you very much. This has been very, very helpful.

It seems to me, just a point of overview, that basically what we are considering here falls into two categories: One has to do with the IG's relationship to the outside world, those who do business with the Department and third parties, and what that ought to be in coordinating that within Justice; and the other has to do with

the internal part of it with regard to its own department head, and the difficulty in getting that right.

What we are doing, it seems to me, over a period of years—and being in the last year of an administration I think helps us to be a little more objective about it, hopefully—is balancing the need for an administration to carry out its own policies versus the need for someone inside there to keep close tabs on what they are doing, not only from the standpoint of waste, fraud, and abuse but some other gray areas, perhaps, and to report to Congress.

I think it is like the other balance-of-power considerations that we have. Sometimes they go this way and sometimes they go that way.

My own feeling is that the Executive Branch has gotten so big and so complex, and the Legislative Branch has gotten so preoccupied with the budget process and everything else, and has so little time to do oversight, that the balance is a little out of whack in favor of the executive power and that we need more right now than we have at some times in the past, maybe, to have a little more independence from the IGs than we have had, because Congress needs all the help that it can get. And maybe even the head of an administration—obviously, they don't know what all is going on. They need to help themselves to monitor what is going on in all of these agencies and departments that we continue to create.

So I think that is what we are talking about here when we are talking about the term and how long it should be. We are talking about the extent of independence that we need. And I think we need to move in the direction of a bit more independence than we have had. All the cases that we have had up here recently have not been cases of the IGs just going in and looking to create havoc without just cause. The cases have been where the IGs are trying to do a decent job, and the heads of departments have tried to squelch them, quite frankly.

So I think we are moving in the right direction. Thanks again to Senator Collins and Senator Levin today, and perhaps we can move on this.

Senator Collins, do you have any other comments?

Senator COLLINS. No, Mr. Chairman. I just want to thank you so much for holding this hearing. I am grateful to the IGs for the work that they do, and I think a lot of the issues are very complex, and we need to strike the right balance. But I hope we will be able to proceed this year, and I thank you for your leadership.

Chairman THOMPSON. Thank you very much.

The record will remain open for 1 week for the submission of other material.

We are adjourned.

[Whereupon, at 11:39 a.m., the Committee was adjourned.]

APPENDIX

QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR COLLINS AND RESPONSES FROM MR. MCFARLAND

The following questions submitted by Senator Collins are directed to Mr. McFarland in his capacity as Inspector General for the Office of Personnel Management:

Mr. MCFARLAND. Madam Chairman, thank you for the opportunity to comment on the questions for the record concerning S. 870, Inspector General Act Amendments of 1999. Though I testified before your Committee as the Chairman of the PCIE Investigations Committee, I am answering your questions as the Inspector General of the Office of Personnel Management. First, let me go on record as supporting the overall bill. Below are my responses to each question you have asked:

Question 1. In 1997, the Permanent Subcommittee on Investigations thoroughly examined the practices of the Treasury Department's Inspector General, Valarie Lau. The Subcommittee found that Ms. Lau had actually awarded two sole-source contracts to acquaintances of hers in violation of standard contracting regulations. Other serious management problems were also identified during the course of the Subcommittee's investigation.

As a result of that incident, I have proposed in S. 870, The Inspector General Act Amendments of 1999, that an external review be conducted every 3 years of the operations of the Offices of Inspector General, so that there will be a clear answer to the question, "Who is watching the watchdogs?" Do you agree that an external review of the Offices of Inspector General is appropriate?

> *Answer.* I wholeheartedly support the concept of external reviews of the entire operations of the Office of the Inspector General (OIG). As I am sure you are aware, the OIGs are subjected to an external peer review of the audit functions every 3 years. In addition, as part of the proposed law enforcement authority provisions you are now considering, we are planning periodic reviews of investigative functions with results reported to the Attorney General. An external review encompassing the remainder of the OIG would attest to our creditability to all interested parties. As the watchdogs of the government, we need to be able to defend our operations at all times.

Question 2. S. 870 also proposes a provision prohibiting Inspectors General from accepting cash awards and bonuses to eliminate the appearance of any impropriety resulting from acceptance of a bonus from an agency head that the Inspector General is required to audit and investigate. Do you support this prohibition?

> *Answer.* I have always opposed bonuses for inspectors general (IG). I believe they make it difficult for IGs to function in the independent nature expected by the American public and Congress. Additionally, acceptance of a bonus award would indeed create a conflict of interest. Your provision is strongly supported by the entire IG community.

Question 3. Although I am generally very reluctant to propose pay raises for any Federal officials, in S. 870, I have included a provision that would compensate the presidentially appointed Inspectors General who would be affected by the bill's ban on accepting cash awards or bonuses. I am aware that it is possible for deputy Inspectors General to earn a higher salary than an Inspector General. To correct this disparity, S. 870 proposes a salary increase from Executive Level IV ($122,400) to Executive Level III ($130,200). Do you support this provision?

> *Answer.* I concur with the proposed change in salary levels for IGs. Logically, the inspector general should be the highest paid staff person in the OIG. In addition, this section of the bill would provide incentives for retention and recruitment of qualified IGs.

Question 4. The Inspectors General are currently required to report their activities to Congress on a semi-annual basis. I have learned from discussions with the Inspectors General that the production of semi-annual reports is very resource-intensive. Thus, I have proposed reducing this requirement to an annual report so that Inspectors General may reallocate the volume of resources presently devoted to report production to audits, investigations, and any other activities the Inspectors General deem necessary. What is your position on streamlining the reporting requirement in this manor?

> *Answer.* I support the proposed streamlining of reporting. The semi-annual report is a time consuming and demanding process. By creating an annual report, we are ensuring reporting on a timely basis while reducing the workload demands in the OIGs. If more frequent reporting is necessary, the bill permits congressional committees or GAO to require it. Most importantly, an IG is mandated to keep the agency and Congress fully informed and, therefore, additional reports may be issued at any time.

Question 5. To enhance their independence from agency heads, I have proposed, in S. 870, a term of office for the presidentially appointed Inspectors General. Do you think that a term of office would be helpful to send a signal to agency heads that the Office of Inspector General is not a political post, and that there is a strong measure of independence expected by law?

> *Answer.* By making appointment terms that exceed the maximum of 8 years of a presidential administration, I believe the bill provides a message to management that IGs are not political, and, therefore, are independent from the political considerations of an administration.

Question 6. In S. 870, I have suggested consolidating smaller Offices of Inspector General into larger offices that perform similar programmatic reviews. One of the bases for this provision is that offices with the equivalent of one, two, or even three employees cannot fulfill the intent of the Inspector General Act. I would like to hear your thoughts on the objective of making the Offices of Inspector General more efficient and true to their mission through consolidation.

> *Answer.* I concur with the concept of consolidation for the OIGs that employ a limited number of staff. When such a consolidation does in fact take place, it will be incumbent on the accepting larger OIG to make sure that the mission of the smaller agency remains a paramount concern and is not relegated to a lesser status of importance.

I feel that S. 870 addresses many of the issues the IG community has faced in the last 10 years. Please feel free to contact me if there are any questions.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Testimony of Hon. Joshua Gotbaum
Executive Associate Director & Controller
Acting Deputy Director for Management
US Office of Management & Budget

before the

Committee on Governmental Affairs
United States Senate

July 19, 2000

Mr. Chairman and members of the Committee,

I am grateful for the opportunity to present the Administration's proposal for streamlining the Inspectors General (IG) use of their law enforcement authority, and to comment on S. 870, the IG Act Amendments introduced by Senator Collins. This Administration has continued the longstanding bipartisan tradition of support for the IGs. The members of the IG community are, I know, also extremely grateful that the Committee is taking time to consider how they might increase their effectiveness.

Before getting to the substance of today's issue, I would like to mention another shared interest between the Administration and the Committee. As a result of recent actions by the President, we currently have nominees for all four unfilled IG positions before the Congress. I hope the Committee considers these nominations expeditiously and encourages its colleagues in the Senate to do so. If confirmed, it would be the first time in many years that all PAS IG slots were filled.

Streamlining IG Law Enforcement Authority

We are extremely grateful that the Committee is considering the Administration's proposal to streamline the process through which the IG's exercise their existing law enforcement authority.

This is, I understand, an issue that has been discussed within the IG community and with the Department of Justice for many years. In the past year, we have worked hard to develop a compromise proposal that cuts red tape for the IG's and permits them to fulfill their longstanding law enforcement mission, while preserving accountability and maintaining the oversight of the Attorney General. The Administration submitted a proposal to Congress just this past February.

