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INSPECTORS GENERAL: INDEPENDENCE AND INTEGRITY

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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INSPECTORS GENERAL: INDEPENDENCE AND INTEGRITY

WEDNESDAY, JUNE 20, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2247, Rayburn House Office Building, Hon. Edolphus Towns (chairman of the subcommittee) presiding.

Present: Representatives Towns, Maloney, Davis of Virginia, Duncan, and Bilbray.

Also present: Representatives Cooper and Miller.

Staff present: Michael McCarthy, staff director; Velvet Johnson, counsel; Cecelia Morton, clerk; Alex Cooper, minority professional staff member; Larry Brady, minority senior investigator and policy advisor; and Patrick Lyden, minority parliamentarian and member services coordinator.

Mr. TOWNS. The subcommittee will come to order.

Today's hearing is on the important role of the Inspector General in providing independent oversight within Federal agencies by investigating and reporting waste, fraud, and abuse to both agency leaders and to the Congress. Inspectors General play a critical role in maintaining checks and balances in the Federal Government. When Congress created the Inspector General nearly 30 years ago, the idea was that having an independent official inside the Federal agencies would help detect and prevent wasteful spending and mismanagement. This concept has been a tremendous success.

Investigations by IGs have resulted in the recovery of billions of dollars from companies and individuals who defrauded the Federal Government. These investigations have led to thousands of criminal prosecutions, debarments, exclusions, and suspensions. In 2006, alone, audits by IG offices resulted in $9.9 billion in potential savings from audit recommendations and $6.8 billion in investigative recoveries.

In sum, the IG work to ferret out criminal and abusive action in Government has gone a long way to create the clean and efficient Government the taxpaying public expects and deserves.

Of course, even the best system needs some improvement from time to time, and that is why we are here today. To effectively carry out their mission, Inspectors General must be independent and objective, which requires that they be insulated from improper management and political pressure.

To preserve the credibility of the office, Inspectors General must also perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.

In recent years there have been several episodes which raised questions about the independence and accountability of the IGs. We have compiled a report for the record that documents some of these episodes, many of which have been in the press recently. Today, we want to look at some of the common problems that these cases identify and how we can fix them.

Does lack of input into budget decisions threaten the independence of IGs? Is there a consistent and credible process for investigating allegations of wrongdoing against IGs? What is the proper relationship between the head of a Federal agency and the Inspector General? These are the types of questions today's hearing will address.

I believe there are legislative changes we can make that will improve the institutional standing of the Inspector General and better guarantee their independence and accountability. My colleague from Tennessee, Representative Jim Cooper—who came to Congress with me and then left and came back, is back with us again—has introduced H.R. 928, the Improving Government Accountability Office Act, to do just that. There is a bill in the Senate that fixes some of the pay disparities that career employees face if they are appointed as IGs. My friend from New York City, Mrs. Maloney, has introduced H.R. 2527, which would streamline IG operations at the IRS.

I welcome all of these witnesses. We have assembled a group of current and former IGs and a senior administration leader on IG issues, and experts from GAO and the Library of Congress. The goal today is to get your input on these issues and these bills.

I always say that we need good input in order to get great output. The output will be a strong bill that will help IGs maintain their role as honest brokers and continue the valuable work that they do for Congress and the taxpayers.

I ask unanimous consent that the gentleman from Tennessee, Mr. Cooper, and the gentleman from North Carolina, Mr. Miller, participate in today's hearing. Mr. Cooper, of course, is a member of the full committee, but not this subcommittee. Mr. Miller is the Chair of the Science and Technology subcommittee that oversees NASA, and recently held a hearing on the Inspector General's office there.

I also ask unanimous consent that all Members have 5 legislative days to submit opening statements for the record. Without objection, so ordered.

I recognize now the ranking member of this subcommittee from the great State of California, Mr. Bilbray, for his opening statement.

Mr. BILBRAY. Thank you, Mr. Chairman.

I appreciate the chance to be able to discuss this subject. Let's face it, the IG in no little ways are sort of Congress' eye in the sky. Our ability to actually perceive what is going on or what is not going on properly is very important.

I would just like to say to my colleague from Tennessee, like myself, a newly recycled Member of Congress, the fact is that this hearing will give us the ability to review opportunities and challenges, see how H.R. 928, as drafted, will help, maybe be able to find some ways that maybe it can be improved and we can move forward, but I think the real issue here is, regardless of your party affiliation, I think we have had concerns about the ability of the IG to do their work appropriately and effectively.

I know that in the previous administration, during my other life in Congress, there were major concerns. I am sure that the same concerns exist today with the new administration. Hopefully with this hearing we will be able to identify exactly what needs to be done from a legislative point of view to get back on track with the intention that Congress move forward with the IG 30 years ago.

I think outcome is what really matters here. In the reality, the standards that we set for the IG in either H.R. 928 or in the other legislation we may do this year or next year will not be one that just affects a Republican administration. It will affect every administration for the next decade or two decades. I think that is the standard we really need to shoot for. Hopefully, we will be able to work together, understanding that this legislation and this oversight is a service to the American people, and that matters most.

With that, Mr. Chairman, I yield back.

Mr. TOWNS. Thank you very much.

Any other opening statements?

Mr. COOPER. Mr. Chairman.

Mr. TOWNS. Mr. Cooper.

Mr. COOPER. If I could just thank you for your kindness in holding this hearing, not only on these important issues, because IGs, as the gentlemen from New York and California have just stated, are one of the most important parts of Government, but also I appreciate your including my bill, H.R. 928. I look forward to the expert testimony from the witnesses.

Thank you, Mr. Chairman.

Mr. TOWNS. Thank you.

Yes, Mr. Miller?

Mr. MILLER. I would like a chance to speak just briefly on the nature of my interest as chairman of the Investigations and Oversight Subcommittee of the Science and Technology Committee.

Mr. TOWNS. The gentleman is recognized.

Mr. MILLER. I agree with Mr. Bilbray that Inspectors General play an important role for Congress in being our eyes and ears throughout the executive branch of Government so that we can perform our functions of oversight, we can know what is going on, whether there is misconduct or whether there is simply a way to run Government better. Inspectors General are an important part of that.

The Inspector General Act of 1978 required that Inspectors General be selected without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management, management analysis, public administration, and investigations. They are nominated by the President, they are confirmed by the Senate.

The Inspectors General have sweeping powers to look at what is going on in agencies, and they are to report to us, to Congress, as well as to the agency head. They can be removed by the President, but in any removal the reasons for removal have to be reported to both houses of Congress. And, in practice, over the 30 years that we have had the Inspectors General Act, many Inspectors General are career IGs, they have served in several administrations, they often have served in more than one agency.

We expect them to be impartial, objective, and, above all, independent. Any Inspector General worth his salt must be willing to make enemies of powerful people to do his job right. As a result, the efforts, as Mr. Bilbray pointed out, are very dedicated Inspectors General.

We have held the executive branch of Government accountable to Congress and to the American people. Ideally, any administration should welcome the role of Inspector General in helping them manage the Federal Government, but we have seen an effort to resist any accountability, whether by Congress, the courts, or by Inspectors General. Unfortunately, the appointment of Inspectors General has been both politicized and dumbed down. The Inspectors General often have not met any professional standards and have not seen themselves as independent watchdogs, but they have seen themselves as part of the management team of the agency.

Mr. Johnson, one of the witnesses today, will testify that Inspectors General are selected or fired or selected by the agency head. That is not how an independent Inspector General should operate, and the result has been Inspectors General just do not—or at least some—understand their proper role. It has created enormous turmoil in their offices with their professional staff who do know what the proper role is and are very frustrated to see appointed Inspectors General is more interested in protecting the agencies from embarrassment than they are in calling the agency out and holding them accountable when need be.

We have specifically investigated the Inspector General of NASA, Moose Cobb. He was personally selected for the position by NASA's former administrator, Sean O'Keefe, who decided he did not like the previous Inspector General, the one that he inherited when he became the administrator of NASA. He had his chief of staff interview Mr. Cobb, who at that time was working in the White House Counsel's office reporting to Alberto Gonzales. Mr. Cobb had no apparent experience in auditing and financial management and public administration, accounting, investigations in aeronautics, or any other area that was pertinent to his service as Inspector General of NASA, nor had he ever managed an office.

Once at NASA, he was everyone's worst nightmare of a boss. He was a tyrant to his own staff, and he was a sycophant to Mr. O'Keefe and to the top management at NASA. He was openly contemptuous of career NASA IG employees. He called them bureaons. That was his shorthand for bureaucratic morons.

Mr. Chairman, I think most Americans, including me, have widely admired, have admired NASA's employees as the right stuff people. It was NASA's employees who put Americans on the moon. It was NASA's employees who got Apollo 13 crew safely back to Earth. But Mr. Cobb at NASA preferred the company of the politi-

cal appointees over that of his own staff or other NASA employees. He frequently had lunch in the NASA cafeteria with Mr. O'Keefe, with Mr. O'Keefe's chief of staff, the NASA General Counsel—in other words, the political appointees. He played golf, he had drinks with them, he called Mr. O'Keefe his boss and worried that Mr. O'Keefe could fire him, as Mr. O'Keefe had, in fact, fired his predecessor.

No NASA employee thinking of blowing the whistle on anything that they saw happening at NASA would feel confident that they could get to Mr. Cobb, tell him what was going on, and believe that he would respect their confidentiality and use the information that employee provided in the proper way.

Mr. Cobb mistrusted and routinely berated his own staff. He discussed audits and investigations with Mr. O'Keefe and the other management at NASA. He halted or edited audit findings to suit NASA management. Experienced staff left in droves and productivity cratered.

The President's Council on Integrity and Management initially ignored employee complaints, but by 2006 the complaints had reached a critical mass and they began an investigation that took several months, and the Council found that Mr. Cobb had abused his authority, that he had shown a lack of independence from NASA officials, and said that discipline up to and including removal should be imposed.

But the decision on what to do about Mr. Cobb was turned over to the new administrator of NASA, creating another appearance of a lack of independence, and now, even after congressional hearings when it was very apparent that all of the congressional leadership with oversight of NASA, committees with oversight of NASA, have called upon the removal of Mr. Cobb, Mr. Cobb remains in position. We cannot turn to the NASA Inspector General to be our eyes and ears in that agency.

Mr. Chairman, the Inspector General Act was intended to make our Government accountable to the American people. Instead, Mr. Cobb at NASA, and perhaps others, have used their positions as Inspectors General to shield the Bush administration from political embarrassment instead of being an independent watchdog, instead of holding that agency or other agencies accountable to Congress and to the American people.

An Inspector General is not going to act as a tough, independent watchdog if they are hired, fired, and disciplined by the agency head, and Inspectors General have to be selected for their professional qualifications, not their political loyalty.

In the early years of the Inspector General Act, a committee of Inspectors General reviewed the prospective Inspectors General for their qualifications. Mr. Cobb almost certainly would not have survived a review like that. Why should that practice not be instituted again?

Something here has to give. I have some reservation about Mr. Cooper's bill, the legislation, but I certainly applaud him for raising this issue and beginning what I think needs to be a debate within Congress.

I look forward to working, Mr. Chairman, with you and with your subcommittee and staff on legislation.

Mr. Chairman, I will present later, if the Chair allows, a more detailed analysis of Mr. Cooper's proposed legislation.

[The prepared statement of Hon. Brad Miller follows:]

STATEMENT OF REP. BRAD MILLER
CHAIRMAN
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON SCIENCE AND TECHNOLOGY
U.S. HOUSE OF REPRESENTATIVES

before the

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION AND PROCUREMENT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

"INSPECTORS GENERAL: INDEPENDENCE AND ACCOUNTABILITY"
JUNE 20, 2007

Mr. Chairman, thank you for the opportunity to address the Subcommittee on the very important subject of the independence and accountability of inspectors general. The recent hearings of the Committee on Science and Technology into the allegations of misconduct by the inspector general of the National Aeronautics and Space Administration (NASA) have made it very clear that both the selection process for inspectors general and their self-disciplinary procedures are sorely in need of change.

The Inspector General Act of 1978 required that statutory inspectors general be selected "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." They are nominated by the President and confirmed by the Senate. The law provided sweeping authority for inspectors general to decide what they would audit and investigate and to have access to agency records and information to carry out their work. They have two clients: the agency in which they are located and the Congress. Their responsibility is to audit and investigate the programs and operations of their agencies and make recommendations to promote economy and efficiency and prevent waste, fraud and abuse.

Inspectors general can be removed by the President, but the reason for the removal must be communicated to both Houses of Congress. In practice, many inspectors general are career IGs and serve during several administrations and often in more than one agency.

An inspector general must be impartial, objective, and above all, independent. An inspector general worth his salt must be willing to make enemies of powerful people. As a result of the efforts of dedicated, professional inspectors general and their staffs, our government has worked more effectively and has been held accountable to Congress and to the American people.

Ideally, any Administration should welcome the efforts of inspectors general as helpful in managing the federal government. But the Bush Administration has fought any effort at accountability, whether by Congress, the courts or by inspectors general. The Bush Administration has both politicized and "dumbed down" the selection of IGs. IGs selected by the Bush Administration too often don't meet professional standards required by statute and have seen themselves not as independent watchdogs of the agency but as part of the management team. Clay Johnson, one of your witnesses today, told our staff that it is the agency heads who decide when their inspectors general should be fired, and new ones put in place. So much for an independent IG. The result has been inspectors general who just do not understand their proper role. It also has created enormous turmoil among the professional staffs of the inspectors general offices throughout government, who understand very well their proper role, but see the appointed inspectors general protecting agencies from political embarrassment rather than holding the agencies accountable.

Our Committee has been investigating allegations of misconduct against Robert Cobb, the current inspector general of NASA, for more than six months. Mr. Cobb was personally selected by NASA's former administrator, Sean O'Keefe, who decided that he did not like the previous inspector general. O'Keefe's chief of staff interviewed Mr. Cobb, an attorney reporting to Alberto Gonzales in the White House, before his appointment. Mr. Cobb had no experience in auditing, financial management, public administration, accounting, investigations, aeronautics or any other area pertinent to service as inspector general of NASA. Nor had he ever managed an office. And once at NASA, he was a tyrant to the IG staff, and a sycophant to O'Keefe and others in the top management at

NASA. He was openly contemptuous of career NASA IG employees, calling them "beaurons," Mr. Cobb's term for "bureaucratic morons."

NASA's employees have been widely admired and respected by Americans, including me, for having the "right stuff." It was NASA employees who put Americans on the Moon, and got the Apollo 13 crew safely back to earth but Mr. Cobb preferred the company of the political appointees at NASA over his own staff or other NASA employees. He frequently had lunch in the NASA cafeteria with Mr. O'Keefe, O'Keefe's chief of staff, and NASA's general counsel. No NASA employee thinking of blowing the whistle to the NASA IG would feel confident that Mr. Cobb would respect their confidentiality and act appropriately on the information. He played golf and had drinks with them. He called the administrator his boss and worried that Mr. O'Keefe might fire him, as O'Keefe had fired his predecessor. Mr. Cobb mistrusted and routinely berated his staff. Mr. Cobb discussed audits and investigations with Mr. O'Keefe and other top administrators. He halted or edited audit findings to suit NASA management. Experienced staff left in droves, and productivity cratered, which apparently was a happy outcome from Mr. O'Keefe's perspective.

The President's Council on Integrity and Efficiency (PCIE) ignored initial employee complaints about Mr. Cobb, but by 2006 the complaints had reached a critical mass and the PCIE began an investigation. The Council found that Mr. Cobb had abused his authority, lacked the appearance of independence from NASA officials, and that discipline "up to and including removal" should be imposed. Mr. Johnson, as head of the PCIE, turned the disciplinary task over the new NASA Administrator, creating yet another appearance of a lack of independence. The Administrator could have recommended Mr. Cobb's removal. Instead, working with Mr. Johnson – who as head of the White House personnel office had also approved Mr. Cobb's appointment – he decided to send Mr. Cobb to management training school and provide him with an executive coach. Despite Congressional calls for his resignation, a hearing that showed Congress had no confidence in his ability or his independence, and his own acknowledgement that he is afraid to address his staff, Mr. Cobb – hiding in his office, but with the support of the President – plans to remain in his position. For the next 18 months, NASA is effectively without an inspector general.

Mr. Chairman, the Inspector General Act was intended to make our government accountable to the American people. Instead, Mr. Cobb and perhaps others have used their position as inspector general to shield the Bush Administration from political embarrassment.

An inspector general will not act as a tough, independent watchdog if they're hired, fired and disciplined by the agency head. And inspectors general must be selected for their professional qualifications, not their political loyalty. In the early years of the Inspector General Act, a committee of inspectors general reviewed prospective inspectors general for their qualifications. Mr. Cobb would never have survived such a review.

Something's got to give. I have some reservations about the specific provisions of this legislation, but I applaud Mr. Cooper for beginning the discussion. I look forward to working with you and your staff on this legislation.

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COMMITTEE ON SCIENCE AND TECHNOLOGY
CHAIRMAN, INVESTIGATIONS AND OVERSIGHT

COMMITTEE ON FOREIGN AFFAIRS
AFRICA AND GLOBAL HEALTH
EUROPE

June 27, 2007

Rep. Edolphus Towns, Chairman
Subcommittee on Government Management, Organization
And Procurement
Committee on Oversight and Government Reform
U.S. House of Representatives
B349 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Towns:

I want to express again my thanks for the opportunity to participate in your Subcommittee's hearing on the independence and integrity of inspectors general and your gracious offer to allow me to submit more detailed comments on the Improving Government Accountability (H.R. 928) for the record. Although it is often overlooked, the audits, investigations and other work provided to Congress by the nation's inspectors general is essential to the important oversight, investigatory and legislation work that we perform as the representatives of the American people. Enhancing the quality and work of the inspectors general is a worthy goal.

My comments are enclosed. I look forward to working with you and your very fine staff on this important legislation over the coming months.

Sincerely,

BRAD MILLER
Chairman
Subcommittee on Investigations and Oversight

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COMMENTS ON H.R. 928
IMPROVING GOVERNMENT ACCOUNTABILITY ACT
SUBMITTED BY
REP. BRAD MILLER, CHAIRMAN
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON SCIENCE AND TECHNOLOGY
June 27, 2007

GENERAL COMMENTS

While it is important to enhance the independence of the nation's inspectors general, it also is essential that any legislation amending the Inspector General Act of 1978 and its amendments not just maintain, but enhance and amend, if necessary, the original criteria for selecting inspectors general. The recent experience of the Subcommittee on Investigations and Oversight and the testimony of Nikki Tinsley, formerly the inspector general of the Environmental Protection Agency, both point to the need for adding a requirement for "ability in organizational leadership and management" Act to the list of "demonstrated abilities" in Section 3 of the Inspector General upon which inspectors general should be selected. Inspectors general's offices often have very lean management structures, and if the inspector general is not a good manager, there is no one else to fill that gap.

Another gap that was pointed out in the June 20 hearing was that it is not required by statute that inspectors general who are appointed directly by agency heads (known as "Designated Federal Entity" or DRE inspectors general) be appointed based on the criteria established in Section 3 for the presidentially appointed inspectors general even though all of them have the same basic responsibilities outlined in Sections 4, 5 and 6 and are required to meet the "Quality Standards for Federal Offices of Inspector General." Recent investigations involving DRE IGs from the Election Assistance Commission and the Smithsonian Institution point out the importance of establishing the same standards and expectations of independence for those IGs.[1] Inspectors general who are not effective in their work or who can be pressured by agency heads to do certain investigations and drop others because of their appointment process do not benefit their agencies or the nation. They should be provided as much protection as possible in this appointment process.

Finally, most of the inspectors general who have been forced out of office in the past decade were not incapacitated, felons or guilty of moral turpitude, but because they were unqualified to do the job. Congress should not establish criteria to make it more difficult for the President to remove an ineffective inspector general or allow an ineffective inspector general to remain in office because of over-specificity in the criteria for removal.

---

[1] "Panel Faces Bipartisan Allegations," *The Washington Post,*, June 22, 2007, A17; "Former IG Says Small Asked Her to Drop Audit; Smithsonian Secretary's Expenses Questioned in Senate," *The Washington Post*, March 20, 2007, C1; Secrecy Pervaded Smithsonian on Small's Watch; Independent Panel also Faults Regions and others for Lack of Spending Scrutiny," *The Washington Post,* June 21, 2007, C1.

Perhaps the most effective method of obtaining qualified inspectors general would be to establish in law a panel of sitting inspectors general to review persons being considered by the President for a position as an inspector general. In the early days of federal inspectors general, such panels were in place. Although these panels would not eliminate the possibility of partisan or other considerations in the selection of inspectors general, it would help assure that the person being nominated in capable for carrying out his or her responsibilities to the agency and the Congress.

SECTION 2. ENHANCING INDEPENDENCE OF INSPECTORS GENERAL

REMOVAL FOR CAUSE:

This section should be deleted. The intent of the section is worthy, but as Inspector General Boesz of the National Science Foundation testified at the June 20 hearing, it may actually diminish accountability for inspectors general. The President, the Congress and heads of Federal entities should not have their hands tied by a "for cause" restriction on removal of the inspectors general. Limiting the grounds on which an inspector general can be removed to the five listed in H.R. 928 would severely reduce the role of the President and the independent investigative mechanism to resolve allegations against inspectors general and their staffs as established under Executive Order 12993. Enforcement of the "Quality Standards for Federal Offices of Inspector General" would be extremely difficult because violation of many of the standards would not meet the "for cause" criteria for removal. Of all of the inspectors general forced from office by investigations or public pressure in the last decade, it appears that only one clearly would have been covered by the five criteria. Many of these inspectors general just weren't qualified to carry out their jobs, or carried them out so ineffectively that their staffs, Congress and the administration were so dissatisfied with their behavior and work that they wanted them removed. The President should be able to remove such persons without an elaborate "for cause" process.

This section also raises serious due process questions. There is currently no administrative or judicial body designated to determine what constitutes "inefficiency," "neglect of duty," or "malfeasance" by an inspector general. It would be very damaging to the agency and the country to have inspectors general tied up making factual arguments in federal court that they were wrongfully discharged under some poorly defined criteria while the management and work of their offices stagnates or remains in turmoil.

ESTABLISHMENT OF TERMS OF OFFICE:

Specified terms of office are used mainly for independent members of federal commissions and for a few other offices, such as the director of the Federal Bureau of Investigation. Because a specified term of office for a public office by definition establishes removal only "for cause," this section should also be deleted. I would suggest that it should be replaced with a provision as follows:

"Each inspector general shall remain in his or her position until he or she voluntarily decides to leave the position or until the President or the head of the Federal entity who controls

the appointment of that inspector general determines that he or she can no longer function effectively in that office. When that determination had been made, it shall be communicated to the Speaker of the House, the President of the Senate, and the committees of jurisdiction in both Houses 30 days in advance of the effective date of the removal."

SECTION 3. DIRECT SUBMISSION OF BUDGET REQUESTS TO CONGRESS

Direction submission of IG budget requests to Congress will greatly enhance the independence of the inspectors general offices and reinforce their relationship with Congress. Two recent incidents at the Smithsonian Institution and the General Services Administration involve either cuts to the inspector general's budget or threats of cuts by the agency head.[2]

SECTION 4. ESTABLISHMENT OF COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Currently, there are two councils of inspectors general: one for the statutory inspectors general; and one for the agency-appointed inspectors general. The two groups have somewhat different interests because of the process by which they are appointed, their reporting structure and their compensation. It is not clear whether merging these two groups under one umbrella will result in any efficiencies in establishing or implementing policies.

INTEGRITY COMMITTEE

This is a very confusing section. It eliminates Executive Order 12993, which established the process for investigating "Administration Allegations against Inspectors General" by an Integrity Committee without setting up a substitute structure. It does not include any of the criteria included in EO 12993 for determining whether the allegation is "meritorious" – the standard used in HR 928 -- or not, nor any of the specific requirements for reporting back to the full council, payment for the investigative work, or procedures for implementation of the Committee's recommendations. The role of the Integrity Committee in relationship to enforcing the "for cause" removal provisions in Section 2, if it has one, is not specified. It is important to the inspectors general, the Congress and the Administration to have a clear understanding of the scope of authority of the Integrity Committee. It seems unproductive to jettison the procedures in EO 12993 that took many years to establish and appear to have worked relatively well and leave nothing in their place.

Like many other professionals with self-disciplinary systems, however, sometimes inspectors general are reluctant to discipline others in their own professions. It might to useful to expand the composition of the Integrity Committee to include one or more <u>former</u> statutory inspectors general.

Also, no distinction is made in the proposed disciplinary process between the Presidentially appointed inspectors general and the DRE IGs. Based on the Science and Technology Committee's investigation of the inspector general of the National Aeronautics and Space Administration, it appears that recommendations for discipline or removal of

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Presidentially appointed IGs should be made to the President to maintain the independence of the IG, and recommendations concerning agency-appointed IGs should be made to the agency head which controls the appointment.

The recent referral for disciplinary action of the NASA inspector general to the NASA administrator created the very lack of appearance of independence by the inspector general that was one of the allegations.

In the report entitled "Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General" (GAO-06-931SP), there was concern expressed that the Integrity Committee's process was not transparent to Congress, and there was no report to Congress on the Committee's activities. The Integrity Committee should provide an annual report to Congress on its activities, including procedures followed, cases investigated and findings. There also have been allegations that the Integrity Committee has not worked in a timely manner. Increased transparency would improve that situation.

SEC. 5. MISCELLANEOUS ENHANCEMENTS

OFFICES AS DISCRETE AGENCIES

Many inspector general's offices are relatively small and use many of the support services of the agencies in which they are located. It appears to be inefficient to establish them as separate federal agencies requiring duplicative support structures.

However, pay equity issues for both types of inspectors general need to be addressed to attract the best candidates possible to these very important positions. Inspectors general should not be making less than their subordinates. But Congress must avoid mandating any system that freezes salaries for long-term inspectors general, or which establishes a bonus system based on performance evaluations by the head of the agency where the inspector general is working.

Mr. TOWNS. Let me just thank all of you for your opening statements. I think that we do have one thing in common: we all feel that something needs to happen in a positive way in order to move forward. I think we all agree on that. As exactly what it is, we may not agree on that, but I think that is the reason why we have these hearings, that is the reason why we bring the experts in to talk to us, so that we can come up with a way and method to be able to try and resolve it.

I want to thank you again for your opening statements.

Let me say this: it is a longstanding policy of this committee that we swear our witnesses in.

[Witnesses sworn.]

Mr. TOWNS. Let the record reflect that they all answered in the affirmative.

Let me introduce the panel.

Clay Johnson is the Deputy Director for Management at the Office of Management and Budget. He served as Chair of the President's Executive Council on Integrity and Efficiency, the coordinating body for Federal Inspectors General.

Phyllis Fong has served as the Inspector General for the Department of Agriculture since December 2002. Prior to that she was the IG at the Small Business Administration. Her career in Executive-level positions in the Federal Inspector General community spans 19 years. She looks young, but she has been around. Ms. Fong is Chair of the Legislation Committee of the PCIE.

Christine Boesz assumed the duty of Inspector General of the National Science Foundation in January 2000. She represents agency-appointed IGs as the Vice Chair of the Executive Council for Integrity and Efficiency.

Your entire statement is in the record, and I ask that each of you summarize within 5 minutes. The yellow light means your time is almost up, and the red light means your time is up.

I would like to start with you, Mr. Johnson. Will you proceed?

STATEMENTS OF CLAY JOHNSON, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, AND CHAIR, PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY AND EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY; PHYLLIS K. FONG, INSPECTOR GENERAL, U.S. DEPARTMENT OF AGRICULTURE, AND CHAIR, LEGISLATION COMMITTEE, PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY; AND CHRISTINE C. BOESZ, INSPECTOR GENERAL, NATIONAL SCIENCE FOUNDATION, AND VICE CHAIR, EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY

STATEMENT OF CLAY JOHNSON

Mr. JOHNSON. Mr. Chairman, Ranking Member Bilbray, Mr. Cooper, and Mr. Miller, thank you for having me here.

After those opening comments, I can tell this hearing is going to be a little bit more interesting than I thought, because, Mr. Miller, you have not only brought into question my oversight of the Inspector General community, you have brought into question my performance as the head of Presidential personnel for 2 years. I can

tell you your assertion about how IGs, how any political appointee, is selected is totally wrong, so I look forward to the conversation here and whenever else you want to continue it.

The comment was made that IGs are Congress' eye in the sky. More importantly, first of all, you have your own eye in the sky, GAO. More importantly, I believe, than your eye in the sky, the IGs are the executive branch's eye in the sky.

Federal agency leadership wants their agencies to work really well. No head of any agency or department wants their agency to perform poorly, so IGs are critical in an agency head's ability for their agency to perform well. IGs identify things that need to be fixed. Oversight, transparency identifies things that need to be fixed. So IGs and agency heads share the same goal: they are to work together. It is not true, as some Members of Congress have suggested, that IGs are best when they are junkyard dogs and they are the avowed enemy of the agency head.

I don't know of any highly functioning, effective IG in the Federal Government, past or present, who has that modus operandi that is an effective IG. I have issued in my written remarks the one-page document that the IG leadership and I developed in 2004, which is our view of the proper relationship that an agency head and an IG ought to have. There is no junkyard dog or enemy component in that.

I do not believe the assertion that the IGs have been dumbed down. I agree totally with Chairman Towns that the volume and the quality of the work done by IGs today is superb. It is outstanding, by any measure, and it is as high as it has ever been.

I have heard, with all the assertions about how independent or dependent IGs are, I have never heard any reference to result to a quantification of their performance that suggests that the quality or quantity of the IG's work is any less than it has been or is anything short of what it can be.

I believe that a lot of the assertions that the IG community needs to be fixed are based on philosophical sentiments as opposed to any kind of tangible evidence that there is a real problem to be fixed.

I think it is very important to recognize that IGs and agency heads share the same goal. They want the agencies to work; therefore, they are to work together. They are not to work in opposition to cause their agencies to work effectively together. But it is also very important that IGs be very independent. What is supposed to be independent is their findings. Their findings are supposed to be based entirely on the facts, not on any kind of political persuasion.

I think it is very important also to recognize that the proper relationship to be achieved by an agency head and an IG is something that needs to be worked at on a daily basis. It is not something that is legislated or created by fiat.

I also believe it is important to recognize that IGs do need to be held accountable for the quantity and quality of their work. As a result of these feelings, I believe the following: I believe that setting terms for IGs and specific reasons for dismissal are bad ideas. It is measures such as these that work against an IG being held accountable for the quality and quantity of their work.

I believe, as a result of what I just stated, I believe it is important that budget requests from an IG not be separate from the

agency submission. I do believe it needs to be clear in the agency's submission what amount is being requested for the IG and how that compares to past performance, but I do not believe it needs to be separate, because it works against the agency head and the IG working together for the success of the agency.

I believe it is very important to fix IG pay. There are parts about IG pay that do not work. In fact, a lot of them are SES, and SES can only get raises if they are evaluated, but who can evaluate an IG is a real problem.

I am not sure that your bill, Mr. Cooper, is the answer. I don't know what it is, but I look forward to working with you on that and other aspects of it.

Finally, I believe it is very important that the Integrity Committee process be reviewed. I think there are some rights that IGs have that they don't need and have that they don't have in that process, and we need to make sure that is the best investigation process that it can be, because is it a very important process.

With those remarks, I look forward to your questions after the other opening remarks.

Thank you.

[The prepared statement of Mr. Johnson follows:]

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

DEPUTY DIRECTOR
FOR MANAGEMENT

Statement of the Honorable Clay Johnson III
Deputy Director for Management
Office of Management and Budget

before the

Subcommittee on Government Management,
Organization, and Procurement
of the
House Committee on Oversight and Government Reform

June 20, 2007

Thank you, Mr. Chairman, Ranking Member Bilbray, and members of the Subcommittee for allowing me to testify today. Per Executive Order 12805, as Deputy Director for Management at OMB, I am the Chairman of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), the two Inspector General councils.

I believe the general quality and quantity of IG work today is superb. In their most recent report to the President, the PCIE and ECIE report that their work has resulted in:

- $9.9 billion in potential savings from audit recommendations;
- $6.8 billion in investigative recoveries;
- 6,500 indictments and criminal informations;
- 8,400 successful prosecutions;
- 7,300 suspensions or debarments; and
- 4,200 personnel actions.

These performance levels are consistent with previous years' efforts: IGs have been and continue to be a primary means by which we identify and eliminate waste, fraud, and abuse.

I believe IGs and Agency leadership currently share the goal of making their agencies successful, as they should. Both want to eliminate waste, fraud and abuse. Both want to identify and fix processes and programs that don't work. I believe IGs are not and should not be treated by agency leadership as the enemy. Like internal auditors in the private sector, IGs are expected to report on and provide recommendations for improvement in those areas where opportunities or deficiencies are identified. They are agents of positive change. IGs are generally respected, not feared, by agency leadership.

I believe IG-agency relationships need to be actively managed to be as independent but still as functional and constructive as they should or could be. I believe the attached *Relationship Principles*, developed by the IG community and me three years ago, should be used by IGs and agency heads to manage their relationship with each other.

I believe IGs are currently held accountable for the quality and quantity of their work, as they should be.

WORKING RELATIONSHIP PRINCIPLES FOR AGENCIES AND OFFICES OF INSPECTOR GENERAL

The Inspector General (IG) Act establishes for most agencies an Office of Inspector General (OIG) and sets out its mission, responsibilities, and authority. The IG is under the general supervision of the agency head. The unique nature of the IG function can present a number of challenges for establishing and maintaining effective working relationships. The following working relationship principles provide some guidance for agencies and OIGs.

To work most effectively together, the Agency and its OIG need to clearly define what the two consider to be a productive relationship and then consciously manage toward that goal in an atmosphere of mutual respect.

By providing objective information to promote government management, decision-making, and accountability, the OIG contributes to the Agency's success. The OIG is an agent of positive change, focusing on eliminating waste, fraud and abuse, and on identifying problems and recommendations for corrective actions by agency leadership. The OIG provides the agency and Congress with objective assessments of opportunities to be more successful. The OIG, although not under the direct supervision of senior agency management, must keep them and the Congress fully and currently informed of significant OIG activities. Given the complexity of management and policy issues, the OIG and the Agency may sometimes disagree on the extent of a problem and the need for and scope of corrective action. However, such disagreements should not cause the relationship between the OIG and the Agency to become unproductive.

To work together most effectively, the OIG and the Agency should strive to:

Foster open communications at all levels. The Agency will promptly respond to OIG requests for information to facilitate OIG activities and acknowledge challenges that the OIG can help address. Surprises are to be avoided. With very limited exceptions primarily related to investigations, the OIG should keep the Agency advised of its work and its findings on a timely basis, and strive to provide information helpful to the Agency at the earliest possible stage.

Interact with professionalism and mutual respect. Each party should always act in good faith and presume the same from the other. Both parties share as a common goal the successful accomplishment of the Agency's mission.

Recognize and respect the mission and priorities of the Agency and the OIG. The Agency should recognize the OIG's independent role in carrying out its mission within the Agency, while recognizing the responsibility of the OIG to report both to the Congress and to the Agency Head. The OIG should work to carry out its functions with a minimum of disruption to the primary work of the Agency.

Be thorough, objective and fair. The OIG must perform its work thoroughly, objectively and with consideration to the Agency's point of view. When responding, the Agency will objectively consider differing opinions and means of improving operations. Both sides will recognize successes in addressing management challenges.

Be engaged. The OIG and Agency management will work cooperatively in identifying the most important areas for OIG work, as well as the best means of addressing the results of that work, while maintaining the OIG's statutory independence of operation. In addition, agencies need to recognize that the OIG also will need to carry out work that is self-initiated, congressionally requested, or mandated by law.

Be knowledgeable. The OIG will continually strive to keep abreast of agency programs and operations, and Agency management will be kept informed of OIG activities and concerns being raised in the course of OIG work. Agencies will help ensure that the OIG is kept up to date on current matters and events.

Provide feedback. The Agency and the OIG should implement mechanisms, both formal and informal, to ensure prompt and regular feedback.

Mr. TOWNS. Thank you very much, Mr. Johnson.

Ms. Fong.

STATEMENT OF PHYLLIS K. FONG

Ms. FONG. Thank you, Mr. Chairman, Ranking Member Bilbray, Mr. Cooper, and Mr. Miller. I am very, very pleased to be here today to talk about the issues of accountability, independence, and the Cooper bill.

As you mentioned in your very kind introduction of me, I have been privileged to have received an appointment from both President Bush and President Clinton, and truly am what I consider to be a career IG employee.

In addition to my service as an IG, as you mentioned, I am the Chair of the PCIE Legislation Committee, and I should just note that the committee's job is to serve as the community's liaison with Congress on issues dealing with legislation. What we try to do in the committee is to build consensus, to the extent that we can, on issues that affect the IG community, as a whole.

Now, that is not always possible because different IGs have different experiences and situations, and so unanimity may not always be possible, but I will say that, with respect to the Cooper bill, there is widespread support in the community for many, many of the provisions in the bill, and we are very, very grateful to Mr. Cooper for working with us over these years to get this legislation developed.

As you requested, my testimony today will focus on issues of independence and accountability. We believe several of the bill's provisions are very effective at addressing these issues. In particular, the provision in the bill that would codify a council of the IGs, we believe that would enhance independence and coordination within the community. It would also codify the workings of the Integrity Committee, which we believe to be a very important byproduct.

In addition, the bill contains provisions regarding terms of office and removal for cause, which we believe strikes directly to the heart of independence of IGs, and also would deal with certain pay issues for the DFE IGs.

So, in closing, on behalf of the Legislation Committee, I would like to express my very deep appreciation to all of you for your work on this, and we look forward to answering your questions.

[The prepared statement of Ms. Fong follows:]

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG

INSPECTOR GENERAL

Before the

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE of REPRESENTATIVES

June 20, 2007

Thank you, Chairman Towns, and Ranking Member Bilbray, for inviting me to testify before you today to discuss several issues of interest pertaining to the independence, accountability, and operations of Federal Offices of Inspectors General (OIG). I want to express my thanks to the Chairman and also the former Chairman, Representative Platts, for your continued interest in the role and performance of Inspectors General (IGs) in the Federal Government.

After being nominated by President Bush and confirmed by the Senate, I have served as the IG for the Department of Agriculture (USDA) since December 2002. Prior to that, I had received an appointment from then-President Clinton and served as the IG at the Small Business Administration from April 1999 until December 2002. My entire career in executive level positions in the Federal IG community spans 19 years, and I am a career member of the Senior Executive Service.

In addition to my service as USDA's IG, I am currently the Chair of the Legislation Committee for the President's Council on Integrity and Efficiency (PCIE). Created in 1981, the PCIE provides a forum for IGs, the Office of Management and Budget (OMB), and other Federal officials to work together and coordinate professional activities. The Legislation Committee consists of IGs from both segments of the IG community – nine presidentially-appointed (PAS) IGs who are members of the PCIE, and three IGs who were appointed by agency heads in Designated Federal Entities (DFEs), and thus are members of the Executive Council on Integrity and Efficiency (ECIE). The ECIE provides a forum similar to the PCIE for the DFE IGs.

The PCIE Legislation Committee serves as the IG community's primary point of contact and liaison on legislative issues with Congressional committees, congressional offices, and the Government Accountability Office (GAO). The Legislation Committee is responsible for providing input to and receiving feedback from Congress on legislation affecting the IG community as a whole. The Committee works toward developing consensus within the entire IG community

regarding major legislation impacting IGs; on some issues, however, there may be a range of perspectives that reflect different IGs' experiences and situations.

As requested by Chairman Towns, my testimony today will be based on my experience as an Inspector General at two Federal agencies and, when appropriate, my perspective as Chair of the PCIE Legislation Committee. My testimony will address the overarching issues of IG independence and accountability in the context of H.R. 928, the Improving Government Accountability Act.

H.R. 928 – The Improving Government Accountability Act

As Chair of the PCIE Legislation Committee, I want to express our appreciation to Representative Cooper for his continuing efforts to explore and craft legislation to promote the independence and accountability of the IG community. We have worked closely with Representative Cooper and his staff on prior versions of this bill, and there is widespread support in the IG community for the major provisions in its current version, H.R. 928. I would like to briefly address several of the bill's provisions that are of particular interest to the IG community.

Establishment of a Council of the Inspectors General on Integrity and Efficiency

H.R. 928 would create a unified Inspectors General Council to enhance coordination and communication among OIGs and better serve our agencies and the Congress.
A unified council would promote the independence and unique responsibilities of IGs by creating a forum for more sustained and organized IG initiatives on a governmentwide basis. Just as individual IGs have dual responsibilities to both the Executive and Legislative branches, so too would a statutory unified Council. For example, the Deputy Director for Management of OMB would serve as the Council's Executive Chair and the Council would also be responsive and report to Congress, as appropriate. The bill would also establish a necessary funding mechanism for the Council's institutional activities, such as publishing an annual

progress report and providing essential training programs for OIG audit, investigative, inspection, and management personnel.

In the area of accountability, the unified IG council provision would permanently establish an Integrity Committee (IC) to handle allegations of wrongdoing on the part of an Inspector General or certain OIG staff. The Integrity Committee is a response to the question of *"Who is watching the watchdogs?"* The functions of the current IC are set forth in an Executive Order. The bill includes several provisions to maintain quality and integrity in IC operations, including a requirement to adhere to the most current Quality Standards for Investigations issued by the IG Council or the PCIE/ECIE, and requirements to ensure fairness and consistency in the operations of the committee. The bill would provide, for example, that the subject of an investigation have the opportunity to respond to any IC report.

H.R. 928's proposal to create a Council of the Inspectors General on Integrity and Efficiency has widespread support in the IG community.

PFCRA, Subpoena Authority, and Law Enforcement Authority

H.R. 928 includes several provisions that the PCIE Legislation Committee believes would improve the effectiveness of OIG audit and investigative activities. First, the bill would amend the Program Fraud Civil Remedies Act (PFCRA) to allow DFE IGs to utilize the Act's processes to pursue false claims and statements where the loss to the government is less than $150,000. Presidentially-appointed IGs already can utilize PFCRA to recover the loss of taxpayer dollars due to fraud, and smaller OIGs should also have the ability to pursue lower-threshold fraud cases. DFE IGs are not currently authorized to utilize PFCRA procedures because those IGs had not been created at the time of PFCRA's enactment.

Second, H.R. 928 would modernize IG law enforcement capabilities by clarifying that IG subpoena authority extends to electronic information and tangible things.

This is an important clarification at a time when ever-increasing amounts of information are stored electronically, and technological advances are constantly creating new forms of data, computer equipment, and data transmission devices.

Finally, H.R. 928 would authorize DFE IGs to apply for full law enforcement authority rather than having to apply for such authority on a case-by-case basis. Presidentially-appointed IGs obtained this authority pursuant to the Homeland Security Act of 2002, which allows them to make arrests, execute search warrants, and carry firearms. This authority has been used effectively by PAS IGs. The bill would make it available to those DFE IGs who seek such authority, once approved by the Department of Justice.

Term Appointment and Removal for Cause

H.R. 928 would establish a renewable term of office of 7 years for both PCIE and ECIE IGs and would authorize removal of an IG prior to the expiration of the term for certain enumerated causes. The IG Act currently provides no specified term of office for IGs; the only limit on the authority to remove IGs is a requirement that Congress be notified of such removal. A majority of the IG community believes that these provisions of H.R. 928, if enacted, would enhance the independence of IGs.

Other provisions in H.R. 928 pertaining to IG authority over OIG personnel and budgets would also enhance OIG independence.

Compensation for DFE IGs

H.R. 928 contains a provision that would require DFE IGs to be classified, for pay and other purposes, at the same level as the majority of other senior officials (such as a general counsel, deputy director, or chief of staff) who report directly to the entity's head or board. This provision would ensure the parity of IG pay and rank within a DFE.

Compensation Issues Involving PAS IGs

Among the issues on which the Chairman invited testimony for today's hearing are pay disparities encountered by IGs. H.R. 928 addresses this issue with respect to DFE IGs, but is silent as to PAS IGs. Currently, a number of PAS IGs are ineligible for locality pay and cost of living adjustments, are excluded from the benefits of the performance-based pay system Congress established for career senior executives, must forego potential bonuses to preserve OIG independence, and have their salaries capped by statute at Level IV of the Executive Schedule, without the possibility of promotion. At a time when IG responsibilities are steadily increasing and Congressional committees, agency heads, and the public look to IGs to ensure integrity in government operations, virtually all PAS IGs are paid at a level significantly below the average annual compensation of the SES personnel they supervise. This disparity in compensation is a significant concern for current PAS IGs and could have an increasing impact on the Government's ability to retain experienced IGs. Perhaps more important, however, is the impact on the willingness of qualified and talented Federal career executives to serve as PAS IGs in the larger and more challenging Federal departments and agencies.

A proposal to equitably remedy this situation can be found in a statutory provision pending in a procurement reform bill.[1] It would simply move PAS IGs from Level IV of the Executive Schedule pay scale to Level III. While this adjustment would not completely address the pay disparities for PAS IGs, it would be a positive step towards recruiting and retaining well-qualified IG candidates.

On behalf of the Legislation Committee, we respectfully request that Representative Cooper and the Members of the Subcommittee consider adding a similar provision to any IG Act-related legislation you may advance during the 110th Congress. We would be pleased to provide additional information to assist the Subcommittee in its deliberations.

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[1] S. 680, the Accountability in Government Contracting Act of 2007.

This concludes my testimony. I again want to thank you for your interest in and support of the Inspector General community, and on behalf of the PCIE Legislation Committee, I sincerely look forward to working with Members of the Subcommittee and your staff to improve the effectiveness of our offices and the departments and agencies we serve. I would be pleased to address any questions you may have.

Mr. TOWNS. Thank you very much, Ms. Fong.

Dr. Boesz.

STATEMENT OF CHRISTINE C. BOESZ

Ms. BOESZ. Thank you, Mr. Chairman and Ranking Member Bilbray and Mr. Cooper and Mr. Miller. I am delighted to be here today.

As you mentioned in my introduction, I not only am an IG but also serve as the Chair of the ECIE, and I wanted to be sure that you understand that this is a group of 33 agencies with very diverse missions and operations. Some have very high public profiles, and some are smaller but still very important agencies.

Although I believe my views are shared by many of the ECIE IGs, today I will speak for myself and will indicate where I think there is broader support.

My testimony focuses on the provisions of H.R. 928. I offer the following observations: First, H.R. 928 proposes to establish 7 year terms for all IGs and the specific causes that would lead for removal of an IG. It is unclear to me whether this proposal would enhance ID independence or instead produce unintended consequences. Because ECIE IGs are generally career Federal employees who serve in positions with Civil Service status and corresponding protections, one unintended consequence may be that strong candidates for IG positions would be dissuaded from exchanging a permanent position for a term appointment.

ECIE IGs are also subject for removal for cause currently. The 10-year removal of any IG are sensitive matters, and any changes to the law need to be carefully considered to avoid impairing the current IG roles or making it undesirable for those who should serve as IGs.

In short, on this matter the devil is in the details.

The proposal to authorize IGs to submit budgets directly to OMB is needed. It removes the risk of an agency inappropriately influencing an IG and it provides transparency to the budget process. I and a majority of the ECIE IGs support this.

The proposal for a unified IG council that has its own appropriation is also desirable. We support it because we believe it would help with our training.

The proposal to require that IGs be classified for pay and other purposes at the same level as other senior staff reporting directly to the agency head is critical within the ECIE community. In a recent survey, we found that some ECIE IGs had a lower grade level than other direct report executives and are sometimes paid less. Not surprisingly, the ECIE IGs strongly support pay parity and equity for all IGs.

H.R. 928 also would allow for ECIE IGs to apply to the Department of Justice for law enforcement authority, ending the inefficient process of reviewing such authority on a case-by-case basis. I and the other ECIE IG strongly support this provision.

Finally, I would mention that H.R. 928 would amend the Program Fraud Civil Remedy Act to include the ECIE IGs and agencies, thereby providing an effective tool to address claims with dollar amounts less than $150,000. This amendment has been a high priority for the ECIE agencies and IGs for many years now.

I also want to note that within the ECIE we have three legislative branch IGs. Their circumstances are a little bit different, and they mentioned to me that they would like to speak directly to you about their specific issues.

Mr. Chairman, this concludes my testimony. I again thank you and the members of the subcommittee for conducting this hearing and giving your time and attention to these very, very important matters.

[The prepared statement of Ms. Boesz follows:]

THE NATIONAL SCIENCE FOUNDATION

OFFICE OF INSPECTOR GENERAL

STATEMENT OF

CHRISTINE C. BOESZ, Dr.P.H.
INSPECTOR GENERAL

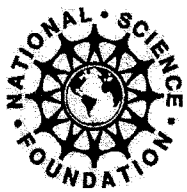
Before the

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE of REPRESENTATIVES

June 20, 2007



Mr. Chairman, Ranking Member Bilbray and Members of the Subcommittee on Government Management, Organization, and Procurement. Thank you for the opportunity to testify today about improving the independence and accountability of the Federal Offices of Inspectors General.

As you know, the Inspectors General (IGs) coordinate their professional efforts through two Councils: the President's Council on Integrity and Efficiency (PCIE), and the Executive Council on Integrity and Efficiency (ECIE). The primary difference between the two is that PCIE IGs are presidentially appointed with Senate confirmation, while ECIE IGs are appointed by their agency heads. Since 2000, I have served as the Inspector General of the National Science Foundation, and in May of this year, was honored to be appointed Vice-Chair of the ECIE.

The ECIE is a group of IGs from 33 agencies with diverse missions and operations. Some have high public profiles such as the US Postal Service, the Federal Reserve Board, and Amtrak, while others are smaller but still important, such as the Election Assistance Commission and the National Endowment for the Arts. The majority of these agencies are headed by boards or commissions. Three are legislative branch organizations serving the Congress. A full list of the ECIE agencies is attached. While I believe that my views are shared by many ECIE members, and indicate where I believe this is the case, I speak today for just myself, as there has not been sufficient time to consult all the members in preparation for this hearing.

Consistent with the request of Chairman Towns, my testimony today will focus on some of the more significant provisions contained in H.R. 928, the Improving Government Accountability Act, which would amend the IG Act of 1978. While the IG Act has been successful in establishing an effective means for promoting good government, and represents the front line in the effort to prevent and defeat fraud, waste and abuse, anything that would enhance the independence and accountability of the Federal IGs warrants broad support, and we thank the committee for the consideration it is giving to this subject.

After discussing these issues with my colleagues over the past months, and reflecting on my own experience as Inspector General of NSF for 7 years, and when appropriate as ECIE Vice-Chair, I would like to offer the following observations about the legislation.

Removal for cause and term appointments:

H.R. 928 proposes to establish 7-year terms for all Inspectors General and lists specific causes that would lead to removal of an IG. It is unclear to me whether this proposal would enhance IG independence or, instead, produce unintended consequences. Unlike the PCIE, most ECIE members are career federal employees who serve in positions with civil service status and the corresponding protections. The unintended consequence may be that strong candidates for IG positions would be dissuaded from exchanging a secure permanent position for a term appointment. Since ECIE IGs are already subject to removal for cause, little or no additional accountability is required. In fact, as a recent panel of IGs observed, accountability could be diminished since there are many legitimate reasons for removal that are not included in the bill.[1] The tenure and removal of an IG are, therefore, a delicate matter, and any changes to the law need to be carefully crafted to avoid impairing the IG role or making it undesirable for the kind of people who should serve as IGs.

Direct Budget Submission:

I believe that the proposal to authorize IGs to submit budgets directly to OMB would significantly enhance the independence and accountability of the ECIE IGs. It would remove the risk of an agency inappropriately influencing an IG by threatening to withhold a funding request, and it would provide more transparency to the budget process. I strongly support this provision.

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[1] GAO-06-931SP, Federal Oversight and the IGs

Establishment of an IG Council:

H.R. 928 contains a provision to replace the PCIE and ECIE with a unified IG council that has its own appropriation. An Integrity Committee would be established within the Council to review and refer allegations against IGs and certain OIG staff for investigation. While there are concerns among my colleagues about the difficulty of managing the business of so large a council, the majority of ECIE members support this initiative.

Offices as Discrete Agencies:

The bill would make each IG office a separate federal agency for purposes of applying certain personnel provisions, such as buyout authority, and provisions relating to the SES. I am strongly in favor of this initiative and believe it would be an effective measure for increasing the independence of our members.

ECIE IG Pay:

H.R. 928 requires ECIE IGs to be classified for pay and other purposes at the same level as the majority of other senior staff who report directly to the agency head. The ECIE recently surveyed its IG members about their compensation and how it compares to their agency peers. We found that our IGs generally had a lower grade level than other executives that report directly to their agency heads, and on average are paid 12 percent less. Not surprisingly, the ECIE IGs strongly support this provision.

Subpoena Power:

This proposal amends the IG Act to clarify subpoena power as including electronically stored information as well as "any tangible thing." The ECIE members view this as an important clarification and fully support this provision.

Law Enforcement Authority for ECIE IGs:

This proposal would allow ECIE IGs to apply to the Department of Justice for law enforcement authority. It would end the inefficient and disruptive process of having to keep renewing their authority, whether on a case-by-case basis or through periodic blanket authority. It is strongly supported by our ECIE members.

Program Fraud Civil Remedy Act (PFCRA) for ECIE IGs:

H.R. 928 would amend PFCRA to include ECIE IGs, thereby providing an effective tool to address false claims with dollar amounts of less than $150,000. The ability to use the enforcement provisions of PFCRA would certainly enhance the recovery efforts of those agencies, and has been a high priority for ECIE members for years.

Semiannual Reporting Requirements:

There is proposed language in the bill to ensure that inspection and evaluation reports are included in the semiannual reporting requirements. As most OIGs already include these reports, there is no opposition in the ECIE community to this proposal.

Consideration for Legislative Branch IGs:

The ECIE includes three legislative branch IGs, which are the Government Printing Office, Library of Congress, and Capitol Police. Since their offices were not established by the original IG Act, neither the Act nor its amendments apply to these offices unless referenced in the statutes that established them. While the legislative branch IGs do not need or favor blanket inclusion in H.R. 928, they should be considered for inclusion, as appropriate, in some of the bill's provisions. For example, all of the legislative branch IGs would benefit from being able to use the enforcement provisions of PFCRA in

performing their work. They look forward to discussing these matters with the committee.

Mr. Chairman, this concludes my testimony. I again thank you and the Members of your Subcommittee for conducting this hearing, and giving your time and attention to this important subject. I would be happy to respond to any questions that you may have.

Attachment:

Attachment:

ECIE Agencies:

Amtrak
Appalachian Regional Commission
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for Public Broadcasting
Denali Commission
Election Assistance Commission
Equal Employment Opportunity Commission
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Housing Finance Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Reserve Board
Federal Trade Commission
Government Printing Office
Legal Services Corporation
Library of Congress
National Archives
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
Peace Corps
Pension Benefit Guaranty Corporation
Securities and Exchange Commission
Smithsonian Institution
Special Inspector General for Iraq Reconstruction
U.S. Capitol Police
U.S. International Trade Commission
U.S. Postal Service

Mr. TOWNS. Thank you very much.

Let me thank all of you for your testimonies.

Let me begin with you, Ms. Fong. What is it in the Cooper bill that you dislike?

Ms. FONG. Well, we have looked at the bill. As I mentioned, it is not always easy to have a unanimous view in the IG community, and so on a number of provisions there are different views as to whether the provision is the best that it could be. Certainly, one of the issues that has come up has been a issue of IG pay. The Cooper bill is very good at addressing the DFE IG situation, does not address the PAS IG situation, so we would want to work with the committee on that provision.

There may also be a few technical amendments that we would want to offer with respect to some of the language. I think Dr. Boesz has raised a very good issue about the legislative branch IGs, as well. That needs to be considered.

Mr. TOWNS. Thank you. Thank you very much.

Mr. Johnson, you know, there is criticism out there, the same as with the education system. They are saying that you have a principal of the school and a lot of bad things are going on in the school, and the principal will not report it because it makes him look like he is a bad principal. So when it comes to the IG, you know, and agency, many people are saying that is what is going on, that there is this cozy relationship, that the IG does not, you know, report everything because it also makes the agency, itself, look bad.