As this Committee knows, IG's have been involved in law enforcement ever since they were created. The IG criminal investigator community has a solid 22-year record of conducting successful law enforcement operations addressing the problems of fraud, abuse, waste, and wrongdoing in federal programs. In the last decade, the IGs achieved more than 122,000 successful criminal prosecutions and obtained over $13 billion in investigative recoveries. In addition, federal agencies took more than 19,000 personnel actions based on IG investigations during the same period.

As IGs became involved in the investigation of external criminal conspiracies against government programs, firearms, arrest and warrant powers became necessary to ensure agent and public safety and to reduce requests for traditional Federal law enforcement agency personnel support in the more dangerous aspects of investigations. OIG criminal investigators are already required to meet the same rigorous qualifications as other Federal law enforcement officers, and receive the same federal law enforcement training in firearms, search and seizure, evidence, etc.

Until the last few years, IGs received the authority to conduct their investigations with the usual law enforcement tools through *case-by-case deputations* as special Deputy U.S. Marshals from the U.S. Marshals Service. Deputation is the process by which a criminal investigator without statutory authority to make arrests, carry firearms, serve warrants, execute search warrants, etc., is provided that authority. The OIGs had to apply for a deputation for each agent for each case where they might need law enforcement authority. This led to excessive paperwork and delays.

Former OMB Deputy Director for Management John Koskinen worked with DOJ and the OIGs to create a process for *annual* deputations of qualified OIG criminal investigators. Under an agreement with DOJ, the seven OIGs with the greatest experience in deputations received one-year blanket deputations for all qualified investigators. This pilot project specified training requirements that the investigators had to meet (including quarterly firearms training) and reporting requirements the OIGs had to provide DOJ on their use of law enforcement authority. This process did not expand OIG access to law enforcement authorities, but it did reduce the administrative burden significantly.

Over the years, DOJ has expanded the pilot. Currently, 23 OIGs are covered by annual blanket deputations. The pilot demonstrated that the OIG criminal investigators were fully capable of performing their law enforcement responsibilities in a professional manner.

Based upon the success of the pilot, last year Deputy Attorney General Eric Holder agreed to further streamline the process by eliminating the annual renewal requirement in favor of ongoing authority that remains subject to DOJ oversight and professional safeguards. OMB worked with DOJ and the IGs to draft the appropriate statutory language.

As I hope both your witnesses from the Department of Justice and the IG community make clear, we are making this proposal to streamline and make more effective the IG's existing law enforcement activities, not to expand them. Only fully trained criminal investigators in Offices of Inspector General (OIG) specifically designated by the Attorney General would be permitted to exercise this authority. They would do so under guidelines promulgated by the Attorney General. As an added measure of oversight, the OIGs must also establish an external review process, in consultation with the Attorney General, to ensure that this authority is exercised properly.

Attorney General Retains Oversight Authority Under our proposal, the Attorney General retains the discretionary authority to grant the law enforcement authority to additional IGs, based upon guidelines clearly delineated by the legislative language. The Attorney General also has the power to rescind any IG's authority at any time. It is important to again note that we are not seeking to increase IGs' law enforcement authority; we are looking to provide them with the

same authorities they already have through deputations and case-by-case approval via a more streamlined approach.

Additional External Review as a Safeguard Our proposal also contains a requirement that the IG community collectively establish an external review process, in consultation with the Attorney General, for ensuring that adequate internal safeguards and management procedures continue to exist within OIGs that receive law enforcement authority under this proposal. The results of each review must be provided to the Attorney General.

We believe that providing these investigators with the same law enforcement authority as their professional colleagues in the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, and other law enforcement agencies, is a good government initiative that will permit the IGs to use their existing skills and training more efficiently and allow other law enforcement agencies to focus on their respective missions.

We hope the Committee and the Congress agree and enact the proposal into law as soon as possible this year.

S. 870 & Other Possible Changes to IG Authorities

We are pleased that this Committee is considering revisions to the IG Act. The last major changes were in 1988 and, after 12 years, a review is appropriate to see how well the Act continues to fulfill its goals.

Senator Collins has for several years engaged in discussions with the IG community about possible changes in the IG Act. S. 870 raises important issues -- of compensation and independence -- that deserve the attention of both the executive branch and the Congress. Nonetheless, there are some provisions in the bill about which we have concerns and would like to engage in further dialogue with Senator Collins and the Committee. Furthermore, there are some important issues on which the bill is silent; since changes to the Act are infrequent, we would hope the Committee would consider these, too, before legislating.

We agree strongly with Senator Collins that IGs, because of the independent nature of their positions, should not be eligible for performance awards from agency heads. Accepting a bonus from the agency head one might be compelled at some point to investigate for improper behavior clearly creates at least the appearance of a conflict of interest. Nonetheless, we are not sure that the right response is necessarily to raise the salaries of IGs to Executive Level 3. This blanket approach would have significant implications for other officials currently at the Executive Level 4, including Chief Financial Officers, Chief Information Officers, as well as General Counsels, Assistant Secretaries, and other senior officials. In many cases, these officials also receive no bonuses. We would welcome the opportunity to discuss IG compensation, but would hope to do so in a way that recognizes this issue more generally. One mechanism that might be considered could be the establishment of an external review and bonus pool for its outstanding members. We would also like to include in this discussion the Designated Federal Entity IGs, whose pay levels vary widely.

We applaud the provision requiring external reviews of IG administrative operations. We suggest that the Committee might consider allowing the IG community to develop an internal mechanism similar to the audit peer review process by which IGs review each other for adherence to applicable rules and regulations. Another suggestion might be to form an external review body involving active professional oversight that draws upon experts from both the public and private sectors.

One provision that the Administration opposes S. 870 is in the creation of a 9-year term for IGs. This Administration, like others before it, has generally opposed a term of years for Presidential appointments in the executive branch. We see no evidence even to suggest that a 9-year term is necessary to preserve the independence of the IGs. Nor do we think it would raise the already high caliber of the individuals willing to serve as IGs. In fact, establishing a 9-year term might make it harder to fill these positions: Nine years is a long time to commit to a position, and establishing an expectation of so long a term could very well reduce rather than expand the pool of qualified and interested candidates. Finally, we are concerned creation of a 9-year term might lead to "lame duck" syndrome, or at least a reduction in an IG's level of effectiveness in the last year or so or his or her term.

Another area in which we hope there is further discussion is in S. 870's proposal for consolidation of smaller OIGs. While there is interest within the Administration and the IG community in sharing of services among smaller offices, and even willingness to discuss consolidating smaller OIGs into larger ones, the interagency comments we received did not support the specific proposals in S.870. Before imposing any particular legislative arrangement, we would strongly prefer to give the IG community an opportunity to conduct its own review, to determine where consolidation is necessary and helpful.

There are also some areas on which S. 870 is silent, but which I think deserve the Congress' consideration. One important issue is how the IG balances the need for independence with an increasing emphasis on agency management. For many issues reviewed by IGs, the most effective way to reduce fraud, waste, abuse and inefficiency is to change management processes and systems. In some cases, however, these changes are subtle. In some, they will require trial and error to implement -- not every individual or system succeeds, certainly not at first. In many cases, ranging from computer security to reducing errors in benefit payments, IGs possess judgment and experience that could help an agency head make improvements. If, however, an agency head believes that every consultation with an IG could become public at any time, they will be reluctant to consult at all.

As a relative newcomer to the IG community, I can't help but notice the vast differences between IG offices. More than one IG has stated what seems to be the community's unofficial motto: "If you've seen one IG, you've seen one IG." Some IGs seem entirely comfortable drawing the line between advising on agency practices and reporting wrongdoing. They actively contribute to agency management, sometimes with great influence and consequence. Other IGs, equally well-meaning and implementing the very same IG Act, conclude that "independence" precludes them from such activities. As the Committee considers proposals to update the IG Act, dialogue on this issue might be very helpful. What is the proper role of the IG *vis-a-vis* the agency? When does independence become isolation? How much will agencies resist oversight by IGs if the findings automatically end up in a report to Congress or on the front page? Could the IGs, given

their acknowledged and fiercely-guarded independence, have the latitude to decide which of their findings to report publicly? Certainly there are gross mismanagement issues that must be brought to the attention of Congress and certainly criminal behavior must be presented to the Attorney General. But what about the subtler questions of judgment concerning management decisions about people, processes and systems?