What are your views? Is this accurate?

Mr. JOHNSON. No, sir, I don't believe that it is accurate at all. I believe that, in fact, there is more transparency about what doesn't work in the Federal Government today than there ever has been before. First of all, the numbers produced by the IG efforts are as strong and as positive and as professionally done as has ever been the case. There is more information now prompted by and developed by this administration, as long as we are talking about this administration, about what programs work and don't work in the Federal Government.

There is more information about what Federal property we need and don't need. There is more information about where our payments are proper and improper and what we are doing to fix them. There is more information about what management practices we have in what agencies and where we are deficient in our ability to be good stewards of the taxpayers' money. So there is more information, there is more public declaration today than ever before, including as a result of the IGs work, on what doesn't work, what does work, and what we need to be doing to make everything work better.

So I believe that there is no indication that there is any kind of pressure to hide what doesn't work. I think it is just the opposite. There has been more effort to declare what doesn't work so there can be more pressure, starting with Congress, more pressure exerted by Congress on the executive branch to cause things to work better.

We have over 1,000 programs in the Federal Government, and yet there is very little pressure from Congress to cause those pro-

grams to work better. There is a tremendous amount of attention paid to what the policy ought to be and how much money ought to be spent, but there is very little attention—and this is not only my opinion, this is the opinion of David Walker and former Chairman Dick Armey—that the executive branch is significantly more focused on program performance than the congressional branch, legislative branch.

And so I think there is more attention than ever before on how things work and how to make it work better, and so I just don't agree with the premise at all that there is an effort to hide things that don't work. It is just the opposite.

Mr. TOWNS. All right. Let me just go right down the line. How do you feel about performance evaluation in terms of tying pay to performance evaluations? Let me go right down the line, starting with you, Dr. Boesz, and come right down the line.

Ms. BOESZ. Tying performance of the IG?

Mr. TOWNS. Yes.

Ms. BOESZ. Well, my situation, my performance, I do get a review based on the performance of the office, and it rolls up. We have a strategic plan, and it rolls up all the way from the auditors up through management to me to the National Science Board, who I work for, and so we are evaluated and expected to meet certain kinds of criteria. Now, we set them, but we also then meet them. So we don't think it is a bad concept.

Mr. TOWNS. Ms. Fong.

Ms. FONG. As a PAS IG we have a slightly different situation. In principle, I support performance-based pay. I think it is very important to hold people accountable, and certainly within our organization we hold our employees accountable for meeting their goals and objectives. When it comes to IGs, we get into a little more complex situation, because the question is who would make the decision as to whether an IG is doing a good job, and the issue of independence and potential conflicts of interest.

If the agency head is the one who appraises the IG, there could be a challenge to whether that appraisal is impartial or justified. There could be charges that the IG either did or didn't do work in order to get a good rating or a bonus or whatever, and so that raises some very difficult issues for IGs who are Presidential appointees.

At this stage of the game, as a PAS IG I am not rated or appraised. I am accountable for the performance of my office and ultimately accountable to the President.

Mr. TOWNS. All right.

Mr. Johnson.

Mr. JOHNSON. I think there are two parts about performance evaluation. One, giving whoever is being reviewed feedback about how they are doing can be helpful to them to learn how to be better. I think it is very difficult to have that feedback come from the head of the agency, as has been suggested. But I would look forward to working with the IGs to figure out how they can get feedback from peers or some other means to help them continually improve their performance.

I think, therefore, it makes it very hard for an SES to get pay increases based on performance evaluation, as is the case with

SESers, because there is no one to do a performance evaluation without violating this independence issue, so we have to fix that.

It has been suggested that the raises be the average of the raises given to everybody. I don't know what it is, but we need to fix that, because it is not fair, it is not right, and it is a big part of the issues raised by Mr. Cooper that I think need to be addressed in some piece of legislation.

Mr. TOWNS. Right. Thank you very much.

I yield to Mr. Cooper.

Mr. COOPER. Thank you so much, Mr. Chairman. Again, I appreciate your holding this hearing. All we are trying to do is make Government work, regardless of the administration. There should be no politics in this bill. We are just trying to get value for taxpayer dollars.

I appreciate the testimony of each of the witnesses. I don't want to dwell on the negative and I don't want to be simplistic and dwell on the positive, either, but one of the complaints has been that people are uncertain about dealing with a fixed term for the IG. That would be a new experience for many of the IGs, not all. How would that mesh with administrations? What term do you pick for a term of office? Of course, IGs could be reappointed and only removed under defined circumstances, but I think we all share the same goals. It is a question of the best way to reach that goal.

An alternative proposal has been to not have a fixed term of office, but to have a 30 day advance notice to Congress in the event that an IG is dismissed. Of course, that gets tricky meshing with the congressional calendar. Is that 30 legislative days? Sometimes we are not here during August or major holidays. Every proposal has its own flaws, but I am curious. Would that sit better with OMB or with the two different varieties of IGs than a fixed term in office?

Mr. JOHNSON. Yes. I, myself, I would recommend that the administration oppose a term. Of course, the President doesn't want any restrictions on his ability to appoint. That is just a generic statement. But I think a term and specific reasons limit the ability to hold an IG accountable.

For instance, Mr. Miller, you were talking about Moose Cobb. None of the things that you have accused Moose of or Moose has been accused of are on this list, which is kind of an interesting, ironic thing. But I think some kind of a notification, I don't know whether it is 30 days, because Congress has a way of, if they are dissatisfied with that, letting that satisfaction be known to the executive branch, but something like that might be appropriate. But I am definitely opposed to and recommend that we oppose a term and specific reasons for dismissal.

Mr. COOPER. But then you would be wholeheartedly in support of the bill, right?

Mr. JOHNSON. I think some legislation is called for to deal with some of these things, but I think I am opposed to some of them.

Mr. COOPER. Ms. Fong, Dr. Boesz, would you have a reaction to that?

Ms. FONG. I think we are struggling with the very heart of the nature of the IG role, which is independence, and how to best ensure that. The sense that I have from my colleagues in the commu-

nity is that it would be very helpful to have some kind of protection so that IGs, when they take a position, have the understanding that they will not be removed tomorrow for a reason that may not be apparent to them, and so, in trying to develop proposals, we looked at terms, we looked at removal for cause. I think your idea about advanced notice to Congress so that there would be an opportunity for oversight is also something that is worth exploring.

The bottom line is that, as IGs, when we operate within our agencies we need the agency managers to see us and to say, that is the IG I am dealing with today, that is the IG that I expect to be dealing with tomorrow, regardless of whether they take on difficult issues. So how do we best protect that?

Mr. COOPER. I agree with you.

Dr. Boesz.

Ms. BOESZ. I would agree very much with that last statement. The IG needs some constant consistency throughout their tenure, whatever it may be.

The 30 day advance notice to Congress, in my personal view, is a much better approach than a term limit; however, we still need to think through how that affects someone who is a Federal employee with specific rights, rather than a Presidential appointee.

Mr. COOPER. I see my time is expiring. I want everyone to know I am very sensitive to your concerns, and I hope that we can address them. I am just thankful that finally legislation may be moving, because we have had this bill now for 4 or 5 years. It has been a long wait, and it is about time that Congress responded to some of these problems.

I want to pay particular tribute to Cicily Simpson, who is helping me with the bill now, and also to Ann Kim, her predecessor, because we couldn't have done this work without them.

Thank you, Mr. Chairman.

Mr. JOHNSON. May I make one comment? I am also not aware that you all feel that an IG has been removed unnecessarily. Aren't we talking about a possible problem, or is your feeling that, in fact, we have had instances of unwarranted removal?

Mr. COOPER. The effort was for professionalization, and we have to anticipate all future circumstances. No, I am not blaming anyone. We just want IG's stature to be enhanced so that they can do an even better job of protecting taxpayers. That is all we are interested in.

Mr. TOWNS. Congressman Duncan from Tennessee.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman. I won't have any questions, since I just got here. I will say that I commend my colleague from Tennessee, Mr. Cooper, for introducing this bill. In the 106th Congress I introduced a bill to make all of the Inspectors General Presidential appointees. At any rate, we later ended up passing a bill to make the Inspector General for TVA an independent.

I do have some questions as to how these terms are going to be defined. The one that leaped out to me was inefficiency. I mean, we could remove half the people in the Federal Government if we are going to talk about inefficiency. But at any rate, there are some of these things that probably need to be defined in a little more de-

tail, but I think that the goal of the legislation is good and I think it is something that I would try to support.

Thank you very much.

Mr. TOWNS. Thank you very much. That is another bill. That is another bill.

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. Johnson, I want to pause and celebrate a point of agreement. I said in my opening statement that I applaud Mr. Cooper for raising the issue, but I do agree with you that the list of reasons for which Inspectors General can be removed is too narrow.

Mr. Bilbray said in his opening remarks that the Inspector General was the eye in the sky, was his term, and you apparently disagreed in part with that and said that the GAO was really more the Congress' watchdog. Do you agree with this statement about the role of Inspectors General: "Inspectors General report both to the head of their respective agencies and to the Congress. This dual reporting responsibility is the framework within which Inspectors General perform their functions. Unique in Government, dual reporting is the legislative safety net that protects the Inspectors General independence and objectivity."

Mr. JOHNSON. I agree with that. What I said, though, was that it is more than your Congress' eye in the sky, it is the executive branch's eye in the sky. You have your own——

Mr. MILLER. Right.

Mr. JOHNSON [continuing]. And then you also have the IGs. You have two eyes in the sky. We have one, which is the IGs. And so it is not just an asset for Congress; it is a huge asset for agency heads and the executive branch.

Mr. MILLER. Right. This, of course, as I hope you know, comes from your own agency's standards.

Mr. JOHNSON. Yes.

Mr. MILLER. You would agree, then, that it is a problem that Congress does not have confidence in the objectivity and independence of an Inspector General?

Mr. JOHNSON. Yes, that would be a problem. Yes.

Mr. MILLER. OK. It would be a problem with his doing his role as contemplated by the statute and by the standards of conduct.

Mr. JOHNSON. There are also opportunities for differences of opinion, obviously.

Mr. MILLER. OK. And that independence is not just a matter of whatever the reality is, but appearance matters, as well. Independence is a critical element of objectivity. Without independence both in fact and in appearance, objectivity is impaired. Do you agree that independence is important?

Mr. JOHNSON. Yes. Right.

Mr. MILLER. With respect to Mr. Cobb, again, your own office's report said that he routinely had lunch weekly with Mr. O'Keefe, the chief of staff, the Council. It was usually in the NASA employees' cafeteria; that Mr. Cobb frequently, or occasionally, at least, played golf with Mr. O'Keefe, he went up to Mr. O'Keefe's office for drinks, he referred to Mr. O'Keefe as his boss. For an employee of NASA who wanted to blow the whistle or who saw something going on that he did not like and wanted to find someone to tell about

it, would that employee have confidence in Mr. Cobb that Mr. Cobb will handle the information in the proper way and would protect the confidentiality of that employee's reporting it?

Mr. JOHNSON. I don't know what would affect that employee's feelings about Mr. Cobb's independence. Let me address this a little bit indirectly. I know two very senior IGs, very senior IGs. One would think nothing of going to the agency head's Christmas dinner at the agency head's house. The other one wouldn't do it with a gun held to his head. They are both outstanding IGs. They have very different views about what appearance is proper and what is improper.

I would suggest to you in a very small way that says there is no correlation. I defy anybody to demonstrate any correlation between whether somebody has lunch with the agency head and the quality of the IG's work. I have never heard you say and I never heard the Integrity Committee say that the quantification of the NASA IG's work is in question.

Mr. MILLER. Actually, Mr. Johnson, it is. The evidence is that the number of audits produced by Mr. Cobb's office has fallen to half what it was under his predecessors, so yes, the quantity——

Mr. JOHNSON. Is the dollar value of them halved?

Mr. MILLER. Well, I didn't come prepared to cross-examine you on the facts.

Mr. JOHNSON. It is a good thing, because I don't know the facts, either, but I just heard you specify that number, which we are in the dollar business, not the number of audit business.

Mr. MILLER. My understanding is it has fallen to half.

Ms. Fong, you are in Inspector General. What is your view of that kind of level of a visible relationship to employees between the Inspector General and the top political leadership of the department? Does that create a problem in your mind?

Ms. FONG. It is probably one of the most difficult issues that IGs face, exactly what is the proper kind of relationship with an agency head. I think each IG has to work it out for himself or herself.

I can speak to you about my own personal experience. Personally, I am most comfortable when I have an arm's length relationship with my agency head. It is not to say it is not cordial, that we don't have a very good, constructive working relationship and I can brief him at any time on issues, but for me an arm's length relationship ensures that anything that comes up that I need to look at, I am able to look at without a sense of my independence being on the table.

Mr. MILLER. OK. And how about the importance of the appearance to others, either employees or to Congress?

Ms. FONG. We certainly are always very aware of appearances. At any time any of us can have allegations filed about our conduct, and so I think we are all very sensitive to the fact that we need to appear impartial and, of course, actually be impartial, as well.

Mr. MILLER. OK.

Mr. JOHNSON. One thing, we are talking about Mr. Cobb, this and that, the Integrity Committee, which is the official investigating entity that produced the report, which is made up of an FBI senior person, the head of the Office of Government Ethics, Office of Special Counsel, Office of Government Ethics, and three IGs

found Mr. Cobb was—there was the appearance of lack of independence, appearance, but no suggestion that anything about his findings were anything but independent, and that there was abuse of authority.

There were 27-odd other allegations that were made, some of which you referenced, in terms of his behavior, which he was found not to be "guilty" of. And I think Administrator Griffin, as he has indicated, is in the process of addressing that. There has been no accusation that he's the problem with dependence, lack of appearance of independence from Mr. Griffin.

So he remains in the office there, because the feeling of the administration, and in consultation with Mr. Griffin, is that he can do a very good job as the Inspector General at NASA.

Mr. MILLER. Mr. Chairman, I don't want to abuse your generosity, but I would like to pursue that point for just a minute more, if I could.

Mr. TOWNS. You can.

Mr. MILLER. Mr. Johnson, the PCIE report said, among other things, concluded that Mr. Johnson would confer with the top management—I am sorry, Mr. Cobb would confer with the top management at NASA in the design of audits, and then would send to them draft copies of findings of audit reports before it was issued for their reaction and audit it, and sat on some findings in response to their concerns. That strikes me as more than an appearance. That strikes me as the reality of a lack of independence. Does that not strike you as something more troubling than unseemly appearance?

Mr. JOHNSON. It doesn't. I am not an IG. Dr. Boesz and Ms. Fong are IGs. It is standard practice before a report is issued that they be sent to agency leadership for official comment, and then it is issued with agency's comment. I don't know if what you are referring to is that process or something other than that process.

Mr. MILLER. Actually, I think I did not speak correctly. It was before they were even a draft. It was before the audits.

Mr. JOHNSON. Three IGs, the Criminal Investigation at FBI, Government Ethics, Special Counsel looked at that and found that not to be problematic, so I just—you ought to ask them that question.

Mr. TOWNS. I want to followup, Mr. Johnson.

I understand there is a process in place for investigating complaints against IGs.

Mr. JOHNSON. Yes.

Mr. TOWNS. The Integrity Committee of the PCIE——

Mr. JOHNSON. Yes.

Mr. TOWNS [continuing]. Works with another IG's office to conduct an investigation. My question is this: what happens after the Integrity Committee reports back? They send a report to the Chair of the PCIE, Mr. Johnson, and what happens after it lands on your desk?

Mr. JOHNSON. I have had some opportunity to understand the answer to this question in the last couple of months. Here is my understanding of the answer to that question: they do their report. It comes to me as the Chair of the PCIE.

Mr. TOWNS. Right.

Mr. JOHNSON. Because these are with the PCIE, they are Presidential appointees. If the identified behavior appears to warrant consideration by the White House for dismissal, I would bring that up with the White House.

Mr. TOWNS. Do they vote on it? At PCIE do you vote on it?

Mr. JOHNSON. No. PCIE is not involved in this.

Mr. TOWNS. All right.

Mr. JOHNSON. There is an Integrity Committee. We were talking about the report by the PCIE. There is an Integrity Committee that is under the umbrella of the PCIE. The people that produce the report are, the chairman is somebody designated by the Director of FBI, the Office of Special Counsel, the Office of Government Ethics, and three IGs, so it is a group of six. They produce a report.

Mr. TOWNS. But is there any voting on this, or is it the President's decision?

Mr. JOHNSON. I don't know how it works. The six of them produce this report.

Mr. TOWNS. Yes.

Mr. JOHNSON. With findings. They say, here's all the allegations, here's what we found to be of substance. It comes to me. If there is suggestion that this ought to go straight to the White House, I take it straight to the White House. If not, it would go to the head of the agency for review and consideration. Then the head of the agency determines whether they have confidence in the IG, whether they want to recommend to the President that the IG be removed, whether there be sanctions, there be some change in the organization, but it goes to the agency head.

That then goes back to the Integrity Committee through me. I get it from one, I hand it to the other. It goes back to the Integrity Committee. Then the Integrity Committee gets it, finds out what the head of the agency wants to do, and if they agree that is it. If they want to comment on it, think it is too much or too little, they issue another report that says whatever they want to say, and then it is sent. So that is the basic process.

Mr. TOWNS. Right. So it is up to you, if you want to move it on, you move it on; if you don't——

Mr. JOHNSON. No.

Mr. TOWNS. No?

Mr. JOHNSON. No. It comes to me from the Integrity Committee.

Mr. TOWNS. Yes.

Mr. JOHNSON. If the behavior is found to be egregious enough that I think possible dismissal, removal by the President ought to be the only question, then I would take it directly to the White House. If it is, in my estimation, less than that, then it would go to the agency head. This is per an Executive order that President Clinton signed in 1994 or 1997 or something.

Mr. TOWNS. In other words, you have to send it somewhere?

Mr. JOHNSON. I have to send it somewhere, yes. It goes to the agency head, and because they share the goal of the success of NASA, in Mr. Cobb's case, and so they decide whether he believes NASA can have a well-functioning IG operation, given this information, or not. And they would come back and go in writing and come back to the Integrity Committee through me with what their response to the findings of the Integrity Committee are.

Mr. TOWNS. All right. Thank you.

Mr. JOHNSON. If it sounds convoluted, it is because it is a little convoluted.

Mr. TOWNS. Yes, I agree with that, but it seems like to me you have a lot of power, though. It seems to me you have a lot of power in the process. Yes.

Mr. JOHNSON. I am more of a messenger. I really don't have any power in the Integrity Committee, itself, on purpose. It is set up that way. It is the Inspector General, the investigative community investigating its own.

Mr. TOWNS. Yes. But I think the reason I say you have a lot of power, I heard the words "pass on to the White House."

Mr. JOHNSON. That is if in my estimation the findings are such that——

Mr. TOWNS. To me that is power.

Mr. JOHNSON. Well, it is.

Mr. TOWNS. I am not going to belabor the point here. But, anyway, you get the point.

Dr. Boesz, does your evaluation affect your pay increase or your bonus?

Ms. BOESZ. The evaluation? I am an SES person, so yes, I am eligible for a bonus and for pay for performance under the way the agency works under the new Civil Service reform. It is set up so that, yes, if I don't perform, don't get an evaluation, I wouldn't get a raise.

Mr. TOWNS. Doesn't that make it hard for you to be independent?

Ms. BOESZ. No, not at all, sir. Not at all, because it is all done on metrix. It is done on the performance of the office. It is not done on my personal performance. It doesn't bother. I don't feel at all conflicted there.

I should point out that I work for the National Science Board. I don't work for the director of NSF. There is an arm's length between me and management. The Board has oversight responsibilities, and I think that metric makes a difference. Many of the ECIE IGs do work for either boards or commissions, and so we do have arm's length from management. I think that is the key why it doesn't affect the independence ability.

Mr. TOWNS. All right. Thank you very much.

Any other questions from Members?

[No response.]

Mr. TOWNS. Let me thank all three of you for your testimony. I am sure you will be hearing from us again. Thank you very much. It was a pleasure.

I would like to welcome our second panel. As with the first panel, it is our committee policy that we swear our witnesses in.

[Witnesses sworn.]

Mr. TOWNS. Let the record reflect that they all responded in the affirmative.

I will briefly introduce each witness.

Eleanor Hill—welcome to the committee—was with the Department of Defense from 1995 to 1999. She was Staff Director of the 9/11 Commission and the Senate Permanent Subcommittee on Investigation, and is a former Federal prosecutor.

Ken Mead was Inspector General of the Department of Transportation from 1997 to 2006. Prior to his service as an IG, he served for 22 years at the Government Accountability Office.

Nikki Tinsley was Inspector General of the Environmental Protection Agency from 1998 to 2006. Prior to her appointment she served as an auditor for the EPA, Department of Interior, and Government Accountability Office.

Jeffrey Steinhoff is Managing Director of the Financial Management and Assurance at the Government Accountability Office. He has 38 years of Federal service, more than half of them spent as a senior executive at GAO.

Fred Kaiser and Vanessa Burrows are the experts on IG issues for the Congressional Research Service at Library of Congress. Mr. Kaiser is a specialist in American national government, and Ms. Burrows is a legislative attorney.

Your entire statement, for all of you, will be in the record. I ask each witness to summarize their testimony within the time we have allotted, which is 5 minutes. The yellow light means your time is running down and the red light means your time has run out, so we will start with you, Ms. Hill, and then we will just go right down the line.

STATEMENTS OF ELEANOR J. HILL, FORMER INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE; KENNETH M. MEAD, FORMER INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION; NIKKI L. TINSLEY, FORMER INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY; JEFFREY C. STEINHOFF, MANAGING DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, GOVERNMENT ACCOUNTABILITY OFFICE; AND VANESSA BURROWS, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE, ACCOMPANIED BY FRED M. KAISER, SPECIALIST IN AMERICAN NATIONAL GOVERNMENT, CONGRESSIONAL RESEARCH SERVICE

STATEMENT OF ELEANOR J. HILL

Ms. HILL. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to discuss with you this afternoon the role that IGs play in what I believe is the promotion of good Government in the Federal system.

While I am now engaged in the private practice of law, I did, as the chairman mentioned, have the opportunity to serve as the IG for the Department of Defense. I also was extremely privileged to really spend the bulk of my career in public service, which also included serving as vice chair of the PCIE from 1998 through 1999.

I am very happy to join both Ken Mead and Nikki Tinsley here this afternoon. They were both friends and former colleagues of mine during our years as IGs.

Your focus on independence and accountability is absolutely on point, in my view, in terms of maintaining the credibility and the effectiveness of the IGs as a community in the Federal Government. Although the idea of Inspectors General has been around really since the 17th century Europe in terms of military Inspectors

General, the idea of a truly independent IG as we know them today are a relatively modern phenomenon, and Congress gets credit for the idea with the IG Act of 1978. That act went far beyond the traditional military Inspector General, and the principal difference, in my view, is the whole concept of independence.

I mentioned the military IGs, because during my term at Defense at the Pentagon I had the opportunity to work with many of them. Also, the DOD is unique. It is so large that it has a number of other what we call administrative IGs at the various Defense agencies. As the departmental Inspector General, I worked with all of them on numerous occasions, and my work with them really enforced for me the importance, the absolute critical importance of independence to the statutory IGs.

I can tell you that on numerous occasions, for example, military Inspectors General in the Department of Defense would come to our office and ask us to conduct top-level, particularly sensitive investigations because they, the military IGs who did not have statutory independence and operated within the chain of command, believed that they did not have the independence needed to make their investigation both actually be objective and appear to be objective within the Department and to Congress and to the American public, for that matter.

I also had numerous conversations with various administrative IGs within the Department of Defense. This would include Defense agencies like DIA, NSA, NRO. They served without the benefit of statutory independence. They serve at the pleasure of the directors of their agencies. And they also would ask us to take on those kinds of investigations. They recognized that in investigations of very senior officials or in audits of programs that are dear to an agency head, statutory independence was absolutely critical to both the integrity of the inquiry and to the credibility of the findings in the Department, on Capitol Hill, and with the American Public.

I must tell you that I could not help but recall those conversations last year when I read reports that oversight of what is now termed the NSA terrorist surveillance program, which I am sure you are familiar with, had been handled not by the Department of Defense IG, who is independent, but rather by the NSA IG, who has limited resources and no statutory independence. In my view, that is exactly the kind of program where the oversight should have been conducted from the very beginning by the independent statutory IG.

Independence, more than anything else, goes to the very heart of the IG missions. The statutory requirements—and you are familiar with them—and the 7-day letter requirement, the ban on Secretarial interference with IG work, etc., all taken together in my view make the IG the most independent and the most unfiltered voice in any Federal department under the Secretary.

As an IG, I was very fortunate in that I never felt forced to sacrifice or compromise my independence. The provisions in the statute, however, are not foolproof, as one would expect. There are other factors that do impact independence. In my case, I would say there were several where I was very fortunate. I worked with two Secretaries of Defense, two Secretaries, Bill Cohen and Bill Perry,

both of whom really understood, appreciated, and accepted the role that an IG can play in a constructive way in a Federal department.

I also had the benefit of becoming an IG only after I had been schooled for many years in jobs where independent factor of an investigation was really the norm. That is what I knew as a professional. I had been a Federal prosecutor and I had been a congressional investigator for years in a committee where inquiries by investigators were very bipartisan.

Clearly, IGS must be comfortable with their independence. They must fully understand its importance. They must be willing to exercise it and they must be prepared to defend it, if necessary.

Independence also, in my view, beyond what is in the statute, depends on Congress. It depends on Congress remaining attentive to IG findings and remaining engaged in exercising its own oversight. For the concept to work, Congress has to be an active player. Congress has to insist on thorough and objective oversight from the IG, separate and apart from the views of any department and any administration. When that happens, the overwhelming incentive for any IG is to resist attempts at politicization from either side. The best way to succeed when answering to those two masters is to conduct independent, professional, and fact-driven investigations.

H.R. 928, as you know, has several provisions, all of which would add to statutory independent protections that already exist. Because I believe so strongly in the need for independence, I do support all of those changes.

I also want to say a few words about accountability. Independence gives IGs power. When they have that power, they have to expect to be held accountable and they have to be held accountable. While we hope that all IGs take the high road, the system has to be capable of addressing allegations of misconduct. The public must be assured that those who enforce high ethical standards on others are, themselves, held to the same standards. There must be a clear and convincing answer to the question: who is watching the watchdog?

The IG community—and I remember this from my years with the PCIE—has wrestled for years with the idea and the question of how to ensure accountability but not sacrifice independence. The lack of clear legal authority, insufficient resources, and record-keeping problems hampered early efforts by the PCIE to address the issue. Both IGs and OMB worked together to prompt a March 1996 issuance of the Executive order which confirmed the PCIE Integrity Committee's authority and process, which Mr. Johnson spoke of earlier.

I can tell you there were still problems, in my memory, with implementation after that Executive order. I remember at least one occasion where I wanted an investigation where I had allegations of serious misconduct by senior IG employees. I went to the Integrity Committee, referred it to them. They actually sent it back to me. I had to go back again and insist on them taking the investigation, which they ultimately did. So there were some bumps along the way in getting it started.

H.R. 928 certainly would codify the existence and the authority of the Integrity Committee. I support that, not only because it further clarifies the authority of the committee, but also because it

sends a clear message to the American public and to the agencies and departments that the law will ensure that IGs are held accountable.

In closing, I just would note that I have truthfully been very dismayed by the reports in recent years of less congressional oversight, coupled with reports of less independence and less professionalism in the IG community. As an investigator, I know better than to pre-judge the accuracy of those reports without access to all the facts, so I do not know to what extent those reports are true. But I can only tell you that, for the good of the country, in my view, I hope they are not.

The rigorous but always objective and fair exercise of the congressional oversight power, bolstered by the work of the independent and professional IG community, is in my mind clearly the surest way to promote integrity, credibility, and effectiveness in Government. The American people deserve and quite rightly expect no less.

Thank you for the opportunity. I look forward to your questions.

[The prepared statement of Ms. Hill follows:]

Statement

by

Ms. Eleanor Hill

Before the

Subcommittee on Government Management, Organization, and Procurement

Committee on Oversight and Government Reform

U.S. House of Representatives

on

"Inspectors General: Independence and Accountability"

June 20, 2007

Mr. Chairman, Ranking Member Bilbray, and Members of the Subcommittee:

Good afternoon and thank you for this opportunity to discuss with you the critically important role that the Inspectors General play in promoting "good government", and all that that concept entails, throughout the Executive Branch. While I am now engaged in the private practice of law, I was indeed privileged to spend the great bulk of my career in public service, which included my tenure as the Inspector General of the Department of Defense from 1995 through 1999 and as the Vice Chair of the President's Council on Integrity and Efficiency (PCIE) from 1998 through 1999. I am especially pleased and honored to join on this panel two of my friends and former IG colleagues from those years, Ken Mead and Nikki Tinsley, both respected leaders within the IG community. I know they share my strong support for the kind of independent, objective, and professional oversight that IGs can and should bring to government.

Mr. Chairman, your focus here today on "independence and accountability" is absolutely on point, in terms of maintaining the credibility and the effectiveness of the Inspector General community. You asked that, based on my own experience, I address those issues as well as the relevant provisions of H.R. 928, the "Improving Government Accountability Act."

Although the "inspector general" concept actually originated in 17th century Europe, the idea of truly "independent" inspectors general, as we know them today, is a relatively modern phenomenon. Congress gets credit for the idea, including statutorily-protected independence as a hallmark of the Inspector General Act of 1978. The Act created something very different than the traditional military "inspector general", as had been described in the Codes of Military and Martial Laws in 1629:

> The Inspector General must have a horse allowed him and some soldiers to attend him and all the rest commanded to obey and assist, or else the service will suffer; for he is but one man and must correct many, and therefore he cannot be beloved. And he must ride from one garrison to another to see the soldiers do not outrage or scathe the country.

Obviously, a lot has changed since 1629. Nevertheless, in recent years, some have suggested that the military IG system, which still exists today, is a model for federal IGs. Although there are some similarities, I think it is a mistake to equate these two very different types of inspectors general. Congress, in its wisdom, went far beyond the traditional military concept in creating Inspectors General within federal agencies and departments.

Military IGs were originally created to lead inspection efforts, something they still do today. By contrast, inspections are a relatively small part of what civilian IGs do. Today's military IGs also conduct investigations, but that is coupled with a substantial focus on providing assistance to members of the military. Audits, a huge part of the civilian IG workload, are handled separately, by the military auditors general or, depending on the nature of the case, by the Defense Department IG or DCAA. The biggest and most critical difference, however, is that military IGs clearly work within their military chain of command -- they do not have the statutory independence and the dual reporting requirements that, in my view, set the federal civilian IGs completely apart from other military and civilian internal department oversight mechanisms.

As Defense IG, I worked closely with the military IGs and oversaw many of their investigations. My work with them - and with many other administrative Defense Agency IGs - only served to reinforce my belief that independence is absolutely essential for federal statutory IGs. On many occasions, military IGs requested that our office conduct top-level, particularly sensitive investigations since they did not believe they had the level of independence needed to conduct an investigation that would both be and appear to be objective. I had similar conversations with some administrative Defense Agency IGs, who are appointed and serve, without the benefit of statutorily-protected independence, at the pleasure of the Directors of their agencies. All of those IGs recognized that in investigations of very senior officials or in audits of programs dear to the agency head, the statutorily protected independence of the Departmental IG was critical to both the integrity of the inquiry and to the credibility of the findings in the Department, on Capitol Hill, and with the American public. I could not help but recall those conversations when I read reports last year that oversight of what has been referred to as NSA's "terrorist surveillance program" had been handled by the NSA IG, who has limited resources and no statutory independence, and not by the Department of Defense IG. In my view, that is exactly the kind of program where the oversight should have been conducted, from the very beginning, by the independent Defense Department IG.

Independence

All of this underscores the absolutely critical importance of independence in the IG world - and the need to protect it. More than anything else, independence goes to the very heart of the IG mission. It is what makes IGs a critical -- and absolutely unique -- link in insuring effective oversight by both the executive and legislative branches of our government. I have often cited the IG Act, and its method of protecting IG independence, as a stroke of Congressional

brilliance. The seven day letter requirement; the ban on Secretarial interference with IG investigations and subpoenas; the dual reporting requirements - to the Secretary, but also to Congress; and the required reporting of IG terminations to Congress -- those provisions, taken together, clearly make the IG the most independent - and unfiltered - voice below the Secretary in any federal department. As an IG, I never felt forced to sacrifice or compromise my independence.

While these are excellent statutory protections, they are not foolproof. Operating under the same statutory scheme, some IGs have been extremely independent, while others have been less so. Clearly, there are other factors which can and do impact independence. In my own case, I was fortunate in several respects: I worked under two Secretaries of Defense who understood, appreciated, and accepted the role and mission of the IG -- Bill Perry and Bill Cohen. I also had the benefit of becoming IG only after being schooled for years in jobs where independent, fact-driven investigation was the accepted norm - as a federal prosecutor and as a congressional investigative counsel on inquiries that were unusually bipartisan in nature. While statutory protections are very important, it goes without saying that IGs also have to be comfortable with their independence, fully understand its importance, be willing to exercise it, and be prepared to defend it, if necessary. IGs can and should work constructively within their departments to be "agents of positive change", but they must insist on doing so in an environment where their independence is clearly understood and respected.

I was also fortunate in that I worked with Congressional Committees that were very interested in, and attentive to, what our IG office was doing in terms of oversight. The IG Act

relies heavily on the tension that usually exists between Congress and the Executive Branch to reinforce and protect IG independence. The success of the statutory mechanisms, like the dual reporting requirements, depends on Congress remaining attentive to IG findings and remaining engaged in exercising its own oversight authority. For the concept to work, Congress has to be an active player. Congress has to be willing to insist on thorough and objective oversight from the IG, separate and apart from the views of any Department or any Administration. When that happens, the IG must walk a fine line between what may be the very different views of Congress and of the Department: the overwhelming incentive in those situations is for IGs to resist attempts at politicization from either side. The best way for IGs to succeed, when answering to these two "masters", is to conduct independent, professional, and clearly fact-based inquiries.

H.R. 928 would add several important provisions to the arsenal of statutory protections for IG independence. First it would require that an IG can only be removed on substantial grounds, as specified in the statute. Currently, the President must notify the Congress of the dismissal, but there is little Congress can do to question or revoke the actual dismissal, absent any set statutory criteria for termination. H.R. 928 would also give IGs the kind of guaranteed tenure (a statutory term of seven years) that would clearly bolster their ability to withstand efforts to compromise their independence and/or the integrity of their audit and investigative findings. Finally, H.R. 928 would confirm the authority of IGs to submit appropriation and budget requests for their offices directly to the Director of OMB as well as to the appropriate Congressional Committees and Subcommittees. In doing so, the bill would help insulate IGs from the agency's power to retaliate via IG personnel and resource cuts. In my own experience in the late 90s, Presidentially-appointed IGs at the larger Departments often viewed their

reporting responsibility to Congress as including IG authority to report agency cuts in their budget requests directly to Congress. However, smaller IG offices, which were sometimes less familiar with the Congressional process, were often reluctant to raise budget concerns outside the formal OMB/agency process. The clear language in HR 928 would insure that all IGs have some way to bring retaliatory budget cuts to the attention of the Congressional appropriators. Because I believe that independence is so critical to the success of the IG mission, I support all of these statutory changes.

Accountability

Independence gives IGs the ability to exercise a great deal of power, for which IGs, like other public servants, must be held accountable. While we hope that all IGs take the high road, and use their investigative and audit powers wisely and responsibly, the system has to capable of addressing allegations of abuse of power or other misconduct within the IG community. If the system is to have any credibility, the public must be assured that those who enforce high ethical standards on others are themselves held to those same standards. There must be a clear and convincing answer to the question "who's watching the watchdog?"

The IG community has wrestled for years with the question of how to insure accountability but, at the same time, maintain IG independence. This was an issue of great discussion in PCIE meetings in the mid to late 1990s. There had been a number of initiatives clearly designed to insure quality, professionalism, and accountability among IGs, including training programs, a peer review process, and the development of quality standards for audits and investigations. Those efforts were, however, focused on preventing problems: the IGs clearly also needed a formalized way to address allegations of problems that had already occurred. In

early 1995, just prior to my arrival as Defense IG, the PCIE replaced less formal mechanisms with an Integrity Committee to review and refer for investigation allegations of misconduct by IGs and Deputy IGs. While well intended, the Integrity Committee initiative lacked clear legal or investigative authority, was limited by insufficient personnel resources, and encountered record-keeping problems. As but one example, I recall that, in the absence of clear authority, it was often difficult for the Committee to persuade an uninvolved IG, and his or her staff, to undertake a needed investigation.

Those kinds of problems prompted a concerted effort by the IGs, working with OMB, to procure an Executive Order that formally authorized the PCIE, through its Integrity Committee, to receive, review, and refer for investigation allegations of misconduct by IGs and certain IG staff members. Executive Order 12993, issued on March 21, 1996, confirmed the authority of the Integrity Committee, chaired by an FBI official, in the accountability process; designated the Chief of the Justice Department's Public Integrity Section as an advisor to the Integrity Committee; gave the FBI authority to conduct all investigations requested by the PCIE; and authorized the Integrity Committee to request assistance from another IG office in an investigation. The Executive Order, and the formalized process it established, was clearly, in my view, a step in the right direction. At least in the early years, however, there were still issues in implementation: I recall at least one instance where, despite my formal request that the Integrity Committee investigate allegations I had received concerning some senior IG staff members, the Committee initially declined to do so, returning the matter to our office for investigation. I was firmly convinced that it would be impossible for a team from our office to conduct an inquiry that would not only be objective, but also have the appearance of being objective and credible to

the complainant and others in the Department. I recall having to again personally raise and debate the issue with the Committee leadership, who eventually agreed, at my urging, to accept the matter for investigation by the Committee.

Since I left the Defense IG and the PCIE in 1999, I am unable to report on accountability efforts by the current Integrity Committee. The PCIE's Progress Report to the President for FY 2006, however, does report on the Integrity Committee's workload for the 2006 time period: 36 new allegations received, resulting in 2 investigations and 25 closed cases, 15 of which were referred elsewhere for resolution.

H.R. 928 specifically addresses both the PCIE and the Integrity Committee. The bill would combine the PCIE and its counterpart, the Executive Council on Integrity and Efficiency (ECIE) into a single, statutorily-authorized "Council of the Inspectors General on Integrity and Efficiency", an idea that I support. By separating the IGs into the PCIE and the ECIE, it has been more difficult for the IG community as a whole to speak, and to impact, important cross-government issues of efficiency and effectiveness. During my time as IG, I was always struck by the huge differences in size, in capabilities, and in focus among the offices within the IG community. While a single Council will not eliminate all those differences, it will encourage greater opportunities for communication and learning across the community. Statutory authorization of the Council will also, in my view, allow and encourage greater communication and interaction between the Council and the Congress, which should prove helpful to Congressional oversight efforts.

If enacted, this legislation would also codify the existence and authority of the Integrity Committee, essentially replacing Executive Order 12993 with similar statutory language. I support that provision, not only because it further clarifies and solidifies the Integrity Committee's authority, but also because it sends a very clear message to the departments and agencies in which IGs work, and to the American public, that the law insures that IGs will be held accountable. IGs play a unique and extremely important role in insuring that meaningful oversight of federal programs takes place, both within the Executive Branch and in the Congress. The IGs' ability to play that role credibly and effectively depends, to a large degree, on the existence of a clear and well-defined accountability process.

Conclusion

In closing, I would only add that I have been genuinely dismayed by reports and suggestions in recent years of less Congressional oversight, coupled with reports of less independence and less professionalism in the IG community. I am no longer in government and, as an investigator, I know better than to prejudge the accuracy of individual reports without access to all the facts. I do not know to what degree all those reports are true. I can only say that, for the good of the country, I hope they are not. In my view, the rigorous, but always objective and fair, exercise of the Congressional oversight power, bolstered by the work of an independent and professional IG community, is clearly the surest way to promote integrity, credibility, and effectiveness in government. The American people deserve, and quite rightly, expect no less. Thank you and I welcome any questions you may have.

Mr. TOWNS. Thank you very much.
Mr. Mead.

STATEMENT OF KENNETH M. MEAD

Mr. MEAD. Thank you, Mr. Chairman. I am really thankful for the invitation to testify. I appreciate the opportunity to work with a number of you over the years, Mr. Cooper on various IG issues; Mr. Duncan, I always consider him a leader in the aviation world; Mr. Davis I remember well sitting in the Court of Appeals courtroom up in Boston on a big dig hearing he was chairing.

I served under two Presidents, Clinton and Bush, and decided to step down after almost 9 years. That means I worked for both Secretary Slater and Secretary Mineta. I have absolute respect for them both. They had tremendous regard for IG independence.

Before becoming IG, I worked in the GAO. I make note of that not really so much as a biographical point, but as a way of saying that I think GAO is an extraordinarily good source of candidates to be IG. I spent 22 years there. It was a great training ground. I think some of my core values were formed in that institution.

I am also real proud of the DOT IG team for their dedication to duty and continuing accomplishments.

Just on a personal note, I want to say something about the IG job. You know, it is a real difficult job and it is sometimes kind of lonely, but in my estimation it is among the greatest rewards and honors of public trust that the Government has to offer, just terrific opportunities to do good for the taxpayers.

As far as the law is concerned, I believe that the bill, H.R. 928, recognizes this, as well. I don't think the law is in need of wholesale change. Just a couple context perspective points on that: The essential design of the IG job is, as a fellow named Paul Light, he worked for Senator Glenn. Some people think Senator Glenn was one of the fathers of the IGs. But Paul Light told me, when I was being vetted for the IG, he says, Don't forget this: the job of the IG is to speak truth to power. You won't find those words in the IG Act, but that is really, when you add it all up, what we are supposed to be doing. The IGs who use that principle as their compass will best serve the taxpayer, the Congress, and the taxpayers.

You are going to have to do some painful and unpopular things as IGs. Sometimes people won't want to have lunch with you. But that just comes with the job.

Relationships with the Congress and the Secretary—the act requires, as has already been pointed out, it has a dual reporting obligation. You have to keep the Congress and the Secretary fully and currently informed. That is not a discretionary duty; it is a mandate. It is a requirement of law. I think that single provision of law is the most important strength of the IG act. It is a duty for which we all ought to be held accountable.

But there is the powerful reinforcing corollary to this that applies to both the Congress and the Secretary. For the Congress, that corollary is the regularity and depth of oversight of agency programs, the extent to which they pay attention to the IGs work. For the Secretary, it is the value that the Secretary attaches to oversight, regularity of access by the IG to the Secretary, and also that the agency heads—like in our case FAA, Highway, NHTSA,

and so forth and so on. There are ten of them, I think—they know that the Congress is watching and that the Secretary is watching, and that there is a demand for respect of the IG's findings.

I think that is one of the reasons why the DOT's IG's office work is held in such high regard today. It is not just because that work is quality; it is because Congress pays attention to it and the Secretary does, too.

A couple of points on relationship with the Secretary. I think it has to be one built on mutual respect and trust. I think the IG has to be independent, but you don't want the IG blind-siding the Secretary. When the Secretary hears about an IG finding on the nightly news or reads about it in the Washington Post for the first time, in my view the IG has probably dropped the ball. I don't believe that should be happening.

Also, the IG can't just take the independence to an extreme. If you do, you are going to be marginalized. The IG needs to make recommendations, and workable recommendations, not just drop it in the Secretary's lap, walk away, and come back a couple years later and say, My god, the problems are still there. They may be there anyway.

Term of office—I think it has already mentioned, 928 establishes the renewable 7 year office for removal only for a specific cause. In my own case, I don't think the term of office or removal for cause would have enhanced my independence or affected us as IG. It would have detracted from it, either. But from what I have seen—and I used to have Phyllis Fong's position as legislative committee chair—in talking with colleagues, I think the idea of giving advance notice to the Congress in writing and a statement of reasons is a good idea. Mr. Duncan mentioned, though, I would be careful about enumerating all these things. You get into inefficiency, and inefficiency is not an intuitively self-defining term. So, on balance, I think that might be the best approach.

I think also, for the IGs that are not appointed by the President, that would be a good approach, too.

Budget? Submission of budget, I think Mr. Cooper's bill has it about right. The IG's original budget request ought to be submitted along with the President's final recommended budget. For example, when the budget outlays for advocacy or highways increase sharply, you should expect, the Secretary should expect, the taxpayer probably should expect that the IG is going to be expanding audit coverage. If the IG can't expand audit coverage because the President, for that matter, isn't going to recommend enough resources, there ought to be some memorialization of that and the Congress ought to be aware that is going to be one consequence.

IG candidate pool and IG pay? I think it has been made pretty clear today that this is a problem. I don't believe that the IG Act's statement of qualifications needs agency change. I think the acid test is in the nomination and conformation process and learning a person's core values.

But on the issue of pay, you have a problem. I am concerned about the adequacy of IG pay, particularly if you want the IG to stay on board for more than the average tenure of the Senior executive branch official. If Mr. Cooper's bill becomes law, you have a

minimum of 7 years. That is a lot longer than the average executive branch senior legislation person.

I am not going to belabor the very significant pay disparities, but I can tell you that I am the victim of it. At the 6 or 7 year point, a new law took effect. I was career SES, and all of the sudden my pay was essentially frozen. My entire senior staff was getting paid substantially more than me and, while I don't think bonuses are appropriate for IGs, I do think you have to do something about this.

The problem exists also with the people that weren't career SES. You expect IGs to come in and spend 7 years on the job, executive level four with no possibility of promotion. That is just one step from the bottom. This goes from, I think, executive level one through five.

Codification of the IG Council, I think H.R. 928 has it about right here, too. I would encourage you, though, before just reenacting the Integrity Committee provisions and carrying them forward, I think you would do everybody a service if you reviewed the due process procedures established by the IC, the consistency of their application, and why it takes so long to conduct some of these investigations. That is important to do not only because of accountability, but in fairness to the Inspectors General who end up getting investigated. And I think it would bring greater transparency to the IC process.

A going forward step there might be for you to off-the-record invite some of these prior IGs in. I don't know if they would be open to that, but that concludes my statement.

[The prepared statement of Mr. Mead follows:]

Testimony of
Honorable Kenneth M. Mead
Formerly Inspector General of the U.S. Department of Transportation

Before the
Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform
United States House of Representatives

For Release on Delivery; Expected at 2:00p.m. EST
Wednesday, June 20, 2007

Mr. Chairman, Ranking Minority Member Bilbray, and Members of the Subcommittee:

I appreciate the opportunity to testify today on matters concerning the independence and accountability of Inspectors General, including H.R. 928, a bill entitled "Improving Government Accountability Act." I thank you for calling this hearing and for your support of the IG community.

I am Kenneth Mead, former Inspector General of the U.S. Department of Transportation (DOT), which has jurisdiction over transportation by air, automobiles, motor carriers, highways, mass transit, rail, the Maritime Administration, and pipelines. Until their transfer to the Department of Homeland Security, DOT had jurisdiction over transportation security and the Coast Guard as well. I was appointed to the Inspector General (IG) position by President Clinton in 1997 and confirmed by the Senate in May, 1997. I served as Inspector General for nearly nine years and resigned in February, 2006. I served with Secretaries Slater and Mineta, and Deputy Secretaries Downey, Jackson, Van Tine, and Cino. I have a high regard for all of these individuals, our working relationships and the absolute respect they demonstrated for the independence of the IG.

I joined the law firm of Baker Botts, LLP shortly after leaving DOT, and work primarily on transportation and government relations matters. I should point out that before becoming IG, I served as the Deputy Assistant Comptroller General for Policy and as Director of Transportation Issues for the Government Accountability Office (GAO). I make note of this not only as a point of biography, but because I believe the GAO is an exceptional training ground and a great source, among others, for IG candidates.

The Honorable Cal Scoville, my successor, and the entire DOT OIG staff continue to do an exceptional job and work in the best traditions of the Inspector General Act. I am very proud of them for their dedication to duty and accomplishments, particularly in the areas of transportation safety, promoting a more efficient transportation system, ensuring the cost-effective application of billions of dollars in Federal funds, and preventing and rooting out fraud, waste, and abuse.

I want this Committee to know that the IG position is a most difficult and sometimes lonely job, but, in my estimation, among the greatest honors of public trust that

Government has to offer, with simply extraordinary opportunities to improve Government and serve the taxpayers. The original IG Act has stood the test of time and has served the taxpayer well. An important amendment to the Act was made five years ago when Congress granted IG offices law enforcement authority in their own right, rather than being specially deputized by the Marshals Service on a case by case basis. While there are several improvements that can be made to the IG Act, it is not in need of wholesale change, and I think that is well recognized by H.R. 928.

As requested, I will offer some observations on H.R. 928, IG independence and accountability, IG budget submission and resources, IG pay and its implications, and the operations of the President's Council on Integrity and Efficiency (PCIE), of which IGs appointed by the President are members. The IG Act sets forth the authority, powers, responsibilities, and protections for the IG, and these can be improved upon, but, ultimately, the values, qualifications, and vision of the individuals selected for that job will be determinative. Add to this the fact that a two- or three-way street must be navigated, and this requires constructive working relationships with both the Congress and the Secretary. Let me give this some personal context and perspective.

IG Accountability, Effectiveness, and Independence

The essential design of the IG's job, as Paul Light told me when he worked for Senator John Glenn, is to speak "truth to power." Inspectors General who use this principle as their compass will best serve the Congress, the Secretary, and the taxpayer. Never forget it. The independence of IGs, and the special authorities Congress has given them, requires that the IG speak the unvarnished truth.

Not infrequently, this will come in the form of unwelcome audit or investigative findings and recommendations. They may be painful or unpopular to deal with and carry serious consequences as well. This also means that the IG's work must be credible, objective, methodologically defensible, and beyond reproach, as proactive as possible, and solution oriented. At DOT, whether we were dealing with planes, trains, trucks, ships, or pipelines, an equally important part of the job is to follow-up on findings and recommendations—to make sure that recommendations are implemented and, if not, that the Secretary and the Congress know about it.

IG Relationships with the Congress and the Secretary

The Inspector General Act requires the Inspector General to keep both the Secretary and the Congress "fully and currently informed." This is a mandatory not discretionary duty and, in effect, establishes a dual reporting obligation. This obligation should be underscored. I consider this single provision of law to be among the most important strengths of the IG Act and it is a duty for which all IGs should be held accountable.

But there is an important, powerfully reinforcing corollary to this that applies to both the Congress and the Secretary. For the Congress, that corollary is the regularity and depth of congressional oversight of agency programs and the attention paid to the IG's work. For

the Secretary, the corollary is the value that he or she attaches to IG oversight, the responsiveness to IG findings and recommendations, and the regularity of IG access to the top of the organization. This is probably not possible to legislate in any meaningful way, but it is a key to IG effectiveness and meeting IG Act expectations.

The regard in which the DOT Inspector General's office is held is due not only to the quality, relevance, and independence of their work. In my opinion, it also is due to the fact that congressional appropriation and authorizing committees make their expectations clear and frequently hold hearings at which the Inspector General testifies. Similarly, and just as important, the Secretary knew this, also had high expectations for oversight, was completely intolerant of fraud or abuse, and insisted that close attention be paid to IG findings. This was reinforced at senior staff meetings, which were attended by the heads of DOT's Operating Administrations. So, the Inspector General knew the Secretary's expectations and those of the Congress were high; the Operating Administrations, such as FAA, FTA, and FHWA, knew the IG's work was important, and that the Secretary and the Congress were watching.

A good working relationship between the IG and the head of the agency is essential. The relationship with the Secretary ought to be one built on mutual respect and trust. The IG must be independent, but should never blindside the Secretary and should work diligently to develop workable recommendations for corrective action. Simply restating the problem and recommending that it be corrected is neither helpful nor sufficient.
The IG cannot take independence to an extreme, just drop the problem on the Secretary, and go away. The result will be that the IG's effectiveness will be marginalized, the IG will be left out of the recommendation loop, and the IG will not be viewed as a "value-added" player in problem solving.

It also is quite important for the IG to be as proactive as possible and prevent problems from occurring in the first place. This, of course, is not always possible to do, and there will be occasions where unambiguously bad news must be delivered. This does not mean that the Secretary should find out about a criminal prosecution affecting the agency in the Washington Post or about an IG finding affecting airline safety on network news. If that happens, the IG has probably dropped the ball and such an oversight may affect the working relationship the IG has with the Secretary.

Statutory Term of Office and Removal for Cause

Currently, IGs nominated by the President and confirmed by the Senate have no statutory term of office, and the only statutory condition for removal is that the President must notify the Congress in writing. There is no requirement that the congressional notification be made before removal or that any particular reason be given for the removal. Also, when there is a change in the Office of the President, there is understandable uncertainty among the Inspectors General about whether the incoming President will want them to stay on. However, during the Bush Administration's transition period, IGs were advised not to submit resignations along with the other appointees, but that decisions would be

made on a case by case basis. I believe this was the approach taken by President Clinton as well.

H.R. 928 would establish a renewable seven year term of office for IGs with removal only for specific causes. Standing alone, I do not think a term of office will enhance the independence of the IG or protect the IG from removal under the current process. This would not be the case though if the term of office provision were considered along with the conditions for removal, which is the case with the approach proposed by H.R. 928. I do not think a term of office, a removal for cause provision, or both would have enhanced my independence or effectiveness as IG. It would not have detracted from it either.

On balance though, and considering the specific situations and concerns of several other IGs with whom I have spoken, the best approach may be a requirement to notify the Congress in writing thirty days in advance of any removal action, along with an explanation of the reasons for the removal. This would provide time for dialogue and an opportunity for the executive and legislative branches to discuss the circumstances. I recommend the Committee consider a similar approach for IGs who are appointed not by the President, but by agency heads or boards of directors. An IG who is not appointed by the President and confirmed by the Senate is referred to as a Designated Federal Entity or DFE IG.

Inspector General Resources and Submission of Budget Requests.

The question of whether IGs have sufficient resources to fulfill their duties differs by agency and degree. The general practice at DOT was to submit the IG's initial budget request to OMB without reduction. That is not the practice at all agencies. Also, after submission of the initial budget request, OMB makes a budget recommendation—called the pass back; there were numerous occasions where we would appeal this recommendation and see if there were areas where we could tighten our belts. Negotiations would follow. In my experience, the Department was supportive and OMB generally was reasonable when all was said and done. However, there were some exceptions to this; in those instances, the Senate and House Appropriation committees would find a way to keep us whole.

Given the substantial return the taxpayer receives for every dollar invested in the IGs, the matter of resource adequacy deserves the Committee's consideration and greater transparency could be bought to the budget process. Without this, the value of resources devoted to oversight and the pernicious implications of inadequate funding will not get on the radar screen.

Therefore, I believe H.R. 928 has it about right and that the Inspector General's original request should be submitted along with the President's final recommended budget. For example, when budget outlays increase significantly for aviation or highways, the IG's audit and investigative activity should increase sharply in those areas as well. Resources must be made available for this to occur, particularly in areas at high risk for fraud, waste, and abuse. If additional audit and investigative coverage of at risk areas will not be

feasible under the President's budget, the Congress needs to know of this consequence. I believe a similar approach should be considered for the DFE IGs. The budget situation for DFE IGs is complicated by the fact that many of them do not have a specific budget line item in their agency budgets, but that could be changed by Act of Congress.

IG Candidate Pool and IG Pay

The IG Act establishes the qualifications for presidentially appointed IGs and I do not believe they are in need of change. It should be noted that the IG Act does not specify the qualifications for DFE IGs, and I see no persuasive reason why that should be the case. In the final analysis, the selection, vetting, nomination, and confirmation process will be the most important determinant in getting the best qualified presidentially appointed IGs.