Another issue worth the attention of the Committee and the Congress is the structure and organization of the Designated Federal Entity IGs? Are they fully effective as currently configured? Should they be encouraged to consolidate or instead to coordinate, and on which of their activities?

We think S. 870 is a good start and offers the first opportunity in more than a decade to help the IGs to do what they help agencies and the Congress to do: find ways to improve their integrity and effectiveness. We hope the Committee takes advantage of this opportunity. I know the IG community would be willing participants.

* * *

We appreciate this Committee's interest and the opportunity to convey the Administration's support for the Inspectors General. As your witness from the Department of Justice will explain, due to resource constraints, the U.S. Marshals Service will no longer provide deputation to OIGs after January 31, 2001. Therefore, we urge the Committee, after careful review, to support our proposal to streamline the Inspectors General use of law enforcement authority so that this legislation can be passed this session. We also look forward to working with Senator Collins and the other members of the Committee on the longer-term and more comprehensive effort to review and update the IG Act.

For over 20 years, IGs have worked to make government worthy of the support of its citizens. I know both the Congress and the executive branch recognize their contributions. With your continued support, they can be an even more effective advocate for good government in the years to come.

President's Council on Integrity and Efficiency

For Release on
Delivery Expected for
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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 fight fraud,

waste, abuse in their agencies; and (3) keep agency heads and the Congress informed of problems. Simply put, 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.

The PCIE and Executive Council on Integrity and Efficiency (ECIE), which serves a parallel mission as the PCIE for the designated Federal entity (DFE) IGs, recently issued the *Progress Report to the President for Fiscal Year 1999,* which highlighted the community's many accomplishments over a 12-month period. The report details the pivotal role the IGs assumed in mitigating the risks associated with the Year 2000 (Y2K) computing problem and focusing unparalleled attention on information technology issues. 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; took actions to recover over $4 billion; and was instrumental in over 13,000 successful prosecutions, suspensions or debarments of nearly 6,700 individuals or businesses, and over 1,200 civil actions.

Of particular interest to the Committee is our ongoing work to audit agency financial statements 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.

Having just highlighted some of our many accomplishments, I along with my colleagues within the community recognize that we cannot sit back and rest on our laurels. We must be constantly looking for ways to improve our operations and be mindful that our integrity and credibility is of the utmost importance to remain effective in our position. Today, as Vice Chair of the PCIE and IG for the FDIC, I am prepared to discuss some legislative items currently under consideration, which could afford opportunities for the community to enhance its effectiveness.

Statutory Law Enforcement Authority

Mr. Chairman, earlier this year, the Department of Justice submitted to the Congress a legislative proposal that would amend the IG Act to authorize criminal investigators in the offices of 23 Presidentially-appointed IGs to exercise law enforcement powers--namely authority to seek and execute search and arrest warrants, make an arrest without a warrant for offenses committed in their presence, and to carry a firearm--in the course of their official duties.

It is important that we emphasize that this grant of statutory law enforcement authority would extend no new authorities, but would simply recognize in statute authorities that are already being exercised. 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 evolved. In 1996, OIG criminal investigators began exercising law enforcement authority under office-wide deputations.

Although OIGs are already exercising law enforcement powers, both the Department of Justice and the OIGs believe that statutory recognition of this authority is vital. Under the current arrangement, the U.S. Marshal's Service confers law enforcement authority upon over 2,500 OIG agents across the Federal government. However, day-to-day supervision and control over the exercise of those authorities rests with each IG. The Marshals cannot and do not monitor the thousands of pending OIG investigations in which law enforcement authorities are being exercised. The proposed statutory grant of law enforcement authority would appropriately place all responsibility for law enforcement authorities to the IGs, themselves, with important oversight by and accountability to the Attorney General.

Mr. Chairman, representatives of the IG community have been meeting with congressional staff members to discuss statutory law enforcement authority. During these discussions, some concern has been expressed that a statutory grant of authority -- instead of a renewable administrative deputation--might result in *decreased* oversight of law enforcement. Exactly the opposite is true.

First, under the bill, law enforcement powers must be exercised in accordance with guidelines promulgated by the Attorney General. These guidelines govern issues such as use of force, consensual interception of communications, coordination with other federal investigators and prosecutors, adherence to personnel and training standards, and periodic reporting. 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. Thus, the Justice Department retains ultimate oversight of the exercise of law enforcement powers and ensures greater consistency.

In addition, 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 will be communicated directly to the Attorney General. With these guidelines and peer reviews, the Justice Department's bill would actually result in *enhanced* accountability by OIGs in their exercise of law enforcement authorities.

A statutory grant of authority would also provide certainty and permanence for OIG enforcement activities. The OIGs regularly conduct complex investigations that require the ongoing exercise of law enforcement authority (arrests, search warrants, and undercover activities) during investigations that often last for years. As members of numerous national and local task forces, other Federal, state and local law enforcement officers depend on OIGs' uninterrupted participation in the enforcement activities of the

task force. Administrative deputations, which must be periodically renewed, cannot offer such a guarantee of continuity.

In this regard, we have learned that the Justice Department intends to not renew OIG blanket deputation authorities after January 31, 2001. If blanket deputation to the 23 OIGs covered in the bill were terminated, without passage of a statute granting law enforcement authority to IGs, it would jeopardize literally thousands of open investigations of fraud against agency programs across government. Investigations of fraud in 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 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. We ask that the Congress foreclose this possibility with a grant of statutory law enforcement.

Statutory law enforcement authority would also be consistent with and promote the continued independence of the IGs. Under the current arrangement, delay or non-renewal of a deputation could be perceived as an attempt to influence an OIG, or even derail an investigation. We emphasize that we know of no instance in which such interference has occurred; however, a statutory grant would eliminate this perception.

The Department of Justice's legislative proposal would also ensure the consistency of law enforcement powers 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.

Congressional staff have also asked whether the proposed legislation would broaden the authority of the IGs or expand the categories of those authorized to exercise law enforcement powers. It would not. Law enforcement authority could 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. Thus, the bill would have no impact on the jurisdiction of the various IGs. Moreover, the bill would carry with it no additional costs since OIG agents are already exercising these authorities, are already fully trained in their exercise, and are already federal law enforcement officers for purposes of the law enforcement retirement system, and otherwise.

The OIGs have achieved impressive successes in law enforcement. We regularly face situations that pose dangers to ourselves, our fellow law enforcement officers, and members of the public. For many years, we have exercised law enforcement authorities to further our statutory responsibilities to investigate fraud in our respective agency programs and operations. We have achieved these successes with an impressive record of

professional and responsible conduct. The Department of Justice has recognized this evolving role of IGs by submitting to the Congress a legislative proposal that offers reliable, permanent law enforcement authorities to qualifying OIGs. On behalf of the entire OIG community, we urge you to endorse this proposal.

Amendments to the IG Act

I am pleased to comment on S. 870, IG Act Amendments of 1999, sponsored by Senator Susan Collins (R-ME) and under consideration by this Committee. In introducing this legislation earlier this year, 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. We have just recently provided your staff with results of an updated survey on the revised bill introduced by Senator Collins during this Congress.

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. 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.

At this time, I would like to briefly discuss the community's views on each section of Senator Collins' bill.

- **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. Most IGs felt that a fixed term would enhance independence and provide more continuity, particularly during changes of Administrations, although several expressed concerns that IGs might become lame ducks at the end of their terms or less aggressive in hope of securing reappointment. Others were concerned that a fixed term might cause an agency head to ignore or be unresponsive to OIG recommendations at the end of an IG's term. Several IGs who favored term limits also thought it important to add a complementary removal only "for cause" provision, such as malfeasance in office. It was noted that most term appointments have this protection, and even though a President must notify Congress when he/she removes an IG, in effect, IGs would still serve at the "pleasure" of the President. IGs felt a removal for cause provision would further enhance their independence and provide continuity, especially during changes of Administration.

- **Prohibition of Cash Bonus or Awards:** This section met with strong support from community members. Virtually all IGs are concerned about the appearance of impropriety associated with IGs accepting awards from the agency head over whom they exercise oversight. In response to a National Performance Review recommendation, the Clinton Administration implemented guidance to request PAS IGs drawn from the SES ranks to waive their rights to cash bonuses/awards determined by their agency head. As such, in January 1994, the IGs agreed to adhere to this policy and, to our knowledge, have not accepted any cash bonuses or awards.