I am concerned about the adequacy of IG pay, particularly if the expectation is for a tenure substantially greater than that of other presidentially appointed officials, and was pleased to see this is a subject the Committee intends to address. Under H.R. 928, that tenure would be 7 years. I know the Committee will be receiving other testimony on this subject, so I will not go into detail on the very significant pay disparities between career staff and Inspectors General who were career employees, substantial pay disparities even between the Inspectors General, and the complicated reasons for this. Suffice it to say that this area needs congressional attention and soon. The pay disparities are significantly affecting the willingness of exceptionally well qualified career staff to be considered for appointment as an Inspector General and the disparity is affecting retention as well.

Under fairly recent legislation, Inspectors General who were career SES employees are likely to experience significant pay penalties if they become an IG. Although I do not think this was an intended result of the legislation, it does occur and I experienced it first hand. IGs with prior SES status can no longer receive the base salary benefit increases now applicable to the SES. This is because the new system is performance-based. To avoid the appearance of a conflict of interest and preserve IG independence, no agency official subject to oversight by the IG can evaluate the IG's performance, so the IG simply gets no performance increase, and, of course, no bonuses. Thus, presidential IGs can and do receive significantly less pay than employees who report directly to them. Meanwhile, presidential IGs who were not previously career SES can receive even less than IGs who were career SES. They will be paid at Executive Schedule, Level IV, with no possibility of promotion; the only level below that is Executive Schedule, level V.

Codification of the Inspector General Councils and Integrity Committee Matters

Currently, Inspectors General appointed by the President are members of the President's Council on Integrity and Efficiency (PCIE). DFE Inspectors General, who are appointed by the head of an agency, are members of the Executive Council on Integrity and Efficiency (ECIE). The two Councils are creations of Presidential Executive Orders. The Councils meet separately, but periodically have a joint meeting. H.R. 928 provides for a single, combined IG Council and further provides that the Council Chairperson shall be elected to that position by the Council. The Deputy Director for Management of the

Office of Management and Budget is the Chair of the Council under the executive order and an Inspector General is requested to serve as Vice-Chair.

Though I have some concerns with the large size of a single council, I believe there is merit in the proposal advanced by H.R. 928. First, the IG Council proposed by the bill could strengthen IG relationships with the Congress and significantly enhance IG coordination and effectiveness on government-wide issues and projects. The bill enumerates specific duties of the Council. Second, if Congress proceeds down the road suggested by the bill, it should consider a small appropriation for a limited dedicated staff to support the Council in carrying out its mission. Neither the PCIE nor ECIE currently receive any appropriations and rely almost exclusively on individual IGs to provide funds and commit staff as their individual circumstances permit.

Finally, H.R. 928 provides for an Integrity Committee within the IG Council with functions and procedures very similar to the current Integrity Committee. In 1996, the Integrity Committee was formally recognized and specifically tasked by Executive Order 12993 to receive, review, and refer for investigation allegations of wrongdoing by an Inspector General and, in certain limited circumstances, allegations against IG staff members as well. The Integrity Committee (IC) also handles complaints against Inspectors General that allege abuse of authority, gross mismanagement, or gross waste of funds. The FBI may conduct or assist in an investigation or the investigation may be conducted by another IG.

As the Committee considers the bill, however, I would recommend that it also review the due process procedures established by the IC, the consistency of their application, and the timeliness of the investigative process. I think this would be in the best interests of accountability and objectivity in general, fairness to the Inspector General or staff being investigated, and bring greater transparency to the IC process.

IC investigations usually do not culminate in a public trial or administrative proceeding where the accused can confront and cross-examine witnesses against them or call witnesses of their own, question motivations, and see for themselves what witnesses are saying and what evidence they are advancing, but, as the experience of the past year has shown, the media somehow learns an investigation of an IG is underway, talks to various sources, and goes forward with a prominently placed article or articles, often well in advance of an investigation's conclusion. This may just come with the territory of being a senior Federal official, but it also can damage reputations and make it very difficult to continue running the Office of Inspector General effectively, particularly if the investigation is protracted in nature. I do not know if the Inspectors General, incumbent or otherwise, who have been the subject of an IC investigation during the past year or so would be open to discussing their experience or observations with subcommittee staff or Members, but this may be an invitation the Committee may wish to extend to them as well as the IC.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions you or the Subcommittee may have.

Mr. TOWNS. Thank you very much. Let me just say to the witnesses there is a red light there. I just don't want you completely ignore that light, OK? Thank you.

Ms. Tinsley.

STATEMENT OF NIKKI L. TINSLEY

Ms. TINSLEY. Good afternoon, Mr. Chairman, members of the subcommittee. I appreciate your giving me the opportunity to be here today to discuss independence, accountability, and other issues affecting the Inspector General community. I believe that Inspectors General play a vital role in improving Government operations, and that, working together with the Councils on Integrity and Efficiency, they are uniquely positioned to contribute to Government reform.

Knowing that I was going to be on a panel with Mr. Mead and Ms. Hill, I knew they would do a good job of addressing the provisions of the legislation. I am going to limit my oral statement to an issue that I am passionate about. I am going to belabor the salary issue, even though Ken did not.

This is about pay disparities and the negative financial impact that accepting a position as Inspector General has on career Federal employees.

The first step in ensuring that Inspectors General would be at high quality takes place in the selection process. Congress intended that Inspectors General be nonpartisan, independent, objective, and of the highest integrity. Career civil servants provide an excellent pool of candidates for Inspector General due to their experience in Government and the nonpartisan nature of their positions. Unfortunately, because of pay disparities, many qualified career employees are no longer willing to accept appointments as Inspector General. This is because virtually all Inspectors General appointed by the President, subject to Senate confirmation, receive significantly less pay than their subordinates, the senior managers who report directly to them, and significantly less pay then their peers, other career civil servants who accept appointments.

Past career civil servants appointed as Inspectors General were members of the Senior Executive Service and were often affiliated with the agencies where they were appointed IG. They brought an invaluable and welcomed level of knowledge and experience to the IG position. They were routinely rated and recognized as outstanding SES performers and received the maximum pay for SES members at the time of their Presidential appointments.

The Civil Service Reform Act of 1975 codified in Title 5 of the U.S. Code allows members of the SES who are appointed by the President to a position which is not in the SES to elect to retain their SES pay and benefits as if they had remained in the SES position from which they were appointed. The legislative history for this provision reveals that it was intended to make it possible for career employees to serve in top-level policy jobs outside the competitive service without losing their status as career employees.

OPM says that this provision is used to encourage career executives to serve at the highest levels of the Government and to broaden the pool the President can use to choose top managers. Title 5 allowed SES members to accept appointments as Inspectors Gen-

eral to retain their SES pay until the 2004 Defense Authorization Act ended pay equity for SES Inspectors General. The 2004 act made the SES members' annual pay increases dependent on performance evaluations. Because of the unique position Inspectors General occupy within the Federal Government, there is no superior within the agency or department that can evaluate their performance without creating the appearance of a conflict of interest, and bringing the Inspector General's objectivity into question.

In addition, beginning in 1994, the administration asked Presidentially appointed Inspectors General drawn from the ranks of the Senior Executive Service to waive their rights to compete for annual bonuses. These awards commonly range from 5 to 20 percent of the employee's annual salary.

In addition, SES Inspector Generals are not considered for Presidential rank awards ranging from 20 to 35 percent of salary, awards that their colleagues are eligible to receive and their peers in the paths frequently do receive.

Since implementation of the 2004 act, Inspectors General who retained their SES continued to be paid at their 2003 salary level, around $142,500. Other members of the Senior Executive Service in other paths who retained their SES status can receive salaries up to $168,000. The financial impact of the restriction on pay plus the elimination of award eligibility can amount to $80,000 annually. It lowers not only the Inspector General's standing when compared to other executives, but also his or her retirement annuity.

The 2004 act plus the elimination of awards creates a disincentive for current SES members to accept a position as Inspector General. It inadvertently created the precise situation the Civil Service Reform Act sought to avoid with its explicit allowance for Presidential appointees to retain their SES status to ensure that the President had the broadest possible pool of candidates to select from when filling these important positions.

My testimony has some options. There are a lot of people who have ideas on options to address the salary and bonus issue. I will say that I think that the one way to solve the salary problem is to pay career SES members who accept positions as Inspector General at the ceiling rate of the SES pay scale. I think they deserve that because of their unique positions working for the administration and the Congress and spanning administrations.

Thank you.

[The prepared statement of Ms. Tinsley follows:]

Statement of Nikki L. Tinsley
Before the
Subcommittee on Government Management,
Organization, and Procurement
Committee on Oversight and Government Reform
U.S. House of Representatives
June 20, 2007

Good afternoon, Mr. Chairman and Members of the Subcommittee. I appreciate your giving me the opportunity to be here today to discuss independence, accountability, and other issues affecting the Inspector General (IG) community; H. R. 928, the Improving Government Accountability Act; and proposals to resolve pay disparities encountered by Inspectors General who are career employees. I had the honor of being a part of the IG community for more than 15 years, serving in two administrations as Inspector General of the Environmental Protection Agency. I believe that Inspectors General play a vital role in improving government operations and that working together through the President's and Executive Councils on Integrity and Efficiency they are uniquely positioned to contribute to government reform. While I am devoting most my statement today to discussing pay comparability and the impact it may have on the pool of individuals qualified to perform the duties of Inspector General, I do think it is time for Congress and the Administration to develop a process to hold Inspectors General accountable for their performance. Also, I believe that it is particularly important that the Councils on Integrity and Efficiency have clear authority to take the steps they deem necessary to sustain and increase the professionalism and effectiveness of IG personnel.

The first step to ensuring that Inspectors General are independent and objective takes place during the selection process. Congress intended that Inspectors General be non-partisan, independent, objective, and of the highest integrity. It identified a limited number of career fields from which Inspectors General should be selected, including audit, investigation, public administration, and law. I would add that Inspectors General should have demonstrated ability in organizational leadership and management. Finally, during the selection and confirmation processes it is of critical importance that both the President and the Senate carefully vet candidates to ensure their past performance indicates they have the qualities expected of an Inspector General and would faithfully execute the IG mandate.

Career civil servants provide an excellent pool of candidates for Inspector General due to their experience in government and the non-partisan nature of their positions. Unfortunately, issues related to pay comparability for career employees limit the pool of qualified individuals willing to accept appointments as Inspectors General. Virtually all Inspectors General appointed by the President subject to Senate confirmation (PAS) receive significantly less pay than their subordinates in the Senior Executive Service (SES) who report directly to them and significantly less pay than other SES members accepting PAS appointments. Inspectors General fall into two distinct groups: those who are SES members when appointed as Inspectors General and those who are not. My remarks focus on career SES members who accept appointments as Inspector General.

SES Members Receiving Presidential Appointments

5 U.S.C. § 3392(c)(1) allows members of the SES who are appointed by the President to a position which is not in the SES to elect to retain their SES pay and benefits as if they had remained in the SES position from which they were appointed.

The legislative history of this provision reveals that it was intended to "make it possible for career appointees to serve in top level policy jobs outside the competitive service without losing their status as career employees." Specifically, it "provides that an employee in the Senior Executive Service, who receives a Presidential appointment outside the Senior Executive Service after receiving such an award, shall continue to receive the annual payments to which he otherwise would be entitled." The provision allows SES members to transition to their Presidential appointment without apprehension of losing their pay, leave, or retirement benefits. S. Rep. 95-969, at 68, 82 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2723, 2790, 2804.

OPM guidance states that this provision is used to "encourage career executives to serve at the highest levels of the government and to broaden the pool the President can use to choose top managers." The provision allowed SES members who accepted appointments as Inspectors General to retain their SES pay. However, the 2004 Defense Authorization Act ended pay equity for SES Inspectors General.

Changes Resulting From the National Defense Authorization Act of 2004

The 2004 Defense Authorization Act made SES members' annual pay increases dependent on performance evaluations. Since Inspectors General occupy a unique position within the Federal government, there is no superior within the agency or department that can evaluate their performance without creating the appearance of a conflict of interest and bringing the Inspector General's objectivity into question.

Bonuses for Inspectors General

Beginning in 1994, the Administration asked Presidentially-appointed Inspectors General drawn from the ranks of the Senior Executive Service to waive their rights to compete for annual bonuses, thus creating a pay disparity between Inspectors General and other members of the Senior Executive Service, including other SES members accepting Presidential appointments. These awards commonly range from 5% to 20% of the employee's annual salary. In addition, SES Inspectors General are not considered for Presidential Rank awards ranging from 20% to 35% of the employee's annual salary that their colleagues are eligible to receive.

Impact on Career SES IG Pay

Past SES members appointed as Inspectors General were often affiliated with their respective agencies and brought an invaluable and welcomed level of knowledge and experience to the IG position. They were routinely rated and recognized as "outstanding" SES performers and received the maximum pay for SES members at the time of their Presidential appointments.

With implementation of the 2004 Defense Authorization Act, Inspectors General who retained their SES status continue to be paid their 2003 salary level, around $142,500, for perpetuity or until the lowest pay level for SES employees reaches their current pay. Other members of the Senior Executive Service and other PAS who retained their SES pay status can receive salaries up to $168,000 annually. The financial impact of the restriction on pay and elimination of bonus eligibility can amount to as much as $84,000 annually. It lowers not only the Inspector General's standing when compared to other executives, but also his/her retirement annuity.

The 2004 Defense Authorization Act creates a disincentive for current SES members to accept a position as an Inspector General. It inadvertently created the precise situation the Civil Service Reform Act of 1978 sought to avoid with its explicit allowance for Presidential appointees to retain their SES status to ensure the President had the broadest possible pool of candidates to select from when filling these positions.

Options to Address Pay Comparability Issues

- Raise the pay of all Inspectors General consistent with the SES maximum, currently $168,000 annually. This would keep IGs who elected to retain their SES pay at the same relative position within the SES pay scale they occupied prior to enactment of the Defense Authorization Act of 2004. While the prior SES pay system was not called a *pay for performance* system, pay raises were justified based upon documented performance accomplishments. This option recognizes the unique and nonpartisan nature of the Inspector General position. (Unlike other Presidential-appointees, Inspectors General do not leave their positions during a change of administration.)

- Provide bonuses for Inspectors General comparable to their SES counterparts, calculating bonuses based on the average of those received by other members of the senior executive service in their agency or department.

- Establish a Performance Review Board to evaluate the performance of career SES Inspectors General and authorize salary increases and/or bonuses. Also, this Performance Review Board could be authorized to recommend deserving Inspectors General for Presidential Rank awards.

Mr. Chairman, this concludes my prepared remarks. I would be happy to respond to any questions you and members of the Subcommittee may have.

Mr. TOWNS. Thank you for your testimony.
Mr. Steinhoff.

STATEMENT OF JEFFREY C. STEINHOFF

Mr. STEINHOFF. Mr. Chairman, members of the subcommittee, I am most pleased to be here today to discuss H.R. 928 and applaud the efforts of Representative Cooper and this subcommittee to work to enhance IG independence and effectiveness.

Before providing my perspectives on the bill, I would like to briefly highlight the concept of auditor independence which is at the heart of the IG Act and to the range of issues the bill addresses.

Independence is the cornerstone of professional auditing. Government auditing standards state, "In all manners relating to the audit work, the audit organization and the individual auditor, whether Government or public, must be free from personal, external, and organizational impairments to independence, and must avoid the appearance of such impairments to independence. Audit organizations must maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by objective third parties with knowledge of relevant information."

In a nutshell, this is what auditing is all about, and the principal reason Congress can place value and reliance on the work of GAO and IGs as an independent set of eyes and ears. Without independence, there is very little left and you really have no more than a consultant, or someone's view.

With this concept in mind, I would now like to discuss some of the specific provisions of the bill.

In May of last year, at the request of Congress, the Comptroller General convened a panel of recognized leaders, people from Federal audit investigative community, the Congress, and others highly knowledgeable in IG matters. We issued a report in September. I have provided that for the record for you all. We had a very wide range and a very experienced group to address the issues that are basically the issues in Representative Cooper's bill.

I would just like to provide a couple of perspectives of several of these areas.

First, while some did favor a term of office and removal for cause, the majority did not. However, across the board people, for the most part, favored advanced notification to Congress. So my answer to the question, Representative Cooper, you asked Clay Johnson earlier is yes. I think that is a plausible solution.

I will add that an IG to be effective must adroitly straddle two worlds. Mr. Mead I think hit it very, very well. They have to work in a very constructive, positive way within the agency they are serving, and they must further have strong relationships to the Congress. Whereas terms of office and removal conditions may or may not be important to independence, what I think at the end of the day is perhaps the most important is the selection and confirmation process and then the regular oversight by Congress, is Congress bringing the IG up, is Congress asking the IG for something. I know that the IGs that are most successful are the ones that do have those relationships.

Second, the provisions in the bill that deal with the budgets. The views of the panel were very, very mixed. I would say that most believe that the separate budgets for Presidential IGs, that process works and that process should be extended to the DFEs, the non-Presidential IGs.

I would add a broader perspective here. I think it is very important, because I don't think there is an IG or GAO that would say that we didn't need more money; that as Congress looks at the appropriation request for an IG, that they consider the return on investment. That would be a very important factor in determining whether these are being sufficiently staffed or not.

The chairman talked about, I think it was $9.9 billion in his opening. I think GAO's savings last year were over $50 billion. But I am not sure the budgets of either party are looked at fully in terms of what is the return on investment, so that is something you might want to look at.

Third, the GAO has long held and called for a combined IG Council in statute, together with a separate appropriation account to fund the council. We are supportive of that. Our panel had mixed views as to whether this should be established in statute, but they did favor dedicated funding for the existing councils.

With respect to whether the IG Integrity Committee should be in law, our panel was not asked to address that perspective, but I will enthusiastically endorse that. This is a very important mechanism. It has been a mechanism there for many years. While certainly someone might want to fine-tune parts of it, as Mr. Mead mentioned, it is something that is very, very key, and having it in law would provide, I think, some permanence here.

With respect to pay, we will endorse what others have said. Our panel strongly believed that is something that must be addressed sooner than later. I will say there are options to what is in the current bill, which we think might be kind of difficult, and options can be authorities through OPM for some of the garden variety things that IGs wish to do, and then, I think as was proposed, a real look at whether you tie IG pay into SES pay.

Finally, our panelists overwhelmingly supported the provisions relating to investigative and law enforcement authorities.

In closing, since the passage of the landmark act almost three decades ago, the IGs have continued to play an essential role in improving Government accountability by providing objective and independent audits, investigations, covering the full range of programs and operations. Independence in both fact and appearance has been a critical element to this success, and it is essential to the continuing success of the IG concept.

We support overall what Representative Cooper is trying to do here and look forward to working with this subcommittee, as well as Representative Cooper, as these matters are looked at further.

Thanks again for inviting me.

[The prepared statement of Mr. Steinhoff follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Government Management, Organization and Procurement, Committee on Oversight and Government Reform, House of Representatives

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INSPECTORS GENERAL

Proposals to Strengthen Independence and Accountability

Statement of Jeffrey C. Steinhoff
Managing Director
Financial Management and Assurance

GAO-07-1021T

June 20, 2007

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-07-1021T, testimony before the Subcommittee on Government Management, Organization and Procurement, Committee on Oversight and Government Reform, House of Representatives

INSPECTORS GENERAL

Proposals to Strengthen Independence and Accountability

Why GAO Did This Study

H.R. 928, Improving Government Accountability Act, contains proposals intended to enhance the independence of the inspectors general and to create a Council of the Inspectors General on Integrity and Efficiency. This testimony provides information and views about the specific proposals based on GAO's prior work.

We believe that effective, ongoing coordination of the federal oversight efforts of GAO and the IGs is more critical than ever, due to the challenges and risks currently facing our nation including our immediate and long-term fiscal challenges, increasing demands being made for federal programs, and changing risk. Close strategic planning and ongoing coordination of audit efforts between GAO and the IGs would help to enhance the effectiveness and impact of work performed by federal auditors.

In May of this year the Comptroller General hosted a meeting with the IGs for the principal purpose of improving the coordination of federal oversight between the IGs and GAO. Working together, and in their respective areas, GAO and the IGs can leverage each other's work and provide valuable input on the broad range of high-risk programs and management challenges across government.

www.gao.gov/cgi-bin/getrpt?GAO-07-1021T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Jeanette Franzel, (202) 512-9471 or franzelj@gao.gov.

What GAO Found

IG independence is one of the most important elements of the overall effectiveness of the IG function. The IG Act, as amended, (IG Act) provides specific protections to IG independence that are necessary due in large part to the unusual reporting requirements of the IGs who are both subject to the general supervision and budget processes of the agencies they audit while at the same time being expected to provide independent reports of their work externally to the Congress.

The IGs, in their statutory role of providing oversight of their agencies' operations, represent a unique hybrid of external and internal reporting responsibilities. IG offices have characteristics of both external audit organizations and internal audit organizations by reporting the results of their work both externally to the Congress and internally to the agency head. A key provision of the IG Act regarding IG independence is for certain IGs to be appointed by the President with the advice and consent of the Senate. Other IGs established by amendments to the IG Act, are appointed by their agency heads.

In May 2006, at the request of the Senate Committee on Homeland Security and Governmental Affairs, the Comptroller General convened a panel of recognized leaders in the federal government and in academia to discuss many of the same proposals that are in H.R. 928. Many of the provisions in H.R. 928, Improving Government Accountability Act, address IG independence. Today we are providing our views and the views of the panel on the following provisions: (1) providing IGs with specified terms of office and limiting IG removal for specified cause, (2) changes to how IGs submit their budget requests, (3) a statutorily established IG Council, (4) defining IG offices as separate agencies for purposes of personnel authority, and (5) providing additional investigative and law enforcement authorities.

The majority of the panelists did not favor a term of office, but they did favor advanced notification to the Congress of the reasons for removal. Regarding IG budgets, the panelists had mixed views about the IGs sending their budget requests directly to OMB and the Congress, but supported separate budget line items for all IGs. In a prior report, GAO recommended establishing an IG Council in statute with a designated funding source and strongly supports the proposal in H.R. 928. In contrast, the panelists had mixed views about statutorily establishing a joint IG Council but did favor establishing a funding mechanism. While the panel did not address the proposal to formalize the Integrity Committee in statute, GAO strongly supports this provision and believes it is important that the independence and work of the Integrity Committee be preserved. We do not support the proposal to define IG offices as separate agencies, but do support the intent of the bill in addressing IG pay and personnel issues. Finally, the panel overwhelmingly supported the provisions in H.R. 928 related to IG investigative and law enforcement authorities.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss current legislative proposals intended to enhance the independence and operations of the inspectors general (IG) offices. The IG offices play a key role in federal agency oversight. They were created to prevent and detect fraud, waste, abuse, and mismanagement in agencies' programs and operations; conduct and supervise audits and investigations; and recommend policies to promote economy, efficiency, and effectiveness. In the past almost 3 decades since passage of the landmark IG Act of 1978, the IGs have played a very important role in enhancing government accountability and protecting the government against fraud, waste, abuse, and mismanagement.

The IG Act recognized IG independence as one of the most important elements of the overall effectiveness of the IG function. In fact, much of the IG Act, as amended (IG Act), provides specific protections to IG independence that are unprecedented for an audit and investigative function located within the organization being reviewed. These protections were necessary due in large part to the unusual reporting requirements of the IGs who are both subject to the general supervision and budget processes of the agencies they audit while at the same time being expected to provide independent reports of their work externally to the Congress. Many of the provisions in the Improving Government Accountability Act, H.R. 928,[1] seek to further strengthen the independence of the IGs to help ensure their ability to effectively carry out their dual internal and external reporting roles.

Today, I will discuss (1) the key principles of auditor independence, (2) the proposals in H.R. 928 regarding IG independence and operations and the establishment of a statutory council of IGs, and (3) additional matters concerning IG independence and the coordination of federal oversight from GAO's recent IG work.

My testimony today draws on provisions of the IG Act, professional auditing standards, prior GAO reports, and information reported by the IGs. In May 2006, the Comptroller General hosted a panel discussion on many of the issues to be discussed today. I will draw upon information gained from the panel to address several issues in H.R. 928.

[1]Improving Government Accountability Act, H.R. 928, 110TH Cong. (February 8, 2007).

Auditor Independence

Key to a consideration of H.R. 928 are the principles of auditor independence and how they apply in the IG community. Independence is the cornerstone of professional auditing. Without independence, an organization cannot do independent audits. Lacking this critical attribute, an organization's work might be classified as studies, research reports, consulting reports, or reviews, but not independent audits. *Government Auditing Standards*[2] state, "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be free from personal, external, and organizational impairments to independence, and must avoid the appearance of such impairments to independence. Auditors and audit organizations must maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by objective third parties with knowledge of the relevant information." [emphasis added].

- **Personal independence** applies to individual auditors at all levels of the audit organization, including the head of the organization. Personal independence refers to the auditor's ability to remain objective and maintain an independent attitude in all matters relating to the audit, as well as the auditor's ability to be recognized by others as independent. The auditor needs an independent and objective state of mind that does not allow personal bias or the undue influence of others to override the auditor's professional judgments. This attitude is also referred to as intellectual honesty. The auditor must also be free from direct financial or managerial involvement with the audited entity or other potential conflicts of interest that might create the perception that the auditor is not independent.
- **External independence** refers to both the auditor's and the audit organization's freedom to make independent and objective judgments free from external influences or pressures. Examples of impairments to external independence include restrictions on access to records, government officials, or other individuals needed to conduct the audit; external interference over the assignment, appointment, compensation, or promotion of audit personnel; restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization's ability to carry out its responsibilities; or external authority to overrule or to inappropriately influence the auditors' judgment as to appropriate reporting content.

[2]GAO, *Government Auditing Standards, January 2007 Revision*, GAO-07-162G, Sections 3.02 and 3.03 (Washington, D.C.: January 2007).

- **Organizational independence** refers to the audit organization's placement in relation to the activities being audited. Professional auditing standards have different criteria for organizational independence for external and internal audit organizations. The IGs, in their statutory role of providing oversight of their agencies' operations, represent a unique hybrid of external and internal reporting responsibilities.

External audit organizations are organizationally independent under professional auditing standards when they are organizationally placed outside of the entity under audit. In government, this is achieved when the audit organization is in a different level of government (for example, federal auditors auditing a state government program) or different branch of government within the same level of government (for example, legislative auditors, such as GAO, auditing an executive branch program). External auditors also report externally, meaning that their audit reports are disseminated to and used by third parties.

Internal audit organizations are defined as being organizationally independent under professional auditing standards if the head of the audit organization (1) is accountable to the head or deputy head of the government entity or to those charged with governance, (2) reports the audit results both to the head or deputy head of the government entity and to those charged with governance, (3) is located organizationally outside the staff or line-management function of the unit under audit, (4) has access to those charged with governance, and (5) is sufficiently removed from political pressures to conduct audits and report findings, opinions, and conclusions objectively without fear of political reprisal. Under internal auditing standards,[3] internal auditors are generally limited to reporting internally to the organization that they audit, except when certain conditions are met.

The IG offices, having been created to perform a unique role in overseeing federal agency operations, have characteristics of both external audit organizations and internal audit organizations. For example, the IGs have external reporting requirements consistent with the reporting requirements for external auditors while at the same time being part of their respective agencies. IGs also have a dual reporting responsibility to

[3]The Institute of Internal Auditors, *Professional Practices Framework, International Standards for the Professional Practice of Internal Auditing* (Altamonte Springs, Florida: March 2007).

the Congress and the agency head. The IG Act also contains many unique provisions to provide for independence under this model.

Under the IG Act, the IGs (1) may perform any audit or investigation without interference from the agency head and others except under specific conditions, (2) report to and receive general supervision only from the heads or deputy heads of their agencies and no other agency officials, and (3) have direct and immediate access to their agency heads. The IGs' external reporting requirements in the IG Act include reporting the results of their work in semiannual reports to the Congress. Under the IG Act, the IGs are to report their findings without alteration by their respective agencies, and these reports are to be made available to the general public.

The IG Act also directs the IGs to keep the agency head and the Congress fully and currently informed by these semiannual reports, and otherwise, of any fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by their agencies. Also, the IGs are required to report particularly serious or flagrant problems, abuses, or deficiencies immediately to their agency heads, who are required to transmit the IG's report to the Congress within 7 calendar days. Finally, depending on the IG's appointment process, either the President or the agency head must provide the Congress notification as to the reasons for the removal of any IG.