- **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 IG's mission-related decisions. A number of respondents desired that language be included to ensure that such reviews did not encompass management practices, operations, and procedures in the criminal investigative realm, particularly with respect to OIG and Justice Department coordination on prosecutorial decisions. Many IGs would rather incorporate these items into the current peer review process.

- **Annual Reports:** Most IGs favored moving to annual reports instead of the current semiannual framework. Some IGs, however, voiced concerns that annual publication would make the reports stale and less useful to Congress. A vocal minority wanted to ensure that the semiannual reporting option was preserved subject to the discretion of the IGs. It may be best to simply require IGs to report to the Congress on at least an annual basis with discretion to report more frequently, if so desired. In addition, there were numerous suggestions regarding the contents of the report, the current requirements, and those new requirements contained in the proposed legislation.

- **Elevation to Executive Level III Salary:** The IGs strongly supported this provision to address the imbalances whereby senior level SES career employees, who receive cost-of-living adjustments and may be eligible for performance bonuses, may earn more than their PAS IG. Several IGs recommended that some allowance be made for IGs from non-Title 5 Legislative branch agencies, such as the General Accounting Office (GAO), to receive the same salary and benefits afforded to career civil servants. Since GAO is a fertile recruiting ground for IGs, candidates from their senior ranks often earn more than the salary level of an IG and may be forced to take a cut in pay if they were to assume the job.

- **Consolidation of Certain DFE OIG Functions:** This portion of the bill was the least well received and most controversial. Those opposed believed it important to have an IG physical presence in the smaller agencies and that size is not an adequate measure of the OIG's effectiveness or results. The ECIE has corresponded with Senator Collins to explain their concerns regarding consolidation, which I would like to share with the Committee for your reference and, as appropriate, inclusion as part of the hearing record.

While we as a community have 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 entire government has undergone change that has precluded the IGs ability to fully perform these responsibilities in the most efficient and effective manner. Detailed below are specifics on such issues needing legislative attention. One of these issues, which received strong bipartisan support, is already in the legislative process.

Clarifying the Scope of IG Authority

The IG Act provides very broad authority, imposing a duty to conduct "audits and investigations relating to the programs and operations" of the host establishment. The Inspectors General are further charged "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 authority from Congress, certain Justice Department Office of Legal Counsel opinions, notably the so-called Kmiec and Barr opinions, and certain decisions of Federal courts, notably 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), construe the IG Act in ways which suggest that this authority may be limited. Courts are divided on the question of whether the IGs can investigate, for example, false statements made to federal agencies by those subject to their regulations, so-called third or external parties. We do note, however, that Deputy Attorney General Barr, in his Opinion of July 17, 1990, did acknowledge that IGs could exercise jurisdiction over an external party if it were the recipient of a non-monetary benefit from the agency, such as licenses or permits to operate.

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.

My colleague from DOT, who accompanies me today, has been engaged on this issue over some time with mixed results. The Courts have split on whether he can investigate criminal violations, such as false certifications, conspiracy, and mail and wire fraud made

to the Department by 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, 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), which created a new Administration within DOT whose primary mission is truck safety.

Given the importance of protecting our public health, safety, and the environment, the IGs believe it is essential that they have unambiguous authority to investigate criminal violations of those who are subject to an agency's regulatory scheme, but who do not receive direct agency funding. It helps ensure the integrity of the underlying program and is an effective deterrent to those who intentionally seek to deceive the government--and the American people.

Though it never was enacted into law, this Committee passed such a clarification several years ago, which is provided below. We believe it may be time to revisit this issue again, and we would be pleased to work with you to advance this effort. That language read:

"The Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end thereof the following:

(e) (1) In carrying out duties and responsibilities under this Act, each Inspector General has authority to determine

(A) the persons subject to, and the nature, scope, and purposes of, audits and investigations conducted by the Inspector General relating to programs and operations administered, carried out, financed, or conducted by his or her establishment, including programs and operations under regulatory statutes; and

(B) the authority of the Inspector General to conduct those audits and investigations.

(2) The conduct of an audit or investigation by an Inspector General in accordance with this Act may not be construed as carrying out a program operating responsibility."

Alternatively, Section 2(1) of the Inspector General Act could be amended to add the following clause:

"including without limitation investigations into allegations that a person or entity subject to the laws and regulations of the agency or its operating administrations, whether or not that person or entity is a recipient of funds from that agency or its administrations, has engaged in fraudulent or other criminal activity in violation of Federal criminal

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.

IG Academies and Forensic Lab

Finally, 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. This legislation was incorporated in the Chairman's bill, S.1707, to move the IG from the Tennessee Valley Authority to PAS status. The authorization of both the academy and laboratory will ensure that the OIG investigators have the specialized training and necessary tools readily available to them. As you know, this legislation has passed the Senate and is pending before the House.

We would like to work with you to expand any further legislation to authorize funding for the Inspectors General Auditor Training Institute. This training facility has been offering entry-level and specialized audit training for OIG audit and audit-related staff for nearly 10 years. The Institute is supported solely by its tuition revenue and has at times been unable to expand its curriculum due to funding concerns. Authorizing funds to annually support the curriculum development and course delivery of the Inspector General Auditor Training Institute would go a long way toward enhancing OIG auditing skills.

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. As always, we appreciate your support of the IG mission and community and look forward to continuing this dialogue and maintaining a constructive relationship with you. At this time, we would be happy to respond to any questions that you or other Members of the Committee may have.

STATEMENT OF

NICHOLAS M. GESS

ASSOCIATE DEPUTY ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

CONCERNING

LAW ENFORCEMENT AUTHORITY FOR THE INSPECTORS GENERAL

JULY 19, 2000

Mr. Chairman, Senator Lieberman, Members of the Committee, thank you for giving me the opportunity to appear before you today on behalf of the Administration. I am a career Assistant United States Attorney from Yarmouth, Maine, on detail to the Office of Deputy Attorney General Eric H. Holder, Jr. My responsibilities include this issue.

We have submitted to the Congress a legislative proposal that would provide statutory enforcement authority to qualifying investigative personnel of the 23 Presidentially-appointed Inspectors General to exercise law enforcement powers – primarily the authority to carry a firearm while conducting official duties. At the same time, our proposal provides for oversight of the exercise of those law enforcement powers by the Attorney General, our Nation's chief law enforcement officer.

Mr. Chairman, we seek statutory authorization for investigative agents of the specified Inspectors General to do exactly what they have been doing for many years under designations afforded them by the U.S. Marshals Service (USMS) as Special Deputy United States Marshals. Beginning in the mid-1980's, the Department of Justice approved these deputations on a case-by-case basis. However, as the role of the Inspector General has evolved, the need for such appointments became so consistent, and the volume of the requests so large, that "blanket" deputations evolved. Since 1995, virtually all criminal investigators in the offices of the 23 covered Inspectors General have exercised law enforcement authorities in cases under office-wide deputations. Thus, the grant of statutory law enforcement authority would not extend new authorities to IG personnel, but would merely recognize the authorities that are already in place.

This authority is needed because IG investigative agents are engaged in law enforcement activities along with their colleagues in other Federal agencies, as well as at the state and local levels. While this is an important piece of what makes law enforcement work so well and which has contributed to historic drops in crime, it also means that these IG personnel are at personal risk and have a legitimate need to carry a firearm, just as their colleagues do. We cannot countenance a situation in which they are at special risk for lack of authority.

We have reached a point where we are now providing deputations to over 2,500 Inspector General personnel. To put this in perspective, there are approximately 2,800

Deputy U.S. Marshals. The USMS simply lacks the resources to process and monitor all of these individuals -- who do not report to the USMS for any practical purpose. We can no longer ask the USMS to undertake a program that confers authority but does not come with concomitant supervision and control. Accordingly, effective January 31, 2001, the Inspectors General who are subject to blanket deputations will no longer be provided with such deputations. We have selected that date, because it falls close to the end of the year. We had intended to select the end of the year but did not want to cause administrative disruptions during the holiday season when resources are especially thin.

In our view, the authority and the responsibility ought to rest in the same place: with the Inspectors General. The Inspectors General have an exemplary record, and there is little concern that they will abuse any authority that they are provided. The fact remains, however, that law enforcement authority is a serious matter, and that the public has a right to expect rigorous oversight. In that regard, our proposal would provide the Attorney General with authority to promulgate regulations governing the exercise of law enforcement authority by the IG community. Those who comply with standard norms to which all Federal law enforcement is subjected have nothing about which to be concerned. But, as I said before, the public expects accountability in law enforcement operations. In our view, the solution, as proposed in our draft legislation, is to establish government-wide standards for hiring, training and conduct that could result in the loss of authority if not observed.