A key provision in the IG Act regarding IG independence is for certain IGs to be appointed by the President with the advice and consent of the Senate. This appointment is required to be without regard to political affiliation and is to be based solely on an assessment of a candidate's integrity and demonstrated ability. These presidentially appointed IGs can only be removed from office by the President, who must communicate the reasons for removal to both houses of the Congress. Government auditing standards recognize this external appointment/removal of the IG as a key independence consideration for IGs as external audit organizations.

Organizational independence differs between the offices of presidentially appointed IGs and agency-appointed IGs. In 1988, the IG Act was amended to establish additional IG offices in designated federal entities (DFE) named in the legislation. Generally, these IGs have the same authorities and responsibilities as those IGs established by the original 1978 Act, but they have a clear distinction in their appointment—they are appointed and removed by their entity heads rather than by the President and are not subject to Senate confirmation. In addition, the DFE IGs do not have the requirement that their appointment is to be without regard to political

affiliation and based solely on integrity and demonstrated ability. The DFE IGs, while they are covered by many of the same provisions of the IG Act as the IGs appointed by the President with Senate confirmation, are more closely aligned to independence standards for internal auditors rather than external auditors. At the same time, *Government Auditing Standards* recognize that additional statutory safeguards exist for DFE IG independence for reporting externally. These safeguards include establishment by statute, communication of the reasons for removal of the head of an audit organization to the cognizant legislative oversight body, statutory protections that prevent the audited entity from interfering with an audit, statutory requirements for the audit organization to report to a legislative body on a recurring basis, and statutory access to records and documents related to agency programs.

We believe that the differences in the appointment and removal processes between presidentially appointed IGs and those appointed by the agency head do result in a clear difference in the organizational independence structures of the IGs. Those offices with IGs appointed by the President are more closely aligned with the independence standards for external audit organizations, while those offices with IGs appointed by the agency head are more closely aligned with the independence standards for internal audit organizations. However, as I mentioned earlier, the IGs represent a unique hybrid of external auditing and internal auditing in their oversight roles for the federal agencies.

Provisions of H.R. 928

In May 2006, at the request of the Senate Committee on Homeland Security and Governmental Affairs, the Comptroller General convened a panel of recognized leaders of the federal audit and investigative community to discuss many of the same proposals that are in H.R. 928, Improving Government Accountability Act. We drew the panel from the current IG leadership, former IGs, knowledgeable former and current federal managers, representatives of academia and research institutions, a former member of the Congress, and congressional staff, including the congressional staff person closely involved in the development of the 1978 Act. Among other issues, the panel members discussed terms of office and removal for cause, submission of IG budgets, a proposed IG Council, and investigative and law enforcement authorities for agency-appointed IGs. The panel members did not discuss the proposal in H.R. 928 calling for establishing IG offices as separate agencies for purposes related to

personnel matters. In September 2006 we issued the results of the panel discussion.[4]

I would now like to highlight the overall perspectives of the panel in the context of H.R. 928.

Terms of office and removal for cause

Depending on the nature of their appointment, IGs serve at the pleasure of either the President or their agency head. The IGs appointed by the President with Senate confirmation may be removed only by the President, while the IGs appointed by their agency heads may be removed or transferred from their office only by the agency head. However, in both types of removal, the reasons must be communicated to the Congress after the action has taken place.

H.R. 928 includes a provision to specify a 7-year term of office for each IG with more than one term possible. In addition, the bill provides a removal-for-cause provision whereby an IG may be removed from office prior to the expiration of his or her term only on the basis of permanent incapacity, inefficiency, neglect of duty, malfeasance, conviction of a felony, or conduct involving moral turpitude.

The majority of the panel participants did not favor statutorily establishing a fixed term of office for IGs. The reasons included the panelists' belief that the proposal could disrupt current agency/IG relationships and that agency flexibility is needed to remove a poor-performing IG if necessary. On the other hand, a statutory term of office and removal for specified causes was viewed positively by some panelists as a means of enhancing independence by relieving some of the immediate pressure surrounding removal. The panel members did generally support a statutory requirement to notify the Congress in writing in advance of removing an IG, with an explanation of the reason for removal. The participants cautioned that this procedure should consist only of notification, without building in additional steps or actions in the removal process.

IG budget submission

The IG Act Amendments of 1988 require the President's budget to include a separate appropriation account for each of those IGs who are appointed by the President or otherwise specified by the act. In this context, IG budget requests are generally part of each agency's budget process and are

[4]GAO, *Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General*, GAO-06-931SP (Washington, D.C.: Sept. 11, 2006).

submitted as a separate budget line item to the Office of Management and Budget (OMB) and the Congress as a part of each agency's overall budget. In contrast, most IGs appointed by their agency heads do not have a separate appropriation account.

H.R. 928 would give the IGs an opportunity to justify their funding requests directly to OMB and the Congress in addition to being a part of their agencies' budget processes. In those cases where the IGs make their budget requests directly to OMB and the Congress, H.R. 928 would also require a comparison of the budget requests submitted by the IGs to the funds requested by the agency heads for their IGs included in the *Budget of the United States Government*. The panel members had mixed views about whether IGs should submit their budget requests directly to OMB and the Congress. The panel believed that the current system of separate budget line items for the presidential IGs works well and that all IGs should have separate budget line items. This is an issue the Congress would need to consider in the context of the broader budget and appropriations process.

IG Council

In accordance with Executive Order No. 12805 issued in 1992, the IGs meet and coordinate as two groups. The IGs appointed by the President and confirmed by the Senate are members of the President's Council on Integrity and Efficiency (PCIE), and the IGs appointed by their agency heads are members of the Executive Council on Integrity and Efficiency (ECIE). Both the PCIE and ECIE are chaired by the OMB Deputy Director for Management.

H.R. 928 provides for a combined IG Council with duties and functions similar to the current PCIE and ECIE, including (1) identifying, reviewing, and discussing areas of weakness and vulnerability in federal programs and operations with respect to fraud, waste, and abuse; (2) developing plans for coordinated governmentwide activities that address these problems and promote economy and efficiency in federal programs and operations; and (3) developing policies and professional training to maintain a corps of well-trained and highly skilled IG personnel. The bill also provides for a separate appropriation account for the IG Council.

In a prior report[5] we recommended establishing an IG Council in statute with a designated funding source. We believe that by providing a statutory

[5]GAO, *Inspectors General: Enhancing Federal Accountability*, GAO-04-117T (Washington, D.C.: Oct. 8, 2003).

basis for the council's roles and responsibilities, the permanence of the council could be established and the ability to take on more sensitive issues could be strengthened. In contrast, the participants in our May 2006 panel discussion had mixed views about statutorily establishing a joint IG Council but did favor establishing a funding mechanism.

H.R. 928 also provides for an Integrity Committee of the IG Council to review and investigate allegations of IG misconduct. The Integrity Committee's function would be similar to that of the current Integrity Committee of the PCIE and ECIE, which is charged with receiving, reviewing, and referring for investigation, where appropriate, allegations of wrongdoing against IGs and members of the IG's senior staff operating with the IG's knowledge. Currently, the Integrity Committee receives its authority under Executive Order 12993, signed in 1996, and is chaired by a representative of the FBI. Other members of the committee are the Special Counsel of the Office of Special Counsel, the Director of the Office of Government Ethics, and three IGs representing the PCIE and the ECIE. Cases investigated by members of the Integrity Committee may be forwarded to the PCIE and ECIE Chairperson for further action.

We believe that H.R. 928 would provide the IG councils—formed currently through executive order—with needed statutory permanence, and we continue to support formalizing a combined council in statute, along with the Integrity Committee. We also strongly support the concept behind the Integrity Committee. We believe it is imperative that the independence of the Integrity Committee be preserved and view this legislation as being directed to ensure permanence of this important function and not to change the basic underpinnings.

IG offices as separate agencies

In order to better attract and retain highly qualified IG employees, H.R. 928 would provide the IGs with personnel authority separate and apart from that of their agencies. To accomplish this, the bill would consider each IG office to be a separate agency for purposes of implementing certain provisions in Title 5 of the United State Code dealing with employment, retention, separation, and retirement.

We have concerns about this proposal. First, we are concerned about the inherent inefficiencies in enforcing a splitting of administrative processes currently often being shared by agencies and their IGs. Secondly, in providing such authorities to the IGs, there could be a great disparity in how this would be implemented by each IG office. The IG community has suggested that, as an alternative, the IGs could seek legislative authorization to apply to the Office of Personnel Management (OPM) for

certain personnel authorities. We believe that if implementation is properly coordinated through the PCIE and ECIE, the IGs' proposal represents a good alternative and would address the intent of H.R. 928.

H.R. 928 also covers all provisions in Title 5 relating to the Senior Executive Service including receiving pay increases and bonuses. Issues over IG pay and bonuses have arisen over the past few years due to recent requirements[6] that rates of pay for the federal Senior Executive Service (SES) be based on performance evaluations as part of a certified performance management system. IGs who are subject to these requirements must therefore receive performance evaluations in order to qualify for an increase to their pay. The IGs are provided general supervision by their agency heads in accordance with the IG Act. However, independence issues arise if the agency head is evaluating IG performance when that evaluation is used as a basis for an increase in the IG's pay or for providing a bonus. As a result, some IGs have effectively had their pay capped without the ability to receive pay increases or bonuses.

The majority of panel participants believed that the pay structure for IGs needs to be addressed. The discussion emphasized the importance of providing comparable compensation for IGs as appropriate, while maintaining the IGs' independence in reporting the results of their work, and providing them with performance evaluations that could be used to justify higher pay. However, responses to IGs' receiving performance bonuses were mixed, mainly due to uncertainty about the overall framework that would be used to evaluate performance and make decisions about bonuses. We believe that an independent framework could be established through the PCIE and ECIE, in cooperation with OPM, to conduct performance evaluations of the IGs.

IG investigative and law enforcement authorities

The IG Act has been amended by subsequent legislation to provide IGs appointed by the President with law enforcement powers to make arrests, obtain and execute search warrants, and carry firearms. The IGs appointed by their agency heads were not included under this amendment but may obtain law enforcement authority by applying to the Attorney General for deputation on a case-by-case basis. In addition, the Program Fraud Civil

[6]National Defense Authorization Act, Pub. L. No. 108-136, 117 Stat. 1392, 1638 (Nov. 24, 2003).

Remedies Act of 1986[7] provides agencies with IGs appointed by the President with the authority to investigate and report false claims and recoup losses resulting from fraud below $150,000. The agencies with IGs appointed by their agency heads do not have this authority. Also, the IG Act provides all IGs with the authority to subpoena any information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to perform the functions of the IG Act. This subpoena authority does not specifically address electronically stored information or other forms of data.

H.R. 928 would allow IGs appointed by their agency heads to apply to the Attorney General for full law enforcement authority instead of having to renew their authority on a case-by-case basis or through a blanket authority that must be renewed after an established period of time. The bill would also provide the designated federal entities with IGs appointed by their agency heads the authority under the Program Fraud Civil Remedies Act to address and prosecute false claims and recoup losses resulting from fraud. In addition, the bill would provide the authority for all IGs to require, by subpoena, information and data in any medium, including electronically stored information as well as any "tangible thing."

Panel participants overwhelmingly supported the provisions to (1) allow IGs appointed by their agency heads to apply to the Attorney General for full law enforcement authority instead of having to renew their authority on a case-by-case basis or through a blanket authority, (2) provide designated federal entities with IGs by their agency heads the authority under the Program Fraud Civil Remedies Act to investigate and report false claims and recoup losses resulting from fraud, and (3) define IG subpoena power to include any medium of information and data.

GAO and IG Coordination

In May of this year the Comptroller General hosted a meeting with the IGs for the principal purpose of improving the coordination of federal oversight between the IGs and GAO. We believe that effective, ongoing coordination of the federal audit and oversight efforts of GAO and the IGs is more critical than ever, due to the challenges and risks currently facing our nation, including our immediate and long-term fiscal challenges, increasing demands being made for federal programs, and changing risks. Closer strategic planning and ongoing coordination of audit efforts

[7] 31 U.S.C. §§ 3801-3812.

between GAO and the IGs would help to enhance the effectiveness and impact of work performed by federal auditors. Working together and in our respective areas of expertise, GAO and the IGs can leverage each other's work and provide valuable input on the broad range of high-risk programs and management challenges across government that need significant attention and reform.

We will continue in our coordination with the IGs to help achieve our mutual goals of providing the oversight needed to help ensure that the federal government is transparent, economical, efficient, effective, ethical, and equitable. Significant coordination has been and is occurring between GAO and the IGs on agency-specific issues and cross-cutting issues. The Comptroller General in testifying[8] on the 25th anniversary of the IG Act, suggested, in light of this increased need for a well-coordinated federal audit community, the creation of a more formal mechanism going forward for a governmentwide council. In addition, panel participants recognized a critical need for a governmentwide council to address broad accountability issues among GAO, the IGs, and OMB. The structure of this council could be similar in concept to the Joint Financial Management Improvement Program (JFMIP), whose principals[9] meet at their discretion to discuss issues of mutual concern to promote governmentwide financial management. An accountability council could share knowledge and coordinate activities to enhance the overall effectiveness of government oversight and to preclude duplicate actions.

A good example of a strong formalized partnership between the GAO and the IGs is in the area of financial auditing. Under the Chief Financial Officers Act of 1990, as amended, the IGs at the 24 agencies covered by the act are responsible for the audits of their agencies' financial statements. In meeting these responsibilities, most IGs have contracted with independent public accountants to conduct the audits either entirely or in part. In some cases, GAO conducts the audits. GAO is responsible for the U.S. government's consolidated financial statement audit, which is based largely on the results of the agency-level audits. GAO and the IGs have agreed on a common audit methodology, the GAO-PCIE Financial Audit Manual, which is used by all auditors of federal financial statements,

[8]GAO, *Inspectors General: Enhancing Federal Accountability*, GAO-04-117T (Washington, D.C.: Oct. 8, 2003).

[9]The Comptroller General, the Director of OMB, the Secretary of the Treasury, and the Director of the Office of Personnel Management

whether the IG, an independent public accounting firm, or GAO. In addition, we have established formal ongoing coordination and information-sharing throughout the audit process so that both the IGs and GAO can successfully fulfill their respective responsibilities in an effective and efficient manner.

In closing, under the landmark IG Act, the IGs have continued to be an essential component of the government accountability framework and the contributions of the IGs have been most noteworthy. IG independence is critical to the effectiveness of the IG offices in carrying out their unique roles of overseeing federal agencies. Independence not only depends on organizational characteristics, but also on the personal independence of the individual appointed to the office and this individual's freedom from external factors that can impair independence. The IG must maintain this independence while reporting to two organizations—its agency and the Congress. This task requires an IG to maintain a prudent balance between loyalty to the agency and responsibility for conducting objective and independent audits and investigations as required by the IG Act. We believe that a number of the provisions in H.R. 928 would help to enhance IG independence and effectiveness, and we would be pleased to assist the Subcommittee as it considers this legislation.

This completes my formal statement. Mr. Chairman, I would be pleased to answer any questions that you or the Subcommittee members may have at this time.

Enclosure I: Inspectors General Appointed by the President

Fiscal Year 2006 Appropriated Budgets and Actual FTEs

	Federal departments and agencies	Budgets	FTEs
1	Department of Health and Human Services	$ 222,000,000	1,445
2	Department of Defense	206,772,130	1,370
3	Treasury IG for Tax Administration	131,953,140	838
4	Department of Housing and Urban Development	104,940,000	646
5	Social Security Administration	91,476,000	608
6	Department of Homeland Security	82,187,000	520
7	Department of Agriculture	80,336,000	598
8	Department of Labor	71,445,000	450
9	Department of Veterans Affairs	70,174,000	464
10	Department of Justice	68,000,000	411
11	Department of Transportation	61,874,000	419
12	Environmental Protection Agency	50,241,000	337
13	Department of Education	48,510,000	288
14	General Services Administration	42,900,000	293
15	Department of Energy	41,580,000	262
16	Department of the Interior	38,541,000	261
17	Agency for International Development	36,640,000	172
18	National Aeronautics and Space Administration	32,400,000	203
19	Department of State	30,945,000	186
20	Federal Deposit Insurance Corporation	30,690,000	125
21	Department of Commerce	22,467,000	122
22	Small Business Administration	20,361,080	95
23	Office of Personnel Management	18,216,000	131
24	Department of the Treasury	16,830,000	116
25	Tennessee Valley Authority	14,700,000	90
26	Nuclear Regulatory Commission	8,308,000	49
27	Railroad Retirement Board	7,124,000	53
28	Corporation for National and Community Service	5,940,000	23
29	Export-Import Bank	1,000,000	0
30	Central Intelligence Agency	na	na
	Totals	**$1,658,550,350**	**10,575**

Source: PCIE and ECIE.

na - Information not available.

Enclosure II: Inspectors General Appointed by Agency Heads

Fiscal Year 2006 Appropriated Budgets and Actual FTEs

	Federal departments and agencies	Budgets	FTEs
1	United States Postal Service	$158,000,000	916
2	Special IG for Iraq Reconstruction	34,000,000	115
3	Amtrak	16,984,000	87
4	National Science Foundation	11,500,000	62
5	Federal Reserve Board	5,118,740	33
6	Government Printing Office	4,950,200	23
7	Pension Benefit Guaranty Corporation	4,038,990	21
8	Peace Corps	3,064,000	19
9	Federal Communications Commission	2,597,903	20
10	Securities and Exchange Commission	2,507,300	10
11	Legal Services Corporation	2,507,000	18
12	Library of Congress	2,457,000	17
13	National Archives and Records Administration	2,200,000	16
14	Smithsonian Institution	1,938,932	14
15	Equal Employment Opportunity Commission	1,810,307	11
16	National Credit Union Administration	1,764,926	8
17	Election Assistance Commission	1,600,000	1
18	National Labor Relation Board	1,080,327	7
19	Farm Credit Administration	998,248	5
20	Federal Housing Finance Board	959,271	4
21	Federal Trade Commission	917,500	5
22	Corporation for Public Broadcasting	834,264	9
23	Commodity Futures Trading Commission	795,000	4
24	Federal Election Commission	691,584	5
25	National Endowment for the Humanities	589,600	5
26	U.S. International Trade Commission	521,205	1
27	Appalachian Regional Commission	476,000	3
28	Federal Maritime Commission	469,885	2
29	National Endowment for the Arts	402,000	3
30	Federal Labor Relations Authority	284,487	1
31	Consumer Product Safety Commission	241,270	2
32	Denali Commission	na[a]	1
33	U.S. Capitol Police	na[b]	na[b]
34	Office of Director of National Intelligence	na[b]	na[b]
	Totals	**$266,299,939**	**1,448**

Source: PCIE and ECIE.

na - Information not available.

[a]IG budget is not determined separately from the agency's budget.

[b]IG offices established in 2006.

Related GAO Products

Inspectors General: Activities of the Department of State Office of Inspector General. GAO-07-138. Washington, D.C.: March 23, 2007.

Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General. GAO-06-931SP. Washington, D.C.: September 11, 2006.

United Nations: Funding Arrangements Impede Independence of Internal Auditors. GAO-06-575. Washington, D.C.: April 25, 2002.

Activities of the Treasury Inspector General for Tax Administration. GAO-05-999R. Washington, D.C.: September 27, 2005.

Activities of the Amtrak Inspector General. GAO-05-306R. Washington, D.C.: March 4, 2005.

Kennedy Center: Stronger Oversight of Fire Safety Issues, Construction Projects, and Financial Management Needed. GAO-05-334. Washington, D.C.: April 22, 2005.

Inspectors General: Enhancing Federal Accountability. GAO-04-117T. Washington, D.C.: October 8, 2003.

Department of Health and Human Services: Review of the Management of Inspector General Operations. GAO-03-685. Washington, D.C.: June 10, 2003.

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Mr. TOWNS. Thank you very much, Mr. Steinhoff.
Ms. Burrows.

STATEMENT OF VANESSA BURROWS AND FRED M. KAISER

Mr. KAISER. Mr. Chairman, may I interrupt for just a second to thank, first of all, the subcommittee and you for inviting us to testify on behalf of this legislation. I am Fred Kaiser. Ms. Burrows and I are sharing responsibility for our prepared statement, as well as our oral statement. I must say I have been asked to go first, if you don't mind.

Mr. TOWNS. We will accept that.

Mr. KAISER. OK. Fine.

The Inspector General Act, as has been noted here, celebrates its 30th anniversary next year, and indeed last year was the 30th anniversary of the first of the contemporary statutory IGs that were created. Several of us at CRS had an opportunity to work on that legislation, both with L.H. Fountain, one of your predecessors, as well as members of the House Government Operations Committee, as it was known at the time.

That legislation and succeeding legislation has had bipartisan and bicameral support here on the Hill, and in combatting waste, fraud, and abuse IGs have been granted a substantial amount of independence, authority, and resources, and in combination these assets are probably greater than held by any similar internal auditing and investigating office at any level of government, here or abroad, now or in the past.

Nonetheless, H.R. 928 attempts to address recent and in some cases longstanding congressional concerns regarding the Offices of Inspector General. Given the time we have available, however, we will only look at a few of them.

One we have heard so much about is the fixed term of office, 7 years with the possibility of reappointment. The grant of a fixed term of office does not run contrary to precedent and has been viewed as providing the incumbent with a chance to gain expertise as well as independence. However, only one Inspector General has a fixed term of office, and that is a 7-year term which can be renewed in the U.S. Postal Service. The Peace Corps IG also has a limited term, but that is only indirect because all Peace Corps personnel are limited to 5 years with a possibility of an extension as far as 8½ years. Nonetheless, only the IG in the Postal Service has that specific provision.

Questions might arise, however, whether 7 years is sufficient, since it does not extend across a two-term Presidency. In addition, allowing for reappointment, which would extend, of course, an incumbent's tenure, might impinge on the IG's independence. He or she would be reappointed by an official who or whose political allies might be subject to an IG investigation at the time.

Also, a term limit, even if renewable, might still offer a lame duck Inspector General if it becomes evident that he or she will not be reappointed. Some have, therefore, suggested as an alternative that there be a single longer term, 10 or 15 years, without the possibility of reappointment, as currently applied to the Comptroller General.

Second, the IG budgets and appropriations, again, we have heard comments about that. H.R. 928 would require reporting of the IG's initial estimates directly to the agency head, Office of Management and Budget, and, of course, appropriate committees of Congress. This would ensure that all three units were aware of the initial estimate, and thus enable each to calculate any decrease or adjustment made afterwards by agency officials or by OMB.

In addition to finding any such alterations, the change in budget reporting could also contribute to congressional oversight of the IG offices and their projected spending, but also as well as to OMB and agency leadership. So it enhances congressional oversight in a very meaningful way, it would appear.

My colleague, Ms. Burrows, who is an attorney at CRS, would like to comment, if she may, on the removal for cause provision.

Ms. BURROWS. H.R. 928 proposes a change in the removal provision for IGs by requiring that removal by the President or the agency head must be for cause on specified grounds such as neglect of duty, inefficiency, or malfeasance of office. Currently, IGs have limited protection with respect to removal from office. IGs can be removed from office for any reason by the President or the agency head.

The Supreme Court has held that Congress has the authority to limit removal of individuals by the President, and that Congress can determine for which reasons the individuals should be removed. In *Humphrey's Executor* v. *The United States,* the court determined that appointed officers other than officers performing purely executive functions could not be removed during their terms of office except for the causes listed in the statute.

According to the court, congressional restraints on the President's power of removal fall within the principle of separation of powers. In *Morrison* v. *Olson,* the Supreme Court expanded Congress' authority as established in *Humphrey's Executor.* The court held that now Congress has the authority to provide for-cause removal protection to any advice and consent officer.

In sum, the addition of the restriction of removal only for cause would protect IGs from being removed by the President or an agency head based on policy reasons, alone. H.R. 928 specifies particular grounds for removal, and thus makes clear that those reasons are the only ones the President or the agency head can remove an IG.

Thank you.

[The prepared statement of Ms. Burrows and Mr. Kaiser follows:]

Statement of
Vanessa Burrows, Legislative Attorney
and
Fred M. Kaiser, Specialist in American National Government
Congressional Research Service

Before

The Committee on Oversight and Government Reform
Subcommittee on Government Management, Organization, and Procurement
House of Representatives

June 20, 2007

on

"Inspectors General: Independence and Accountability"

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting us to comment on proposed changes affecting offices of inspectors general (OIGs), particularly those offered in H.R. 928, the proposed Improving Government Accountability Act, introduced by Representative Jim Cooper. The language of H.R. 928 reflects some past proposals and utilizes concepts found in current law. We ask that our prepared statement and several CRS reports be included in the record.

Overview

The Inspector General Act, as amended, will reach its 30th anniversary in 2008, and today there are nearly 60 offices of inspectors general. This longevity and growth built on the efforts of the Committee on Oversight and Government Reform (then the Committee on Government Operations) in spearheading their origination, actually beginning in 1976. Substantial bipartisan and bicameral support was necessary at their creation, given the across-the-board opposition by executive agencies early on, and for their continued development.

There are two types of Inspectors General (IGs): (1) federal establishment IGs are appointed by the President with Senate confirmation, and may be removed only by the President except in the case of impeachment; and (2) designated federal entity IGs are appointed and removed by the agency head in usually smaller agencies. The establishing mandates and statutory supports for the IGs[1] provide a useful vantage point to view the current proposals to modify the IGs, their statutory powers and political power. In combating waste, fraud, and abuse, IGs have been granted a substantial amount of independence, authority, and resources. (In combination, these assets are probably greater than those held by any similar internal auditing-investigating office at any level of government, here or abroad, now or in the past.) Some of these purposes and powers of the IGs include their charges to:

- conduct and supervise audits and investigations within an agency;
- provide leadership and coordination for recommending policies and activities to promote the economy, efficiency, and effectiveness of programs and operations;
- have access to agency information and files and subpoena power for records and documents;
- receive complaints from agency employees whose identities are to remain confidential (with certain stated exceptions);
- implement the cash incentive award program for employee disclosures of waste, fraud, and abuse;
- hold independent law enforcement authority (in offices in establishments);
- receive a separate appropriations account for offices in establishments;
- be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in relevant professions;
- remain in office without term or tenure limits;
- report suspected violations of federal criminal law immediately and directly to the Attorney General; and
- operate under only the "general supervision" of the agency head, who is prohibited (with only a few express exceptions) from preventing or prohibiting an IG from initiating or carrying out an audit or investigation.

Along with these, IGs have critical reporting requirements to keep the agency head and Congress "fully and currently informed" through specified reports and otherwise (which includes testifying at hearings and meeting with Members and staff). The reports include semi-annual reports as well as immediate reports regarding "particularly serious or flagrant problems." For both types, the IG reports are submitted to the agency head who transmits them unaltered, but with comments deemed necessary, to Congress within a designated period of time. The resulting connections between the IGs and Congress not only enhance legislative oversight capabilities, but also provide an avenue for potential support for IG findings, conclusions, and recommendations for corrective action.

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[1] Codified at 5 U.S.C. Appendix and 31 U.S.C. § 1105(a)(25).

Proposed Changes

H.R. 928 attempts to address recent, and in some cases, longstanding, congressional concerns regarding OIGs. Despite their institutional arrangements and authorities, modifications to the IG Act, as amended, have been seen as useful to enhance the IG's independence and power. Along these lines is the wide range of proposed changes in the Improving Government Accountability Act, as introduced. Its overarching theme is to strengthen and clarify the authority, tenure, resources, oversight, and independence of the inspectors general. The bill's specific proposals and considerations set up additional protections for IGs, including "for cause" removal and terms of office; consolidation and codification of two existing councils established by executive order — the President's Council on Integrity and Efficiency (PCIE), which consists of the presidentially appointed IGs, and the Executive Council on Integrity and Efficiency (ECIE), which consists of agency head appointed IGs — into a single Council of the Inspectors General on Integrity and Efficiency; the reporting of the IG's initial budget and appropriations estimates to the Office of Management and Budget, the agency head, and congressional committees; program evaluation in IG semi-annual reports; and the grant of law enforcement authority to IGs in designated federal entities.