By way of example, an individual who exercises law enforcement authority must be properly trained and there should therefore be minimum training standards. In that regard, we hold our own Department of Justice law enforcement agents from agencies such as the FBI, DEA, U.S. Marshals and INS, to policies governing domestic terrorism investigations, undercover operations, the use of deadly force, major narcotics purchases and electronic surveillance. The Inspector General community should, as well. Our legislative proposal will assure that not only does this occur, but that it does so in a uniform and accountable fashion, which should enhance the public's confidence in the law enforcement officers who serve it.

The Department of Justice – through its U.S. Marshals Service – has been happy to assist its colleagues in Federal law enforcement by providing special deputation authority. However, the process has become so burdensome that it threatens the effectiveness of our Nation's first Federal law enforcement agency and diverts resources from its high-threat trials, judicial security, asset forfeiture, witness protection, and domestic and international terrorism-related missions. We cannot allow that to continue. Yet we are also keenly appreciative of the risks faced by our IG colleagues. Accordingly, we ask the Committee to act promptly and favorably on our legislative proposal and to undertake all necessary efforts to protect the lives of Federal law enforcement officers.

That concludes my remarks. I would be pleased to answer any questions you may have about this matter.

II

106TH CONGRESS
1ST SESSION

S. 870

To amend the Inspector General Act of 1978 (5 U.S.C. App.) to increase the efficiency and accountability of Offices of Inspector General within Federal departments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1999

Ms. COLLINS (for herself, Mr. ROTH, Mr. GRASSLEY, and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend the Inspector General Act of 1978 (5 U.S.C. App.) to increase the efficiency and accountability of Offices of Inspector General within Federal departments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Inspector General Act Amendments of 1999".

SEC. 2. APPOINTMENT AND REMOVAL OF OFFICERS.

(a) IN GENERAL.—Section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

1 (1) by inserting "(1)" after "(a)"; and

2 (2) by adding at the end the following new

3 paragraph:

4 "(2)(A) Each appointment under this subsection

5 shall be for a term of 9 years. An individual may serve

6 more than 1 term.

7 "(B) An individual may continue to serve as Inspec-

8 tor General beyond the expiration of the term until a suc-

9 cessor is appointed and has qualified, except that such in-

10 dividual may not continue to serve for more than 1 year

11 after the date on which the term would otherwise expire

12 under this paragraph.".

13 (b) EFFECTIVE DATE.—The amendment made by

14 this section shall take effect on the date of enactment of

15 this Act and shall apply only to an appointment made on

16 or after such date.

17 **SEC. 3. PROHIBITION OF CASH BONUS OR AWARDS.**

18 Section 3 of the Inspector General Act of 1978 (5

19 U.S.C. App.) is amended by adding at the end the fol-

20 lowing:

21 "(e) An Inspector General (as defined under section

22 8G(a)(2)(6) or 11(3)) may not receive any cash award or

23 cash bonus, including any cash award under chapter 45

24 of title 5, United States Code.".

1 **SEC. 4. EXTERNAL REVIEWS.**

2 (a) IN GENERAL.—Section 4 of the Inspector General
3 Act of 1978 (5 U.S.C. App.) is amended by inserting at
4 the end the following:

5 "(e)(1)(A) Not less than every 3 years an external
6 review shall be conducted of each Office defined under sec-
7 tions 11(4) and 8G(5).

8 "(B) The Inspector General of each Office defined
9 under sections 11(4) and 8G(5) shall arrange with the
10 General Accounting Office or an appropriate private entity
11 for the conduct of the review.

12 "(C) If an Inspector General contracts with a private
13 entity for a review under this subsection, the private entity
14 shall be contracted in accordance with section 303 of the
15 Federal Property and Administrative Services Act of 1949
16 (41 U.S.C. 253).

17 "(2) At a minimum, an external review under this
18 subsection shall evaluate whether the Office of Inspector
19 General properly manages and controls—

20 "(A) contracts awarded by the Office of Inspec-
21 tor General, including a determination of whether—

22 "(i) procedures used to procure contracts
23 are in accordance with applicable laws and reg-
24 ulations; and

25 "(ii) costs incurred are reasonable and al-
26 lowable under the terms of each contract;

"(B) appropriated funds, including a determination of whether training and travel funds are expended in accordance with applicable laws and regulations; and

"(C) personnel actions, including a determination of whether hiring and promotion practices used and performance awards issued are in accordance with applicable laws and regulations.

"(3) Not later than 30 calendar days after the completion of an external review, a report of the results shall be submitted to the head of the establishment and simultaneously to the appropriate committees or subcommittees of Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section heading for section 4 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended to read as follows: "DUTIES AND RESPONSIBILITIES; REPORT OF CRIMINAL VIOLATIONS TO ATTORNEY GENERAL; EXTERNAL REVIEWS".

SEC. 5. ANNUAL REPORTS.

(a) IN GENERAL.—Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking the first sentence and inserting "Each Inspector General shall, not later than October 31 of each year, prepare annual reports summarizing the activities and accomplishments of the Of-

1 fice during the immediately preceding 12-month pe-
2 riod ending September 30.";
3 (2) by striking paragraphs (1) through (12)
4 and inserting the following:
5 "(1) a summary of the program areas within
6 the establishment identified by the Inspector General
7 as high risk because of vulnerabilities to waste,
8 fraud, abuse, and mismanagement;
9 "(2) a description of the most significant au-
10 dits, investigations (administrative, civil, and crimi-
11 nal), and evaluations and inspections completed dur-
12 ing the reporting period;
13 "(3) a summary of each report made to the
14 head of the establishment under section 6(b)(2) dur-
15 ing the reporting period;
16 "(4) a table showing—
17 "(A)(i) the total number of final audit re-
18 ports issued by the Office of Inspector General;
19 and
20 "(ii) the financial benefits associated with
21 the reports segregated by category, such as
22 budget reductions, costs avoided, questioned
23 costs, and revenue enhancements; and
24 "(B) corrective actions taken and program
25 improvements made during the reporting period

1 in response to either an Office of Inspector
2 General audit finding or recommendation (ex-
3 cluding any recommendation included under
4 subparagraph (A) with respect to such correc-
5 tive actions);
6 "(5) a table showing—
7 "(A) the judicial and administrative ac-
8 tions associated with investigations conducted
9 by the Office of Inspector General;
10 "(B) the number of—
11 "(i) cases referred for criminal pros-
12 ecution, civil remedies, or administrative
13 actions;
14 "(ii) cases presented but declined for
15 prosecution, segregated by criminal and
16 civil;
17 "(iii) cases accepted for prosecution
18 (both Federal and State), segregated by
19 criminal and civil;
20 "(iv) defendants indicted;
21 "(v) defendants convicted;
22 "(vi) defendants acquitted or charges
23 dismissed after indictment;
24 "(vii) defendants sentenced to terms
25 of imprisonment;

1 "(viii) defendants sentenced to terms
2 of probation; and
3 "(ix) suspensions, disbarments, exclu-
4 sions, sanctions, or some other similar ad-
5 ministrative action; and
6 "(C) the total amount of fines, restitu-
7 tions, and recoveries;
8 "(6) a description of the organization and man-
9 agement structure of the Office of Inspector Gen-
10 eral, including—
11 "(A) an organization chart showing the
12 major components of the Office;
13 "(B) a statistical table showing the num-
14 ber of authorized full-time equivalent positions
15 segregated by component and by headquarters
16 and field office; and
17 "(C) the amount of funding received in
18 prior and current fiscal years;
19 "(7) a table showing—
20 "(A) the number of contracts, and associ-
21 ated dollar value, awarded on a noncompetitive
22 basis by the Office of Inspector General; and
23 "(B) with respect to any individual con-
24 tract valued over $100,000, awarded on a non-
25 competitive basis—