Removal for cause only. First, H.R. 928 proposes a change in the removal provision for IGs by requiring that removal by the President or the agency head must be for cause on specified grounds. H.R. 928 provides that "[a]n Inspector General may be removed from office prior to the expiration of his or her term only on any of the following grounds: (1) Permanent incapacity. (2) Inefficiency. (3) Neglect of duty. (4) Malfeasance. (5) Conviction of a felony or conduct involving moral turpitude." Congress has provided these specific grounds, and an appendix to this testimony lists other examples of statutory terms used to limit the President's authority to remove officials appointed with the advice and consent of the Senate. Under current law, IGs have limited protection with respect to removal from office. Presidentially appointed IGs may be removed from office for any reason by the President. The President is required to communicate the reasons for such removal to Congress; however, the reasons need not be given in writing and no time limit is set.[2] There is no requirement that Congress be given advance notice of an IG's removal. IGs who are appointed by an agency head may be removed or transferred for any reason by the agency head, and the only limitation on such removal is that the agency head must promptly communicate to both Houses of Congress, in writing, the reasons for the IG's removal or transfer.[3]

The Supreme Court has held as constitutional congressional conditions limiting the President's ability to remove appointed officers. In *Humphrey's Executor v. United States*,[4] the Court determined that appointed officers, other than officers performing "purely executive" functions, could not be removed during their terms of office "except

[2] 5 U.S.C. App. § 3(b).

[3] 5 U.S.C. App. § 8G(e).

[4] 295 U.S. 602 (1935).

for one or more of the causes named in the applicable statute,"[5] such as "inefficiency, neglect of duty, or malfeasance in office."[6] The Court reasoned that "the fixing of a definite term [of office] subject to removal for cause . . . is enough to establish legislative intent that the term not be curtailed in the absence of such cause."[7] Congressional restraints on the President's power of removal fall within the principle of separation of powers, according to the Court, which recognized the "fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others."[8]

Subsequently, in *Morrison v. Olson*,[9] the Supreme Court expanded the congressional authority established in *Humphrey's Executor*. The Court removed the limitations with respect to inapplicability to officers performing "purely executive" functions, holding that now Congress has the authority to provide for cause removal protection to *any* advice and consent officer. The Court established a two-step balancing test for such separation of powers situations. First, the President must establish that the congressional action interferes with a core power. If so, Congress must show a necessity for its action to overcome the interference. In *Morrison*, the Supreme Court held that congressional restrictions on the Attorney General's ability to remove an executive officer did not violate the constitutional principle of separation of powers.[10] In analyzing the issue, the Court reasoned that the "good cause" standard for removal did not impermissibly interfere with the functions of the executive branch because Congress had not tried "to gain a role in the removal of executive officials" beyond its current powers.[11] Additionally, even with its limitations, removal power remained within the executive branch,[12] thus enabling the executive branch to perform its constitutional duty to "take care that the laws be faithfully executed."[13] In the IG context, the executive branch would "retain[] ample authority to assure that the [IG] is competently performing his or her statutory responsibilities" according to the IG Act.[14] The Court also noted that

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[5] *Id.* at 632.

[6] *Id.* at 621; 15 U.S.C. § 41.

[7] *Humphrey's Executor*, 295 U.S. at 623.

[8] *Id.* at 629-30.

[9] 487 U.S. 654 (1988).

[10] The now-lapsed independent counsel provision in the Ethics in Government Act prohibited the Attorney General's removal of an independent counsel except for "good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that substantially impairs the performance of such independent counsel's duties." 28 U.S.C. § 596(a)(1).

[11] *Morrison*, 487 U.S. at 686; *see also id.* at 694-95.

[12] *Id.* at 686; *see also id.* at 694, 696.

[13] U.S. CONST. art. II, § 3.

[14] *Morrison*, 487 U.S. at 692.

Congress's limitation on the executive's removal power "was essential, in the view of Congress, to establish the necessary independence of the office."[15]

Congress may grant for cause removal protection to officers at all levels of departments and agencies for reasons varying from general "cause" to discrete, limited reasons such as inefficiency, neglect of duty, and malfeasance in office. For example, the Commissioner of Social Security "may be removed from office only pursuant to a finding by the President of neglect of duty or malfeasance in office."[16] Yet the Chief Actuary of the same agency[17] and the Chief Actuary of the Centers for Medicare and Medicaid Services[18] "may be removed only for cause." During the Clinton Administration, Congress even provided temporary protection from the President's authority to remove appointed officials for the Under Secretary for Nuclear Security of the Department of Energy.[19] An appendix to this testimony lists other statutory examples of constitutional limits on the President's authority to remove officials appointed with the advice and consent of the Senate.

Precedents also exist for limiting the removal of an individual with an analogous position to an IG to "for cause" reasons. The Special Counsel, who heads an independent agency dedicated to protecting federal employees and applicants from prohibited personnel practices, may be removed for cause, which the relevant statute defines as "inefficiency, neglect of duty, or malfeasance in office."[20] In the cases of the

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[15] *Id.* at 693. In *Humphrey's Executor v. United States*, which addressed the removal of a Commissioner of the Federal Trade Commission, the Supreme Court viewed the President's power of removal as a "coercive influence that threatens the independence" of independent agencies. 295 U.S. 602, 630 (1935); *see also* Morrison v. Olson, 487 U.S. 654, 688 (1988); Mistretta v. United States, 488 U.S. 361, 411 (1989).

[16] 42 U.S.C. § 902(a)(3).

[17] 42 U.S.C. § 902(c)(1).

[18] 42 U.S.C. § 1317(b)(1).

[19] P.L. 106-398, App. § 3151, 114 Stat. 1654A-464. The first Under Secretary for Nuclear Security of the Department of Energy, after its reorganization incorporating the National Nuclear Security Administration, was given a term of office of three years and "the exclusive reasons for removal from office . . . shall be inefficiency, neglect of duty, or malfeasance in office." *Id.*

[20] 5 U.S.C. § 1211. Regarding grounds for removal, it should be noted that there is no clear standard clarifying the statutory terms "inefficiency, neglect of duty or malfeasance in office." *See* Marshall J. Breger, Gary J. Edles, *Established by Practice: The Theory and Operation of Independent Federal Agencies*, 52 ADMIN. L. REV. 1111, 1144-45 (2000). Congress has stated, however, that a removal for good cause must be based on "some type of misconduct," as opposed to the refusal to carry out a presidential order. *See* INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1987, S. REP. NO. 100-123, at 1-3 (1st Sess. 1987). Regarding the question of congressional removal, "Congress may typically remove such officers only for impeachable offenses." S.E.C. v. Davis, 689 F. Supp. 767, 770 (S.D. Ohio 1988). For a discussion of conduct that may give rise to an impeachment, see Elizabeth B. Bazan, *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice*, CRS Report No. 98-186A, at 24-28 (Feb. 27, 1998).

Comptroller General, who heads the Government Accountability Office, and Deputy Comptroller General, the grounds for removal for cause extend to permanent disability, inefficiency, neglect of duty, malfeasance, or a felony or conduct involving moral turpitude.[21] H.R. 928 outlines the same removal provisions for IGs as the for cause requirements for the Comptroller General and Deputy Comptroller General, except that the bill would add a *conviction* of a felony or conduct involving moral turpitude.[22]

In the IG context, one IG, the IG for the United States Postal Service (USPS), may be removed "upon the written concurrence of at least 7 [of 9] Governors, but only for cause."[23] What constitutes cause for removal is not defined in the USPS IG statute.

In sum, Congress has the authority to limit removal of individuals by the President or an agency head and can determine for which reasons that individuals should be removed. H.R. 928 is explicit in listing the reasons for which Congress wants to allow IGs to be removed. Different written formulations of the removal for cause provision — for example, "neglect of duty or malfeasance" as opposed to "inefficiency, neglect of duty, or malfeasance" — do not diminish the purpose of giving IGs a degree of independence if Congress deems it proper. The addition of the restriction of removal only for cause, without delineating the causes for which individuals could be removed, would protect IGs from being removed by the President or an agency head based on policy reasons or because of a disagreement with an IG's determination. H.R. 928 specifies particular grounds for removal and thus makes clear that those reasons are the only reasons the President or an agency head can remove an IG.

For cause removal, however, does recognize that some minimal due process procedures are required. This was implicit in *Humphrey's Executor*. President Franklin D. Roosevelt removed Federal Trade Commissioner William E. Humphrey, noting "I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission."[24] Humphrey, and later his estate, contested his removal in court and succeeded. We are not aware of any instance in which a "for cause" removal officer has been fired by the President since Humphrey, and therefore there has been no establishment of a mechanism to determine the appropriateness of presidential removal. However, there is one recorded instance of an advice and consent officer who demanded and was offered a minimal hearing.[25]

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[21] 31 U.S.C. § 703. However, the Comptroller General and Deputy Comptroller General are legislative branch officials, and they can only be removed by joint resolution of Congress. *See* Bowsher v. Synar, 478 U.S. 714 (1986).

[22] The for cause removal requirements for the Comptroller General and Deputy Comptroller General do not require *a conviction* of a felony or conduct involving moral turpitude, as H.R. 928 would require.

[23] 39 U.S.C. § 202(e)(3).

[24] Humphrey's Executor v. United States, 295 U.S. 602, 619 (1935).

[25] The White House delineated charges of improprieties justifying the removal of Civil Aeronautics Board member Robert D. Timm in a letter to him in 1975. He alleged that the White House wanted to remove him based on policy differences. Presidential advisors created an

The removal for cause requirement is viewed by its proponents as a way to strengthen and preserve the independence of the IGs, whose ability to investigate allegations of waste, fraud, and abuse within their respective agencies would be enhanced by prohibiting their firing without cause.[26] Requiring for cause removal could potentially prevent the removal of an IG whose investigations were proving embarrassing to the agency. However, requiring removal only for cause would meaningfully restrict the President's and agency heads' discretion, and may make it difficult to remove a poor-performing IG. An alternative approach might be to require the President or agency head to notify the IG and Congress in advance (30 or 60 days) about the prospect of a dismissal and the reasons for it. This would allow an opportunity before the removal occurs for the IG to challenge the specific concerns or allegations, for Congress to inquire into them, and, possibly, for a resolution of the dispute.

The Council of the IGs on Integrity and Efficiency proposed by H.R. 928, discussed in greater detail below, would not have enforcement authority to remove an IG after investigating and reporting on allegations. The current presidentially established IG councils, PCIE and ECIE, also lack such authority. Presidents and agency heads may be reluctant to adopt recommendations for disciplinary action from such oversight councils, and statutory for cause removal may not increase the likelihood of action on such recommendations. Some questions may be raised as to whether the current system of independence, which falls short of protection and tenure, has provided an overall satisfactory result. Apparent failures may be attributable to the effectiveness of current oversight mechanisms to monitor the appropriateness of IG activities.

A set term of office (seven years, with possible reappointment). H.R. 928 would institute fixed terms of office for all established and designated federal entity IGs. The new provision is designed to encourage IGs to remain in office for at least the seven years, as it appears that many leave before then. (However, there is no systematic survey of IG tenure in office. It may be possible for the PCIE and the ECIE, which already have a database covering each IG's length of service, to conduct a study of this matter.)

The grant of a fixed term of office does not run contrary to precedent and has been viewed as providing the incumbent with the chance to gain expertise,[27] as well as independence.[28] However, only one IG, the USPS IG, has a fixed term of office; it is a

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informal hearing process and set a date for the hearing, in which Timm refused to participate, instead demanding "a full hearing before an independent hearing officer, with the right to judicial review." The Administration next detailed the charges against Timm and again offered the hearing. Timm then resigned. S. COMM. ON GOVERNMENTAL AFFAIRS, STUDY ON FEDERAL REGULATION, VOL. V: REGULATORY ORGANIZATION, S. DOC. NO. 95-91, at 37-38 (2d Sess. 1977).

[26] *See Humphey's Executor*, 295 U.S. at 630; *see also* Morrison v. Olson, 487 U.S. 654, 688 (1988); Mistretta v. United States, 488 U.S. 361, 411 (1989).

[27] *Humphrey's Executor*, 295 U.S. at 624.

[28] "The authority of Congress . . . cannot well be doubted, and that authority includes, as an

seven-year term and is renewable. All other IGs have no fixed terms. Several other executive branch positions also have fixed terms of office, such as the Director of the Office of Personnel Management (four years),[29] the Director of the Office of Government Ethics (five years),[30] and the Special Counsel (five years).[31] The Director of the Office of Government Ethics and the Special Counsel are similar to IGs in that they perform investigative functions. The Comptroller General of the Government Accountability Office, a legislative branch position, serves for fifteen years, and like IGs, conducts audits and investigations.[32] Similar to the provisions regarding the USPS IG, H.R. 928 would establish the seven-year, renewable fixed term of office for all other IGs.

Questions might arise over whether seven years is sufficient, since it does not extend across a two-term presidency. Such a term would likely extend the IG's tenure beyond that of most agency heads, arguably providing greater continuity, stability, and independence for IGs and their offices. At a day-long session on IG independence which took its guidance, in part, from Representative Cooper's bill in the 109th Congress, H.R. 2489, panelists including "current and past administration officials, current PCIE and ECIE leadership, former IGs, participants from research organizations and academia, and congressional staff" discussed this issue.[33] It appears that a majority of panelists participating did not favor statutory IG terms of office.

Allowing for reappointment, which would extend the incumbent's tenure, might impinge on the IG's independence; he or she would be reappointed by an official who (or whose political allies) might be subject to an IG audit or investigation at the time. Term limits, even if renewable, would also allow for a lame-duck IG, if it becomes evident that he or she will not be reappointed. And such limits would still permit a vacancy awaiting a full-fledged inspector general until a replacement arrives (with the position being filled by an acting IG). These characteristics both affect the stability of the office and continuity of its operations, projects, orientation, and priorities. Some may suggest a single but longer term (10 or 15 years without the possibility of reappointment), as currently applied to the Comptroller General.

The term of office section of H.R. 928 may necessitate additional clarification. Though the bill specifies that an establishment (presidentially appointed) IG could serve

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appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime." *Id.* at 629.

[29] 5 U.S.C. § 1102.

[30] 5 U.S.C. App. § 401.

[31] 5 U.S.C. § 1211(a).

[32] 31 U.S.C. § 703.

[33] Government Accountability Office, *Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General*, GAO-06-931SP, at 2, 5-6 (2006). The concerns of the panelists expressed in the GAO report do not appear to focus on the length of the term limit, but rather discuss term limits in conjunction with for cause removal provisions. *Id.*

more than one term of office, the bill also states that such an IG may only "holdover" for no more than an additional year after the expiration of his or her seven-year term:

> An individual may continue to serve as Inspector General beyond the expiration of the term for which the individual is appointed until a successor is appointed and confirmed, except that such individual may not continue to serve for more than 1 year after the date on which the term would otherwise expire.[34]

Since H.R. 928 states that IGs may serve for more than one term, reappointment and confirmation would be required before the IG could serve another full seven-year term due to the holdover language for establishment IGs in § 2(b) of the bill. This would also be true for designated federal entity IGs (appointed by agency heads), for whom there is no holdover provision.

Additionally, the Peace Corps IG currently has a term of office that is indirectly fixed. It appears that no Peace Corps IG has served more than five years since the creation of the IG position. The Peace Corps IG's tenure limit ranges from five to eight-and-a-half years, due to employment time-limits for all Peace Corps personnel. A conforming or technical amendment may help to address the five-year employment limit on Peace Corps employees in 22 U.S.C. § 2506. That statute states that the Director of the Peace Corps may grant a one-year extension to an individual employee, plus a two-and-a-half year addition with the agency. This additional two-and-a-half year extension would only appear to be granted to an IG in the case the IG's extension would "promote the continuity of functions in administering the Peace Corps."[35]

A Council of the Inspectors General on Integrity and Efficiency. H.R. 928 would statutorily establish a Council of IGs on Integrity and Efficiency (CIGIE) in which all of the federal government IGs who are currently part of PCIE and ECIE would participate. The PCIE and ECIE were established by executive order in 1992.[36] The new council's membership would also extend to two other IGs not included in the existing councils; these offices (i.e., at the Central Intelligence Agency and at the Government Printing Office, a legislative branch agency) do not operate directly under the IG Act but instead under their own separate statutory authority. The CIGIE would also include other relevant executive agencies and officials, as the PCIE and ECIE do now, and provide for an Integrity Committee (which already exists under executive order) to handle allegations of wrongdoing by IGs and top officials in their offices. The merger of the two councils would combine their forces and arguably reduce overlap and duplication. One concern, however, might be the size of the new collective and whether it would prove unwieldy. It appears that the proposed CIGIE would be an interagency council of the kind widely seen throughout the federal government.

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[34] H.R. 928, § 2(b)(1).

[35] 22 U.S.C. § 2506(a)(5) and (6).

[36] Exec. Order No. 12805, 57 FR 20627 (May 14, 1992). The PCIE was originally established in 1981 by Executive Order 12301 and amended in 1988 by Executive Order 12625, but both of these orders were replaced when the ECIE was established.

This proposal would modify the existing arrangements, which have grown under executive orders issued by Presidents Ronald W. Reagan, George H. W. Bush, and William J. Clinton. This statutory structure, although incorporating some notable changes, would more strongly institutionalize the current structure, endorsed by successive Presidents, giving it greater stability as well as legislative approval. This change could also add opportunities for congressional oversight of the inspectors general as well as of the coordinative arrangements among themselves and between the IGs and other relevant executive entities.

Integrity Committee. As mentioned above, H.R. 928's proposed § 11(d) would establish the Integrity Committee of the CIGIE. Such committee "shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and certain staff members of the various Offices of Inspector General." This section does not appear to specify how allegations of wrongdoing that are made *against an IG* would be referred to the Integrity Committee. This may raise also the question of who could refer an allegation of an IG's wrongdoing to the committee: Would another IG be able to allege wrongdoing by an IG? However, § 11(d)(5)(A) states that the Integrity Committee shall "review *all* allegations of wrongdoing it receives against an Inspector General" (emphasis added), so clarification as to who may make such allegations may not be necessary.[37] The use of the term "all" in § 11(d)(5)(A) seems to indicate that the Integrity Committee would be required to review every allegation of wrongdoing, including allegations by Members of Congress or by the general public.

After the proposed Integrity Committee reviews allegations of wrongdoing, it must refer to the Chairperson of the Integrity Committee any allegation of wrongdoing that the Integrity Committee determined is "meritorious that cannot be referred to an agency of the executive branch with appropriate jurisdiction over the matter."[38] Next, the Chairperson of the Integrity Committee must thoroughly and timely investigate each referred allegation. The Chairperson must report to the Executive Chairperson of the CIGIE "the results of any investigation that substantiates any [referred] allegation."[39] A finding by the Integrity Committee, after a complete investigation that substantiates any allegation, could be presumptively deemed a finding of cause under the statute that the President or agency head could use in deciding whether to remove an IG. Such a finding would not be binding on the President or the agency head, but could serve as a prima facie basis for removal if the President or agency head agreed with the finding.

IG budgets and appropriations. H.R. 928 would require reporting the IG's initial estimates directly to the Office of Management and Budget (OMB), the agency head, and appropriate congressional committees. This would ensure that all three units were aware of the initial estimate and, thus, enable each to calculate any decreases or

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[37] *See* William J. Esposito, Chairman of the Integrity Committee of the PCIE, *Policy and Procedures for Exercising the Authority of the Integrity Committee of the President's Council on Integrity and Efficiency*, at 5-6 (Apr. 24, 1997).

[38] H.R. 928, § 11(d)(5)(B).

[39] H.R. 928, § 11(d)(7)(C).

adjustments made afterwards by agency officials or OMB. In addition to finding any such alterations, the change in budget reporting could also contribute to congressional oversight of the IG offices and their projected spending as well as OMB and agency leadership.

Program evaluation information in IG semi-annual reports. Inspectors general now issue semi-annual reports on their activities and operations, with specific information and data about their investigations and audits. H.R. 928 would add information about their program evaluations and inspections, which, in the IG community, refer to short-term evaluations of specific, narrow projects, whose findings and conclusions might be used to promote better management practices, among other things. Such inspections apparently reflect a growing field of endeavor for the IGs; periodically updated information about these arguably would benefit the users of the semi-annual reports in Congress, other executive agencies, and the public.

Law enforcement authority. Qualified law enforcement authority (e.g., to carry firearms and execute warrants) has been granted to IGs in federal establishments, that is, the cabinet departments and larger federal agencies. H.R. 928 would extend this coverage, under the same controls, to IGs in designated federal entities, the usually smaller boards, commissions, foundations, and government corporations. A rationale for expanding the scope of this authority to the OIGs of the designated federal entities is that this would increase the capabilities of their criminal investigators, who currently may need to rely on piecemeal statutory authorizations or on special deputation by the U.S. Marshals Service, which is limited in time and location. The additional authority, however, would mean that IGs would need to be vigilant in approving and monitoring the conduct of OIG staff in this regard, ensuring that they receive necessary training, meet relevant qualifications, and use the powers appropriately.

Mr. Chairman, that concludes our prepared statement. We would be happy to answer any questions that you or other Members of the Subcommittee might have, and we look forward to working with all Members and staff of the Subcommittee on this issue in the future.

Appendix:
Select Statutes Limiting President's Authority to Remove Officials Appointed with Advice and Consent of Senate

A. Positions Where Statutes Stipulate that the President may Remove an Official Only for the Cause or Causes Cited:

1. Only for inefficiency, neglect of duty, malfeasance in office

- Federal Energy Regulatory Commission, Commissioners, 42 U.S.C. § 7171(b)
- Federal Labor Relations Authority, Members, 5 U.S.C. § 7104(b)
- Merit Systems Protection Board, Members, 5 U.S.C. § 1202(d)
- Merit Systems Protection Board, Chairman of Special Panel, 5 U.S.C.
- § 7702(d)(6)(A)
- Office of Special Counsel, Special Counsel, 5 U.S.C. § 1211(b)

2. Only for inefficiency, neglect of duty, malfeasance in office, or ineligibility

- National Mediation Board, Members, 45 U.S.C. § 154, First

3. Only for neglect of duty or malfeasance in office

- Consumer Product Safety Commission, Commissioners, 15 U.S.C. § 2053(a)
- National Labor Relations Board, Members, 29 U.S.C. § 153(a)
- Social Security Administration, Commissioner, 42 U.S.C. § 902(a)(3)

4. Only for general cause

- Postal Rate Commission, Commissioners, 39 U.S.C. § 3601(a)

B. Positions Where Statutes Omit the Term "Only" Before the Cause or Causes Cited for Removal:

1. Inefficiency, neglect of duty, or malfeasance in office

- Federal Mine Safety and Health Review Commission, Commissioners, 30 U.S.C. § 823(b)(1)
- Federal Trade Commission, Commissioners, 15 U.S.C. § 41
- National Transportation Safety Board, Members, 49 U.S.C. § 1111(c)
- Nuclear Regulatory Commission, Commissioners, 42 U.S.C. § 5841(e)
- Occupational Safety and Health Review Commission, Commissioners, 29 U.S.C. § 661(b)
- Surface Transportation Board, Members, 49 U.S.C. § 701(b)(3)

2. For Cause

- Federal Reserve System, Board of Governors, 12 U.S.C. § 242

C. Positions Where President Need Only Communicate Reasons for Removal to the Senate or to Both Houses of Congress:

- Archivist of the United States, 44 U.S.C. § 2103
- Chief Benefits Officer, Department of Veterans Affairs, 38 U.S.C. § 306(c)
- Chief Medical Officer, Department of Veterans Affairs, 38 U.S.C. § 305(c)
- Comptroller of the Currency, 12 U.S.C. § 2
- Director of the Mint, 31 U.S.C. § 304(b)(1)

Mr. TOWNS. Thank you very much.

Let me thank all of you for your testimony, and let me begin by first—you know, Ms. Hill, you indicated that you commented about more oversight from Congress. Could you expound on that?

Ms. HILL. Well, my comments partly reflect my time as IG. They also reflect the years I spent doing congressional oversight and investigations, which is, if you count 9/11, almost 16 or 17 years.

I just firmly believe that congressional oversight is part and parcel of the equation that drives IG independence. Because the beauty of the statute, of the IG Act, is that the IGs, if they have an engaged Congress and they have, on the other hand, an engaged department, which they usually do, since they are in the department and they are talking about department operations, if both of them are looking closely at what the IG does, and normally most of the time Congress and the Department may take a slightly different view of what is going on, that tension between the views of Congress and the agency almost forces those IGs to stick to the facts, to be objective, and to do, in my view, professional oversight.

They cannot go too far over the line each way because either the department is going to be on them and call them, if they are skewing it to the Congress' side. If they skew it to the department side, Congress will be after them. But to make that work Congress has to be paying attention, they have to look carefully at what the IGs are doing.

I recall years ago, when I worked on the Senate Governmental Affairs Committee and the Subcommittee on Investigations, and that full committee was one of the committees that was heavily engaged in the drafting and the passage of the original IG Act, Senator Glenn and others on that committee. They were very familiar with the IGs, and they had a process in place that they were constantly, every time an IG semi-annual report came out, some staff person on that committee was responsible for reviewing each and every—they had different agencies' reports. They looked at those reports. They looked at what was in there.

Nowadays there is even more to look at because the IGs, they used to just list summaries of cases; now they actually identify most of them, what the biggest problems at these agencies and departments are.

If Congress uses that as a tool for their own oversight, they can engage the IGs and they can be interested and attentive to what is going on, and it will force the IGs to do, in my view, more professional work, more thorough work, and remain objective, because Congress is going to look at it slightly different than the Department does. The Department obviously is trying to, in their natural course of things, is going to try and protect the department's interest. Congress tends to have a bigger and broader view of oversight for the Federal Government as a whole. I think you need both of those viewpoints, and the IGs to be independent need to have Congress engaged enough to insist that they are allowed to do the job they are supposed to be doing.

Mr. TOWNS. Thank you very much.

Starting with you, Mr. Steinhoff, and going this way, do you support a term of office, set date and time?

Mr. KAISER. I think there are pros and cons to it. The panel that we had generally did not support it. I agree with Mr. Mead that it would not hurt, but there are certainly other ways for an IG to be fully independent, and there are, I think, some operational issues with terms of office for that many people and the process that would, in fact, go through.

One of the issues that the panel that GAO raised was that the provisions of the bill didn't really deal with whether the IG was incumbent or not. Did they have the basic competence to do the job? Were they doing a bad job? They felt there were other mechanisms to deal with the removal issues.

I think the provision to provide for advanced notice, let's say 30 days in advance, whatever the timeframe you wanted to select, would, in fact, provide that protection.

Mr. TOWNS. Ms. Tinsley.

Ms. TINSLEY. Well, I was part of the GAO panel, actually, and pretty much agree with what Jeff said. I don't like the idea of term limits, although I could argue term limits. You can argue. It is easy to argue both sides of that. It is hard to decide what the right answer is. Obviously, you shouldn't ask an IG to leave for the wrong reason; at the same time, if the administration asks you to leave, I think it might be difficult for an IG to be effective, because it is all about convincing the agency to make improvements to its programs and operations, and if that agency does not have faith in you it is going to be hard to be effective. So I think 30 day notice might be a better approach.

Mr. TOWNS. But we are talking about independence. How do we get there? I mean, if he knows or she knows that the agency could just sort of move them on, or they have no really—you know, I am looking at the whole thing in terms of the fact that you can't be too comfortable if you know that they can just move you out. So a certain amount of time would sort of give you a certain amount of protection and independence, wouldn't it?

Ms. TINSLEY. You know, like Ken, I served for two administrations, and there have been a number of Administrators at the Environmental Protection Agency, particularly during this administration. I believe that our office issued some very hard-hitting reports while I was the Inspector General, and I did not—and even though I said things to the Administrator that were not popular, I did not ever have a problem with being concerned that I was going to be asked to leave because I was writing hard-hitting reports. So I think it is, in part, an issue with perhaps the integrity of the agency head, in addition to the IG, and I think that if you pick someone for the job who isn't well vetted and who turns out to not be an IG, there needs to be a way to ask that person to leave.

Mr. TOWNS. Yes.

Mr. Mead.

Mr. MEAD. If you fix the pay, you might be able to go, I think, the 7-year or 9 year term. I don't think it would hurt. If you are not going to fix the pay, I don't know the type of people that can stay in those jobs for seven or 9 years at the current pay. Anyway, I won't go further on that.