1 "(i) the name of the contractor;
2 "(ii) statement of work;
3 "(iii) the time period of the contract;
4 and
5 "(iv) the dollar amount of the con-
6 tract;
7 "(8)(A) a summary of each audit report issued
8 in previous reporting periods for which no manage-
9 ment decision has been made by the end of the re-
10 porting period (including the date and title of each
11 such report);
12 "(B) an explanation of the reasons such man-
13 agement decision has not been made; and
14 "(C) a statement concerning the desired time-
15 table for achieving a management decision on each
16 such report;";
17 (3) by redesignating paragraph (13) as para-
18 graph (9);
19 (4) in paragraph (9) (as redesignated by para-
20 graph (3) of this subsection)—
21 (A) by striking "section 05(b)" and insert-
22 ing "section 804(b)"; and
23 (B) by striking the period and inserting a
24 semicolon and "and"; and

1 (5) by adding at the end the following new
2 paragraph:
3 "(10) any other information that the Inspector
4 General determines appropriate to include in the an-
5 nual report.".
6 (b) SEMIANNUAL REPORTS.—Section 5 of the Inspec-
7 tor General Act of 1978 (5 U.S.C. App.) is amended—
8 (1) by redesignating subsection (f) as sub-
9 section (g); and
10 (2) by inserting after subsection (e) the fol-
11 lowing:
12 "(f)(1) Subject to paragraph (4), in addition to any
13 annual report required to be furnished and transmitted
14 under subsection (b), an Inspector General shall prepare
15 and submit a report described under paragraph (2) to—
16 "(A) the applicable congressional committee, if
17 the chairman or ranking member of a congressional
18 committee with appropriate jurisdiction submits a
19 written request to such Inspector General; or
20 "(B) to the Comptroller General of the United
21 States if the Comptroller General submits a written
22 request to such Inspector General.
23 "(2) A report referred to under paragraph (1) shall—
24 "(A) contain the information required for an
25 annual report under subsection (a); and

1 "(B) summarize the activities of the Office dur-
2 ing the 6-month period ending on March 31 of the
3 calendar year following the date on which the re-
4 quest is made.
5 "(3) A report under this subsection shall be sub-
6 mitted on April 30 of the calendar year following the date
7 on which the request is made.
8 "(4) An Inspector General shall not be required to
9 submit a report under this subsection if the written re-
10 quest for such report is submitted to the Inspector General
11 after November 30 of the calendar year preceding the date
12 on which the report is otherwise required to be submitted
13 to a congressional committee or the Comptroller Gen-
14 eral.".
15 (c) SUBMISSION OF OTHER REPORTS.—Nothing in
16 the amendments made by this section shall be construed
17 to limit an Inspector General from submitting any report
18 containing in whole or part information required in an an-
19 nual or semiannual report furnished and transmitted
20 under section 5 of the Inspector General Act of 1978 (5
21 U.S.C. App.) to Congress more frequently than on an an-
22 nual or semiannual basis.
23 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 4(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "semiannual" and inserting "annual".

(2) Section 5 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in subsection (b)—

(i) by striking "Semiannual" and inserting "Annual"; and

(ii) by striking "April 30 and"; and

(B) in subsection (c)—

(i) in the first sentence by striking "semiannual" and inserting "annual"; and

(ii) in the second sentence by striking "semiannual" and inserting "annual".

(3) Section 8(f) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "semiannual" and inserting "annual".

(4) Section 8A(c) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "semiannual" and inserting "annual".

SEC. 6. INSPECTORS GENERAL AT LEVEL III OF EXECUTIVE SCHEDULE.

(a) LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by striking each item relating to the following positions:

1 (1) Inspector General, Department of Edu-
2 cation.
3 (2) Inspector General, Department of Energy.
4 (3) Inspector General, Department of Health
5 and Human Services.
6 (4) Inspector General, Department of Agri-
7 culture.
8 (5) Inspector General, Department of Housing
9 and Urban Development.
10 (6) Inspector General, Department of Labor.
11 (7) Inspector General, Department of Trans-
12 portation.
13 (8) Inspector General, Department of Veterans
14 Affairs.
15 (9) Inspector General, Department of Defense.
16 (10) Inspector General, United States Informa-
17 tion Agency.
18 (11) Inspector General, Department of State.
19 (12) Inspector General, Department of Com-
20 merce.
21 (13) Inspector General, Department of the In-
22 terior.
23 (14) Inspector General, Department of Justice.
24 (15) Inspector General, Department of the
25 Treasury.

1 (16) Inspector General, Agency for Inter-
2 national Development.
3 (17) Inspector General, Environmental Protec-
4 tion Agency.
5 (18) Inspector General, Federal Emergency
6 Management Agency.
7 (19) Inspector General, General Services Ad-
8 ministration.
9 (20) Inspector General, National Aeronautics
10 and Space Administration.
11 (21) Inspector General, Nuclear Regulatory
12 Commission.
13 (22) Inspector General, Office of Personnel
14 Management.
15 (23) Inspector General, Railroad Retirement
16 Board.
17 (24) Inspector General, Small Business Admin-
18 istration.
19 (25) Inspector General, Federal Deposit Insur-
20 ance Corporation.
21 (26) Inspector General, Resolution Trust Cor-
22 poration.
23 (27) Inspector General, Central Intelligence
24 Agency.

1 (28) Inspector General, Social Security Admin-
2 istration.
3 (29) Inspector General, United States Postal
4 Service.
5 (b) LEVEL III POSITIONS.—Section 5314 of title 5,
6 United States Code, is amended by adding at the end the
7 following:
8 "Inspector General, Department of Education.
9 "Inspector General, Department of Energy.
10 "Inspector General, Department of Health and
11 Human Services.
12 "Inspector General, Department of Agriculture.
13 "Inspector General, Department of Housing
14 and Urban Development.
15 "Inspector General, Department of Labor.
16 "Inspector General, Department of Transpor-
17 tation.
18 "Inspector General, Department of Veterans
19 Affairs.
20 "Inspector General, Department of Defense.
21 "Inspector General, Department of State.
22 "Inspector General, Department of Commerce.
23 "Inspector General, Department of the Interior.
24 "Inspector General, Department of Justice.

1 "Inspector General, Department of the Treas-
2 ury.
3 "Inspector General, Agency for International
4 Development.
5 "Inspector General, Corporation for Community
6 and National Service.
7 "Inspector General, Environmental Protection
8 Agency.
9 "Inspector General, Federal Emergency Man-
10 agement Agency.
11 "Inspector General, General Services Adminis-
12 tration.
13 "Inspector General, National Aeronautics and
14 Space Administration.
15 "Inspector General, Nuclear Regulatory Com-
16 mission.
17 "Inspector General, Office of Personnel Man-
18 agement.
19 "Inspector General, Railroad Retirement
20 Board.
21 "Inspector General, Small Business Administra-
22 tion.
23 "Inspector General, Federal Deposit Insurance
24 Corporation.

"Inspector General, Central Intelligence Agency.

"Inspector General, Social Security Administration.

"Inspector General, United States Postal Service.".

(c) SAVINGS PROVISION.—Nothing in this section shall have the effect of reducing the rate of pay of any individual serving as an Inspector General on the effective date of this section.

SEC. 7. OFFICES OF INSPECTOR GENERAL IN CERTAIN DESIGNATED FEDERAL ENTITIES.

(a) TRANSFER OF FUNCTIONS.—Section 9(a)(1) of the Inspector General Act of 1978 is amended—

(1) in subparagraph (J)—

(A) by inserting "(i)" after "(J)";

(B) by inserting "and" after the semicolon; and

(C) by adding at the end the following:

"(ii) of the Department of Labor, the Office of Inspector General of the Pensions Benefit Guaranty Corporation, effective 30 days after the date of enactment of the Inspector General Act Amendments of 1999;";

1 (2) in subparagraph (K)—

2 (A) by inserting "(i)" after "(K)";

3 (B) by inserting "and" after the semicolon;

4 and

5 (C) by adding at the end the following:

6 "(ii) of the Department of Transpor-

7 tation, the Office of Inspector General of

8 the Federal Maritime Commission, effec-

9 tive 30 days after the date of enactment of

10 the Inspector General Act Amendments of

11 1999;"; and

12 (3) in subparagraph (R)—

13 (A) by inserting "(i)" after "(R)";

14 (B) by inserting "and" after the semicolon;

15 and

16 (C) by adding at the end the following:

17 "(ii) of the Office of Personnel Man-

18 agement, the Office of Inspector General of

19 the Federal Labor Relations Authority, ef-

20 fective 30 days after the date of enactment

21 of the Inspector General Act Amendments

22 of 1999;".

23 (b) ADMINISTRATIVE PROVISIONS.—

1 (1) TERMINATION OF OFFICES.—The Office of
2 Inspector General of each designated Federal entity
3 transferred under subsection (a) is terminated.
4 (2) INCUMBENTS.—The individual who is the
5 Inspector General of a designated Federal entity
6 transferred under subsection (a)—
7 (A) shall be transferred to the Office of In-
8 spector General of the applicable establishment;
9 (B) shall be an employee of such Office
10 under the direction of the Inspector General of
11 the applicable establishment; and
12 (C) shall continue to be compensated at
13 not less than the rate provided for before such
14 transfer, for at least 1 year after the date of
15 such transfer.
16 (3) PERSONNEL AND ASSETS.—Section 9 (b)
17 and (c) of the Inspector General Act of 1978 (5
18 U.S.C. App.) shall apply to the transfers made by
19 the amendments under subsection (a) of this section.
20 (c) FORMER DESIGNATED FEDERAL ENTITY.—Sec-
21 tion 8G(a)(2) of the Inspector General Act of 1978 (5
22 U.S.C. App.) is amended by striking "the Corporation for
23 Public Broadcasting, the Equal Employment Opportunity
24 Commission, the Farm Credit Administration, the Federal
25 Communications Commission, the Federal Election Com-

1 mission, the Federal Housing Finance Board, the Federal
2 Labor Relations Authority, the Federal Maritime Commis-
3 sion, the Federal Trade Commission, the Legal Services
4 Corporation, the National Archives and Records Adminis-
5 tration, the National Credit Union Administration, the
6 National Endowment for the Arts, the National Endow-
7 ment for the Humanities, the National Labor Relations
8 Board, the National Science Foundation, the Panama
9 Canal Commission, the Peace Corps, the Pension Benefit
10 Guaranty Corporation," and inserting "the Corporation
11 for Public Broadcasting, the Equal Employment Oppor-
12 tunity Commission, the Farm Credit Administration, the
13 Federal Communications Commission, the Federal Elec-
14 tion Commission, the Federal Housing Finance Board, the
15 Federal Trade Commission, the Legal Services Corpora-
16 tion, the National Archives and Records Administration,
17 the National Credit Union Administration, the National
18 Endowment for the Arts and the National Endowment for
19 the Humanities, the National Labor Relations Board, the
20 National Science Foundation, the Panama Canal Commis-
21 sion, the Peace Corps,".

22 (d) AMENDMENTS RELATING TO SPECIAL PROVI-
23 SIONS CONCERNING FORMER DESIGNATED FEDERAL EN-
24 TITIES.—

1 (1) RULE OF CONSTRUCTION OF SPECIAL PRO-
2 VISIONS.—Section 8I of the Inspector General Act of
3 1978 (5 U.S.C. App.) (relating to rule of construc-
4 tion of special provisions) is amended—
5 (A) by striking "SEC. 8I" and inserting
6 "SEC. 8K"; and
7 (B) by striking all beginning with "special
8 provisions" through "of this Act" and inserting
9 "special provisions under section 8, 8A, 8B, 8C,
10 8D, 8E, 8F, or 8H of this Act.".
11 (2) SPECIAL PROVISIONS CONCERNING FORMER
12 DESIGNATED FEDERAL ENTITIES.—The Inspector
13 General Act of 1978 (5 U.S.C. App.) is amended by
14 inserting after section 8H the following:
15 "SPECIAL PROVISIONS CONCERNING FORMER
16 DESIGNATED FEDERAL ENTITIES
17 "SEC. 8I. (a) For purposes of this section, the term—
18 "(1) 'establishment' means any establishment
19 to which an office is transferred under section
20 9(a)(1) (J), (K), or (R); and
21 "(2) 'former designated Federal entity' means a
22 designated Federal entity from which any office is
23 transferred under section 9(a)(1) (J), (K), or (R).
24 "(b) The Office of Inspector General of each estab-
25 lishment shall perform all duties, responsibilities, and
26 functions of an Office of Inspector General under this Act

1 with respect to each applicable former designated Federal
2 entity.
3 "(c) The Inspector General of an establishment shall
4 prepare and submit an annual report under section 5 re-
5 lating to each applicable former designated Federal entity
6 to the head of such former designated Federal entity.
7 "(d) In the administration of section 5(d) with re-
8 spect to a former designated Federal entity—
9 "(1) the Inspector General shall make the re-
10 quired report to the head of such former designated
11 Federal entity instead of the head of the establish-
12 ment; and
13 "(2) the head of such former designated Fed-
14 eral entity shall make the required transmittal to
15 Congress.
16 "(e) The head of each former designated Federal en-
17 tity shall provide the Office of the Inspector General of
18 the applicable establishment with such office space, equip-
19 ment, supplies, facilities, and services as may be nec-
20 essary, in the same manner as provided under section 6(c).
21 "SPECIAL PROVISIONS CONCERNING THE NATIONAL EN-
22 DOWMENT FOR THE ARTS AND THE NATIONAL EN-
23 DOWMENT FOR THE HUMANITIES
24 "SEC. 8J. For purposes of this Act—

1 "(1) the National Endowment for the Arts and
2 the National Endowment for the Humanities shall
3 be treated as a single designated Federal entity;
4 "(2) subject to paragraph (3), the heads of the
5 designated Federal entities of the National Endow-
6 ment for the Arts and the National Endowment for
7 the Humanities (as determined under section 8H)
8 shall jointly exercise all functions of the head of a
9 designated Federal entity; and
10 "(3) in the appointment of a single Inspector
11 General for the National Endowment for the Arts
12 and the National Endowment for the Humanities,
13 the heads of such designated Federal entities shall
14 consult with the Deputy Director for Management of
15 the Office of Management and Budget.".
16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect 30 days after the date of en-
18 actment of this Act.

○

LETTER SUBMITTED FOR THE RECORD TO SENATOR COLLINS FROM MR. KONZ

March 21, 2000

Senator Susan M. Collins
Chairwoman, Permanent Subcommittee on Investigations
Senate Committee on Government Affairs
SR-100 Russell Office Building
Washington, D. C. 20510-6262

Dear Senator Collins:

In April 1999, you introduced S.870, the "Inspector General Act Amendments of 1999". We understand that your bill will likely receive increased attention during this session of Congress and the 24 Designated Federal Entity (DFE) Inspectors General (IGs), listed in Attachment 1, would like to take this opportunity to provide our views on the proposed legislation, particularly, our concerns with the consolidation proposal.

As part of the 1988 amendments to the Inspector General Act, Congress created DFE IGs to address the need for independent and objective audits, investigations, and other reviews at their agencies. These agencies historically had not received a high level of oversight by the Congress, the media, or the public; and before the 1988 amendments, little independent auditing and almost no criminal investigations were performed in these agencies. Congress recognized the value of an on-site IG as a visible deterrent to potential fraud, waste, and abuse and as an objective evaluator of the economy, efficiency, and effectiveness of these entities programs and operations. DFE IGs have performed these duties and responsibilities for about twelve years.

We recognize that proposals for consolidation are generally made to improve the efficiency and effectiveness of operations and to provide a basis for more effective oversight of entity operations. However, by virtue of being "on-site" and knowledgeable of our entity's legislative backgrounds, operating environments, cultures, and policies and procedures, DFE IGs have developed the necessary knowledge base to effectively review our entity's operations. In addition, DFE IGs generally have established constructive working relationships with program officials, often serving as management consultants while being ever mindful of our need to remain independent. In our opinion, therefore, care should be taken to ensure that consolidation of DFE IGs will, in fact, improve the situation.

Just as every agency needs its own General Counsel and Chief Financial Officer, we believe that each agency needs its own Inspector General. If your concern is whether the DFE IGs have sufficient resources to carry out their important mission, we would like to let you know of some of the steps we have taken to date. Where additional expertise or specific skills are needed, DFE IGs frequently contract for those resources. We also work together on a project basis to assist one another. For example, although some DFE IGs do not have investigators on staff, they have made arrangements to use staff from other IGs to perform needed assignments.

Even if staffing levels of the Presidentially-appointed OIGs are increased following consolidation, there is little assurance that these conglomerate OIGs would have sufficient resources to provide the desired level of audit and investigative coverage to DFE programs. The Presidentially-appointed OIGs, while significantly larger that most DFE OIGs, often do not have sufficient staff to meet all of their own mandates. Thus they may find it difficult to devote sufficient attention to new areas outside of their mainstream operations.

For these reasons, the DFE IG community believes that consolidation should be based on specific needs for change identified after consideration of available alternatives and their impact on Agency authorities and responsibilities. Before decisions on such consolidations are made, participation by involved IGs and program officials is essential to better evaluate available alternatives and thus improve the decision process.

The DFE IG community generally does not wish to comment, as a group, regarding the remainder of the proposed amendments. We would encourage, however, careful evaluation of any provisions that do not provide comparable treatment throughout the IG community. By law, both the Presidentially-appointed IGs and those of us in the DFE community have the same roles and responsibilities and should be given, to the extent feasible, the same opportunities, protections, and requirements. Particular attention to comparability would help reduce unnecessary distinctions between Presidentially-appointed and DFE IGs and thereby help negate inappropriate challenges because of differences in perceived IG independence.

Over the years, your subcommittee along with the full Senate Committee on Governmental Affairs has worked closely with us on various subjects related to IG matters. Members of our community are again ready to assist you and your staff to help address any concerns you may have regarding DFE IGs. We look forward to working closely with you on this legislation. In this regard, I have volunteered to act as our focal point in providing input related to this issue.

Sincerely,

Kenneth A. Konz
Focal Point for the DFE OIGs

cc: Senator Carl Levin
Ranking Minority Member, Permanent Subcommittee on Investigations
Senate Committee on Government Affairs

DFE IG's Concurring With These Perspectives

Hubert Sparks
Inspector General
Appalachian Regional Comm.

Mary B. Wyles
Inspector General
Consum. Product. Safety Comm.

Aletha L. Brown
Inspector General
Equal Empl. Opportunity Comm.

H. Walker Feaster, III
Inspector General
Federal Communications Comm.

Lynne A. McFarland
Inspector General
Federal Election Comm.

Tony P. Kominoth
Inspector General
Federal Maritime Comm.

Frederick J. Zirkel
Inspector General
Federal Trade Comm.

Edouard Quatrevaux
Inspector General
Legal Services Administration

A. Roy Lavik
Inspector General
Comm. Futures Trading Comm.

Kenneth A. Konz
Inspector General
Corporation for Public Broad.

Eldon W. Stoehr
Inspector General
Farm Credit Administration

Edward Kelley
Inspector General
Federal Housing Finance Board

Francine C. Eichler
Inspector General
Federal Labor Relations Auth.

Barry R. Snyder
Inspector General
Federal Reserve Board

Robert G. Andary
Inspector General
Government Printing Office

Thomas D. Blair
Inspector General
Smithsonian Institution

DFE IG's Concurring With These Perspectives

H. Frank Thomas
Inspector General
Nation Credit Union Admin.

Sheldon L. Bernstein
Inspector General
National Endowment for the Humanities

Charles D. Smith
Inspector General
Peace Corps

Wayne Robert Poll
Inspector General
Pension Benefit Guaranty Corp.

Edward Johns
Inspector General
National Endowment for the Arts

Jane E. Altenhofen
Inspector General
National Labor Relations Board

Dev Jagadesan
Inspector General
U. S. International Trade Comm.

Walter Stachnik
Inspector General
Securities & Exchange Comm.

PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

August 7, 2000

The Honorable Carl Levin
Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

Thank you for your interest in and long-time support for the Inspector General community. It was my pleasure to testify before you and other members of the Committee on the need for statutory law enforcement and other enhancements to the Inspector General concept.

During the hearing, you had some questions regarding the actual tenure of the Inspectors General since the Act was passed in 1978. In working with your staff, we have gathered information to answer your questions for both the presidentially-appointed (PAS) and the designed Federal entity (DFE) Inspectors General. In addition, we are providing historical data for each Office of Inspector General (OIG), which lists each Inspector General by name and the date/length of service. We hope you find this information responsive and useful.

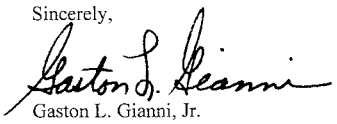
As Vice Chair of the President's Council on Integrity and Efficiency and Inspector General for the Federal Deposit Insurance Corporation, I look forward to our continued relationship with the common goal of protecting the integrity of government programs, improving program effectiveness, and preventing and detecting fraud, waste, and abuse. Over the years, the community has worked with your Committee on a wide range of government management issues and stands ready to assist you in your legislative and oversight functions.

As discussed at the hearing, granting statutory law enforcement authority is crucial for ensuring the OIGs' continued impact and effectiveness. While realizing that this is a short legislative session, I am especially hopeful that the Congress may be able to consider statutory law enforcement authority before adjournment. I thank you in advance for your support on this effort.

As you and your colleagues consider this vital piece of legislation, I would like to reiterate three significant points. First, the OIGs would not receive any additional or new authorities as a result of this legislation. The long-standing authority under blanket deputation would merely be codified. Second, only those 23 OIGs who currently have met the Department of Justice requirements and operate under blanket deputation authority would be granted the permanent authority. Finally, by appropriately conferring all responsibility for law enforcement authorities in the Inspectors General, this legislation will result in greater accountability as the OIGs would be subject to peer review and enhanced oversight by the Attorney General.

Again, thank you for your interest and support of the Inspector General community. If you have any questions or need additional information, please contact me at (202) 416-2026, or Leslee Bollea, of my office, at (202) 416-2960.

Sincerely,



Gaston L. Gianni, Jr.
Vice Chair

cc: Honorable Susan Collins, Chair, Senate Permanent Subcommittee on Investigations
Honorable Fred Thompson, Chair, Senate Governmental Affairs Committee
Honorable Joseph Lieberman, Ranking Member, Senate Governmental Affairs Committee

Attachments - 3

Analysis of Tenure of PAS Inspectors General

(as of 8/4/2000)

Tenure of Active PAS IGs

Mean	49 months, or 4.1 years
Median	36 months, or 3 years

This analysis includes the:

1) tenure of individuals currently serving as PAS Inspectors General in 26 of the 28 Offices of Inspector General (OIG). Twenty-four OIGs have confirmed Inspectors General. The two OIGs (i.e., Department of Defense and USAID) also included in the analysis have individuals currently serving in acting capacities and who were nominated to be the agency's Inspector General.

2) length of time served in an acting capacity for the individual ultimately confirmed as the Inspector General.

* * * * *

Observation: Three active IGs have served the community in different agencies. While the analysis necessitated counting each tenure individually, it is important to note their total length of service. June Gibbs Brown (HHS) has been the IG at four different agencies and has served over 15 years as an IG. Dave Williams (Treasury Inspector General for Tax Administration) has also been an IG at four different agencies and his total tenure is 10 years. Jeff Rush (Treasury) is now the IG of a second agency and has served 6 years.

* * * * *

Tenure of Former PAS IGs

Mean	52 months, or 4.3 years
Median	39 months, or 3.25 years

This analysis includes the:

1) tenure, to the extent possible, when the OIG became statutory. Although several OIGs existed within agencies prior to being established by law, this information was not included in the analysis but has been maintained for historical purposes.

2) terms of confirmed Inspectors General. If the confirmed Inspector General served in an acting capacity prior to being sworn in, the entire length of that individual's term (i.e., acting and confirmed) was included in the calculation.

3) tenures of three Inspectors General (i.e., Education, HUD, and SBA) who were impacted by President Reagan's dismissal of the Inspectors General in January 1981. For purposes of this analysis, the number of months served prior to the dismissal and after the dismissal were combined and counted as one tenure.

4) tenures of confirmed Inspectors General for the two OIGs that are no longer in existence. These OIGs include the Resolution Trust Corporation, which was dissolved on December 31, 1995, and the United States Information Agency OIG, which was dissolved effective April 26, 1996.

Analysis of Tenure of DFE Inspectors General

(as of 7/26/2000)

Tenure of Active DFE IGs

Mean	77 months, or 6.4 years
Median	69 months, or 5.7 years

This analysis includes the tenure of individuals currently serving as DFE Inspectors General in 29 Offices of Inspector General (OIG). As appropriate, the length of time served in an acting capacity for the individual appointed as the Inspector General was also included.

Tenure of Former DFE IGs

Mean	48 months, or 4 years
Median	42 months, or 3.5 years

This analysis includes:

1) the terms of appointed Inspectors General. If the Inspector General served in an acting capacity prior to appointment, the entire length of that individual's term (i.e., acting and appointed) was included in the calculation.

2) the tenures of Inspectors General for the Panama Canal Commission OIG, which ceased to exist on December 31, 1999. Information on the Action OIG (prior to it being folded into the PAS Inspector General at the Corporation of National and Community Service) was not available for this analysis.