I think the most important thing is, though, as Ms. Tinsley and others have said, the IG needs some protection that if you are com-

ing out with a very unpopular, painful finding and recommendation, you don't want to be in peril of losing your position over that.

Another thing on the term limits, sir, is when you come up toward the end, if it is renewable term, I don't want to see situations where the IG has to feel he is on good behavior for 3 years, so I am not really a big fan or renewable terms.

On the other hand, I am not a fan of the Comptroller General's term. It seems like a very long time to me. Mr. Walker, Mr. Ballard sure wouldn't go that far, but 15 years is a big chunk of time for one particular job.

Mr. STEINHOFF. For the record, I am supportive of that. [Laughter.]

Mr. TOWNS. Ms. Hill.

Ms. HILL. Yes, I do support the term limits. The classic example—and it is a little closer to the 7-years. The Comptroller is 15—is the Director of the FBI. That seems to have worked reasonably well over the years. You don't hear a lot of complaints, maybe some but not too many, about the politicization of the FBI any more.

My problem with the 30 day notice idea is that if you tell Congress, what is Congress going to do about this in 30 days. It is not always easy for Congress to react. That is also an issue with the provisions on the cause. I think I support that. I think it is a good idea to have cause for removal, but you have to anticipate down the line what happens once that happens.

Say the President decides he is going to remove somebody for what he thinks meets one of those terms. He notifies Congress. Congress may disagree that it is the same. They may not view the definition in the same way. Then what do you do? Does Congress have the right to cut that off somehow? If so, how? Does the individual have the right to bring a cause of action in a court to stop the termination?

So I think, as far as the act goes, as far as the bill goes, it is a good idea, but as a practical matter, if that ever happens you are going to have issues raised about now what. What do we do? And the same thing I think would happen with this 30 day to the Hill, because what would Congress do to prevent that. If they wanted to stop it, then what?

That is why I would support the term limit.

Mr. TOWNS. Right. Thank you very much.

I yield to the ranking member, Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

Mr. Chairman, last year marked my 30th year in government, in management of government. Going through the steps, being a mayor at 27 and administering a county of over 3 million 6 years later, there has been a lot of oversight and a lot of this kind of auditing going on, and so some of these things are sort of interesting.

Mr. Kaiser, you were talking about a how many year term? One year term, no renewal?

Mr. KAISER. Seven year term as it was provided here, with reappointment possible. The Comptroller General has the 15 year term that is non-renewable. FBI Director is 10 years, non-renewable.

Mr. BILBRAY. You know, as somebody who spends a lot of time in Mexico, I see what term limits have done there. My question is:

doesn't that make the lame duck syndrome, immediately makes it a 7-year lame duck rather than maybe a shorter period?

Mr. KAISER. It would in the sense that, especially as you get closer to the end of that term, once a person enters the office at 7 or 10 or 15 years they have longevity ahead of them; however, when you get close to the end, that person's influence probably wanes at that point, yes.

Mr. BILBRAY. And the eyes may wander, shopping for the next step. And I only have to say, Mr. Chairman, I want to clarify that my comments are not in any way in opposition or reflecting support or opposition of H.R. 928. I think that it is a good framework to start discussing changes.

Ms. Hill, you used a reference to the FBI Director. Now let's be very frank. It is a lot different. The FBI Director, wouldn't you agree, is an apex, is really a culmination of a career, law enforcement career, to be something that you would shoot for and know that this was the golden ring that you were grabbing for, and thus knowing that when you took this job that would probably be the end of most of your aggressive professional life?

Ms. HILL. Well, that is true, but I still think it helps the independence a little bit. I mean, you know, in the IGs, you know, there is a great variety in the type of people who become IGs. There is the statutory requirements, and there are certain career professionals, there are people with auditing experience, investigation experience, etc., so you have a wider range of types.

I am not a big, big fan of term limits, but I think in the idea of the IG's situation you do need as much protection and independence as you can get, as long as you maintain your accountability, because that is such a unique job. It really is a unique job in the Federal Government.

Mr. BILBRAY. My concern, though, is when you hit this what some of us may not say is top management and put term limits there, you get two types of candidates: one, those who basically are looking for a way to basically close out their career, and the other is a hotshot young candidate——

Ms. HILL. Right.

Mr. BILBRAY [continuing]. Who may be looking at this to create a name and jump to another post. But that jump may be reflecting a certain industry over here or a certain agency over there, and may effect the proficiency. So I think there is a flip side here, wouldn't you agree, that you need to look at this seriously. This may have unintended——

Ms. HILL. I agree you should definitely look at it seriously. I mean, one option would be consider maybe a slightly lesser term and stagger it. I mean, the issue now is the terms. To the effect there are imaginary terms, it goes with the administration, and maybe stagger it so that you get some—you know, keep some independence there.

Mr. BILBRAY. I think, obviously, with the legislation posed it is going to end up having some staggering.

Ms. HILL. Right.

Mr. BILBRAY. I think in reality, from experience, we know that even political appointments are staggered because administrations coming in don't get around to it. I mean, in fact, many appoint-

ments are not really addressed until almost the second part of the term.

Ms. HILL. Right. And the IGs, that has been a problem with IG appointments, because, at least years ago, I think they were not always the first ones to get appointed, and there were some IG positions, including the one at Defense, that were vacant for a long period of time or had acting people in them, which is not a good thing, either, because my view of that is that decreases the amount of practical independence they have. It is not an appointed——

Mr. BILBRAY. Thank you, Ms. Hill. I think the point is that if we stagger it, we stagger it in between, in reality it probably will not only help to keep the continuity, but I think also will help the administration sort of concentrate on those appointments that they might be able to get appointed in time and on schedule.

Ms. Tinsley, first of all let me warn you I was raised by an accountant and I married an accountant. That is probably why I am so disorganized. No, actually, I married her because I was so disorganized.

You were an accountant when you were selected for your position to IG. Do you see that as being a critical talent when reviewing the EPA, or do you see it as a beneficial one? How would you judge that in there? And do you think that credential is very important at agencies like EPA, or would other credentials do you think would be more effective?

Ms. TINSLEY. I think that the talent that a person should have would analytical ability. You don't have to be a CPA to have analytical ability. In fact, many would say that most of them don't. But I also think that you need to have management and leadership skills. I think that is key, regardless of your background, although the career fields that the IG Act specifies equate to the kind of work Offices of Inspector General do, and it makes sense to me to bring someone into that position that understands the kind of work they are going to be doing, because they are leading an organization that is going to be making important recommendations.

Mr. BILBRAY. Thank you.

Let me for the record point out that both my mother and my wife agree that I will never balance the budget because I can't even balance my own checkbook. [Laughter.]

I yield back, Mr. Chairman.

Mr. TOWNS. Thank you very much.

I yield to Mr. Cooper.

Mr. COOPER. Thank you very much, Mr. Chairman.

I think, as my colleagues can see, we have tried to come to a reasonable compromise between differing points of view, but it is hard to please everyone. In fact, sometimes it is impossible. But I think, as my colleagues will realize, when a Presidentially appointed IG can be removed for any reason, an agency appointed IG can be removed for any reason, that really gives you slender comfort. Here on this panel we have some of the more successful IGs. You have had good relationships with multiple administrations.

Our job is to legislate for all circumstances, and that is why I think many of us on this side of the table, being elected to terms, we are accustomed to terms, and that gives us some comfort. Many

IGs have never known that comfort, and there are pros and cons on anything.

But I share Ms. Hill's concern. What will Congress do with the information of 30 day advance notice? It seems like, at a bare minimum, we have to put some sort of for-cause in there to protect IGs' independence.

We always want accountability, but we are trying to find that right balance. Perhaps someone will deliver the magic formula that will make everyone happy, but my goal is to move reasonable legislation, because, as I noted earlier, it has been 4 or 5 years. That is 4 or 5 years that IGs have lacked the pay equity and the independence and the protections that I think we can all agree on, so let's not let the best be the enemy of the good here.

I know our colleagues on the other side of the aisle will have useful suggestions to make. The key is to protect the IGs out there who are catching the bad guys, who are saving the taxpayer dollars.

It is really a marvelous, good news story. There are so few good news stories about Government sometimes, but I think it is very important that we focus on the productive work that IGs are doing and thank goodness that they are, and hopefully we can attract even, you know, more qualified IGs and protect them so that they can do that good work.

That is my goal, and I appreciate hearing so much expert testimony on this, including the constitutional provisions that we need to be aware of so that we make sure that we stay within our constitutional bounds, because no one can predict which party will control which branch. We need this law to work for all circumstances.

I thank you, Mr. Chairman, for holding this hearing.

Mr. TOWNS. Thank you very much. And I thank you for the work that you are doing on it. I think it is so important that you talk to as many people as you possibly can before moving forward what you are doing.

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Ms. Hill said that Congress should be more involved in the oversight of Inspectors General, not just using the Inspectors General work as a tool for oversight of the entire Federal Government, but actually involved in the oversight of Inspectors General.

Ms. HILL. What I mean is that they should be attentive to what IGs are doing. They should not hesitate if there are issues in those departments that they think the IG should be looking at, to request the IGs to look at them and to look at what they are finding, so that, you know, that the IGs, when they are doing an inquiry, they know that not only is the head of the department going to be paying attention to it, but the Congress is going to be paying attention to it, and therefore they are going to do their best to make that an objective, fact-based inquiry.

Mr. MILLER. Well, in the spirit of Congress providing oversight of the Inspectors General, when I asked a question to Mr. Johnson earlier he said that it was not true that Mr. O'Keefe had picked Mr. Cobb to be the Inspector General of NASA, but that came from the interviews conducted by the Integrity Committee, itself, and

specifically from the interview of Courtney Alexander Stadd, S-T-A-D-D, who was the chief of staff to Sean O'Keefe at NASA and the White House liaison there.

According to a memorandum of the interview of PCIE staff, which I guess was a HUD Inspector General that conducted the report, staff said that O'Keefe had wanted to replace Roberta Gross, the previous IG, from the outset, and staff advised that O'Keefe interacted with Cobb when Cobb was working at the White House and O'Keefe was at Office of Management and Budget. That was how they got to know each other, as Cobb handled the ethics evaluation for political appointees when he was at the White House. O'Keefe asked Stadd to contact Cobb and inquire if he was interested in the IG's position at NASA. This was when the position was not yet vacant, was still filled by Roberta Gross.

Stadd contacted Cobb. Cobb seemed interested. Stadd indicated "he thought it was unusual that O'Keefe had a say in who the next IG would be." Stadd did not know the procedure for Cobb to apply for a position not yet vacant.

Does that also strike you as an unusual way to pick an IG?

Ms. HILL. Well, again, I don't know the facts of that case, so I can't really comment on an individual case.

Mr. MILLER. For an agency head to pick the replacement—first of all, decide that the IG needs to be replaced, and then pick the replacement, Mr. Mead, how does that affect the independence of the IG?

Mr. MEAD. Well, I imagine there was multiple input. I am not familiar with the facts of this case, so I am not going to opine on that, but it strikes me that the selection process for IGs, that it is in your interest, I think it is in the interest of the executive branch for the President to have a pool of candidates. I pointed out I think GAO is a good source of candidates. I don't think it is unusual at all for an agency head to be asked their thoughts about whether they have a particular candidate in mind.

I am really only aware of my own case and how I got to be IG. I didn't know the Secretary. I think my name was dropped in a hat by somebody from GAO that knew somebody in White House personnel. Beyond that, though, I really can't get into it.

Mr. MILLER. Ms. Tinsley, do you have anything to say on this point? You don't have to if you don't want to.

[No response.]

Mr. MILLER. Also from the PCIE report—and I talked about this earlier—the report of investigation found that Cobb frequently joined O'Keefe in lunches intended for senior staff at NASA headquarters, played golf on at least two occasions with Administrator O'Keefe, joined O'Keefe on the NASA aircraft for official travel on several occasions. Our committee has gotten tips from NASA employees that they believe that Mr. O'Keefe flew in the NASA plane when regulations of how the plane could be used would have required that he fly commercially.

Those tips apparently didn't go to the Inspector General of NASA, they came to us, the Oversight Committee, perhaps because Mr. Cobb was on the plane with him. He referred to Mr. O'Keefe as his boss, sought guidance from the Administrator on the audit design for at least two audits, sought O'Keefe's review of draft OIG

opinion regarding the independence of the Columbia Accident Investigation Board. That was the shuttle that was destroyed on reentry. He advised O'Keefe about search warrants to be issued and the significant criminal investigation before those warrants were executed.

The PCIE report concluded that none of these instances standing alone is sufficient to create an appearance problem, but it is the responsibility of the IG to consider how the combined effect of this interaction with the agency head might cloud or be perceived to cloud his independence.

Then the report goes on to talk about two specific instances where Mr. Cobb had prevented NASA from reporting apparent criminal conduct to law enforcement agencies and found that those two agencies created further the appearance of a lack of independence.

What is your own view as from the experience of the Inspector General of the propriety of this combined, this cumulative effect of an appearance, Ms. Hill?

Ms. HILL. Again, I am a stickler for detail and fact, and I am very reluctant to comment on facts where I haven't read all the reports and know all of the——

Mr. MILLER. What is your opinion?

Ms. HILL. But I will tell you that, you know, IGs live in glass houses. I have always thought that. And you have to be very careful about appearance, so I would just say that, you know, I can only—as Ken said, I can only speak for my own personal experience, and I always tried to be very careful and keep not just the legal line but the appearance issue in mind, because people do look at you and you have to, you know, do what you think is best and effective in the agency, but also keep in mind that you are supposed to be independent.

That probably is not really answering your question, but, again, you know, I feel very uncomfortable commenting on facts that I do not really—I haven't seen the reports. I haven't read the material. I don't know what happened, what didn't happen in that case.

Mr. TOWNS. Thank you very much, Mr. Miller.

I would like to put the opening statement from Congressman Davis into the record. Without objection, so moved.

Let me thank all of you for your testimony. I think that you have been extremely helpful. As you can see, this is an issue that we really, really want your input on, because we think that something needs to be done, and, of course, Congressman Cooper is moving in the right direction. I think that his openness to soliciting to get additional information, input coming from both the Members and from you and others as witnesses, I think indicates how serious he is about doing something about the problem.

Of course, I agree with you. I think the appearance is something that we have to address. I mean, we just cannot ignore that. Of course, the salary, I think that is an issue and I think these are all the kind of things that we hope to be able to address before the end.

Thank you very much for your testimony, again. We look forward to working with you.

Thank you.

[Whereupon, at 4:18 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Tom Davis and additional information submitted for the hearing record follow:]

OPENING STATEMENT OF REP. TOM DAVIS
RANKING MEMBER, COMMITTEE ON
OVERSIGHT AND
GOVERNMENT REFORM

Thank you, Mr. Chairman, for holding this hearing today on the independence and accountability of federal Inspectors General. I believe that the Inspectors General of the United States perform a central role in the federal government's efforts to eliminate fraud, waste, and abuse within our agencies.

Sometimes agency heads are so consumed with day-to-day management that it is difficult for them to recognize a problem within their own operation, and it takes someone with the skills like those of our federal IGs to identify and recommend how programs that don't work can be fixed. I look forward to hearing how IGs are able to remain independent from their respective agencies to ensure that they are most effective, yet manage to work closely with agency personnel to make the agency successful.

The Inspector General Act of 1978 originally created 12 Offices of the Inspector General. The federal Inspector General, of which there are currently 57, is charged with examining the actions of a government agency or, in some cases, a contractor, as a general auditor of operations to ensure they are operating in compliance with general established policies of the government. They audit the effectiveness of security procedures and look for signs of misconduct, waste, fraud, theft, or certain types of criminal activity. Additionally, IG's can review pending legislation and regulations, and are supposed to keep the agency head and Congress fully and currently informed.

One of the pieces of legislation that we will be discussing today is H.R. 928, the Improving Government Accountability Act, introduced by Rep. Jim Cooper, who is here with us today. H.R. 928 is largely a good vehicle to discuss some of the issues with the current structure. For instance, there is no doubt that there is a problem when the people who are the head of an office are making less money than the people who answer to them, and indeed are capped at a lower figure. This is the kind of problem that will discourage the most competent people from entering the field. I look forward to hearing from Rep. Cooper as well as the witnesses before us today on this matter.

As a result of recent hearings by the full Oversight and Government Reform Committee, I am interested in discussing very concrete and practical problems that we have seen evolve in recent months. For instance, I am curious to know what an IG should do when he has to investigate his agency head, or has serious policy issues with him or her. At the General Services Administration (GSA), this is going on as we speak. Unfortunately, Brian Miller, the IG at the GSA was unable to testify before us today due to a scheduling conflict. I would have liked to hear how objectivity is maintained in a situation like this. Should another federal IG be tapped to take on the issue when a conflict like this arises? Are there other options? I look forward to hearing the witnesses' opinions regarding circumstances like this.

I think that this hearing poses a number of opportunities to further explore how to improve accountability and independence within the Office of the Inspector General, but it is with some disappointment Mr. Chairman that once

again a document has been introduced only this morning to be publicly displayed. While this is certainly a surprise, a cursory read of the cleverly titled "facts sheet" shows that it is little more than allegations, not facts.

Maintaining the integrity and accountability of the Inspectors General is important in our mission of eliminating fraud, waste and abuse in the federal government. I thank Chairman Towns for holding this hearing today and look forward to hearing from our witnesses today.

I

110TH CONGRESS
1ST SESSION

H. R. 928

To amend the Inspector General Act of 1978 to enhance the independence of the Inspectors General, to create a Council of the Inspectors General on Integrity and Efficiency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2007

Mr. COOPER introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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A BILL

To amend the Inspector General Act of 1978 to enhance the independence of the Inspectors General, to create a Council of the Inspectors General on Integrity and Efficiency, 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 "Improving Government Accountability Act".

1 **SEC. 2. ENHANCING INDEPENDENCE OF INSPECTORS GEN-**
2 **ERAL.**

3 (a) REMOVAL FOR CAUSE.—The Inspector General
4 Act of 1978 (5 U.S.C. App.) is amended—

5 (1) in section 3(b) by adding at the end the fol-
6 lowing: "An Inspector General may be removed from
7 office prior to the expiration of his or her term only
8 on any of the following grounds:

9 "(1) Permanent incapacity.

10 "(2) Inefficiency.

11 "(3) Neglect of duty.

12 "(4) Malfeasance.

13 "(5) Conviction of a felony or conduct involving
14 moral turpitude."; and

15 (2) in section 8G(c) by adding at the end the
16 following: "An Inspector General may be removed
17 from office prior to the expiration of his or her term
18 only on any of the following grounds:

19 "(1) Permanent incapacity.

20 "(2) Inefficiency.

21 "(3) Neglect of duty.

22 "(4) Malfeasance.

23 "(5) Conviction of a felony or conduct involving
24 moral turpitude.".

1 (b) ESTABLISHMENT OF TERMS OF OFFICE.—The
2 Inspector General Act of 1978 (5 U.S.C. App.) is amend-
3 ed—
4 (1) in section 3 by adding at the end the fol-
5 lowing:
6 "(e)(1) The term of office of each Inspector General
7 shall be seven years. An individual may serve for more
8 than one term in such office. Any individual appointed and
9 confirmed to fill a vacancy in such position, occurring be-
10 fore the expiration of the term for which his or her prede-
11 cessor was appointed, shall be appointed and confirmed
12 for a full seven-year term.
13 "(2) An individual may continue to serve as Inspector
14 General beyond the expiration of the term for which the
15 individual is appointed until a successor is appointed and
16 confirmed, except that such individual may not continue
17 to serve for more than 1 year after the date on which the
18 term would otherwise expire under paragraph (1)."; and
19 (2) in section 8G(e) by inserting "(1)" after
20 "(e)", and by adding at the end the following:
21 "(2) The term of office of each Inspector Gen-
22 eral shall be seven years. An individual may serve
23 for more than one term in such office. Any indi-
24 vidual appointed to fill a vacancy in such position,
25 occurring before the expiration of the term for which

his or her predecessor was appointed, shall be appointed for a full 7-year term.".

(c) APPLICATION.—The amendments made by this section shall apply to any Inspector General appointed before, on, or after the date of the enactment of this Act. The term of office of an Inspector General serving on such date of enactment is deemed to begin on such date of enactment.

SEC. 3. DIRECT SUBMISSION OF BUDGET REQUESTS TO CONGRESS.

Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

"(f)(1) For each fiscal year, an Inspector General may transmit an appropriation estimate and request to the Director of the Office of Management and Budget and to the appropriate committees or subcommittees of the Congress, in addition to any appropriation estimate and request submitted to the head of the establishment concerned.

"(2) The President shall include in each budget of the United States Government submitted to the Congress—

"(A) a separate statement of the amount of appropriations requested by each Inspector General

1 who has submitted an appropriation estimate under
2 paragraph (1); and
3 "(B) a statement comparing each such appro-
4 priation estimate and request submitted by an In-
5 spector General and the funds requested by the head
6 of the establishment concerned.".

7 **SEC. 4. ESTABLISHMENT OF COUNCIL OF THE INSPECTORS**
8 **GENERAL ON INTEGRITY AND EFFICIENCY.**

9 (a) ESTABLISHMENT.—The Inspector General Act of
10 1978 (5 U.S.C. App.) is amended by redesignating sec-
11 tions 11 and 12 in order as sections 12 and 13, and by
12 inserting after section 10 the following new section:

13 **"SEC. 11. ESTABLISHMENT OF THE COUNCIL OF THE IN-**
14 **SPECTORS GENERAL ON INTEGRITY AND EF-**
15 **FICIENCY.**

16 "(a) ESTABLISHMENT.—There is established as an
17 independent entity within the executive branch the Inspec-
18 tors General Council (in this section referred to as the
19 'Council'). The Council's mission shall be to increase the
20 professionalism and effectiveness of personnel by devel-
21 oping policies, standards, and approaches to aid in the es-
22 tablishment of a well-trained and highly skilled workforce
23 in the offices of the Inspectors General.
24 "(b) MEMBERSHIP.—

1 "(1) IN GENERAL.—The Council shall consist of
2 the following members:
3 "(A) All Inspectors General whose offices
4 are established under—
5 "(i) section 2; or
6 "(ii) section 8G.
7 "(B) The Inspectors General of the Cen-
8 tral Intelligence Agency and the Government
9 Printing Office.
10 "(C) The Controller of the Office of Fed-
11 eral Financial Management.
12 "(D) A senior level official of the Federal
13 Bureau of Investigation designated by the Di-
14 rector of the Federal Bureau of Investigation.
15 "(E) The Director of the Office of Govern-
16 ment Ethics.
17 "(F) The Special Counsel of the Office of
18 Special Counsel.
19 "(G) The Deputy Director of the Office of
20 Personnel Management.
21 "(H) The Deputy Director for Manage-
22 ment of the Office of Management and Budget.
23 "(2) CHAIRPERSON AND EXECUTIVE CHAIR-
24 PERSON.—

1 "(A) EXECUTIVE CHAIRPERSON.—The
2 Deputy Director for Management of the Office
3 of Management and Budget shall be the Execu-
4 tive Chairperson of the Council.
5 "(B) CHAIRPERSON.—The Council shall
6 elect one of the Inspectors General referred to
7 in paragraph (1)(A) or (B) to act as Chair-
8 person of the Council. The term of office of the
9 Chairperson shall be two years.
10 "(3) FUNCTIONS OF CHAIRPERSON AND EXECU-
11 TIVE CHAIRPERSON.—
12 "(A) EXECUTIVE CHAIRPERSON.—The Ex-
13 ecutive Chairperson shall—
14 "(i) preside over meetings of the
15 Council;
16 "(ii) provide to the heads of agencies
17 and entities represented on the Council
18 with summary reports of the activities of
19 the Council; and
20 "(iii) provide to the Council such in-
21 formation relating to the agencies and en-
22 tities represented on the Council as will as-
23 sist the Council in performing its func-
24 tions.

"(B) CHAIRPERSON.—The Chairperson shall—

"(i) convene meetings of the Council—

"(I) at least six times each year;

"(II) monthly to the extent possible; and

"(III) more frequently at his or her discretion;

"(ii) exercise the functions and duties of the Council under subsection (c);

"(iii) appoint a Vice Chairperson to assist in carrying out the functions of the Council and act in the absence of the Chairperson, from a category of Inspectors General described in subparagraph (A)(i), (A)(ii), or (B) of subsection (b)(1), other than the category from which the Chairperson was elected;

"(iv) make such payments from funds otherwise available to the Council as may be necessary to carry out the functions of the Council;

"(v) select, appoint, and employ personnel as needed to carry out the functions

of the Council subject to the availability of appropriations and the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates;

"(vi) to the extent and in such amounts as may be provided in advance by appropriations Acts, enter into contracts and other arrangements with public agencies and private persons to carry out the functions and duties of the Council;

"(vii) establish, in consultation with the members of the Council, such committees as determined by the Chairperson to be necessary and appropriate for the efficient conduct of Council functions; and

"(viii) prepare and transmit a report annually on behalf of the Council to the President on the activities of the Council.

"(c) FUNCTIONS AND DUTIES OF COUNCIL.—

"(1) IN GENERAL.—The Council shall—

1 "(A) continually identify, review, and dis-
2 cuss areas of weakness and vulnerability in
3 Federal programs and operations with respect
4 to fraud, waste, and abuse;
5 "(B) develop plans for coordinated, Gov-
6 ernment-wide activities that address these prob-
7 lems and promote economy and efficiency in
8 Federal programs and operations, including
9 interagency and inter-entity audit, investiga-
10 tion, inspection, and evaluation programs and
11 projects to deal efficiently and effectively with
12 those problems concerning fraud and waste that
13 exceed the capability or jurisdiction of an indi-
14 vidual agency or entity;
15 "(C) develop policies that will aid in the
16 maintenance of a corps of well-trained and
17 highly skilled Office of Inspector General per-
18 sonnel;
19 "(D) maintain an Internet Web site and
20 other electronic systems for the benefit of all
21 Inspectors General, as the Council determines
22 are necessary or desirable;
23 "(E) maintain one or more academies as
24 the Council considers desirable for the profes-
25 sional training of auditors, investigators, inspec-

1 tors, evaluators, and other personnel of the var-
2 ious offices of Inspector General; and
3 "(F) make such reports to the Congress as
4 the Chairperson determines are necessary or
5 appropriate.
6 "(2) ADHERENCE AND PARTICIPATION BY MEM-
7 BERS.—Each member of the Council should, to the
8 extent permitted under law, and to the extent not in-
9 consistent with standards established by the Comp-
10 troller General of the United States for audits of
11 Federal establishments, organizations, programs, ac-
12 tivities, and functions, adhere to professional stand-
13 ards developed by the Council and participate in the
14 plans, programs, and projects of the Council.
15 "(3) EXISTING AUTHORITIES AND RESPON-
16 SIBILITIES.—The creation and operation of the
17 Council—
18 "(A) shall not affect the preeminent policy-
19 setting role of the Department of Justice in law
20 enforcement and litigation;
21 "(B) shall not affect the authority or re-
22 sponsibilities of any Government agency or enti-
23 ty; and

1 "(C) shall not affect the authority or re-
2 sponsibilities of individual members of the
3 Council.
4 "(d) INTEGRITY COMMITTEE.—
5 "(1) ESTABLISHMENT.—The Council shall have
6 an Integrity Committee, which shall receive, review,
7 and refer for investigation allegations of wrongdoing
8 that are made against Inspectors General and cer-
9 tain staff members of the various Offices of Inspec-
10 tor General.
11 "(2) MEMBERSHIP.—The Integrity Committee
12 shall consist of the following members:
13 "(A) The official of the Federal Bureau of
14 Investigation serving on the Council, who shall
15 serve as Chairperson of the Integrity Com-
16 mittee.
17 "(B) 3 or more Inspectors General de-
18 scribed in subparagraph (A) or (B) of sub-
19 section (b)(1) appointed by the Chairperson of
20 the Council, representing both establishments
21 and designated Federal entities (as that term is
22 defined in section 8G(a)).
23 "(C) The Special Counsel of the Office of
24 Special Counsel.

1 "(D) The Director of the Office of Govern-
2 ment Ethics.
3 "(3) LEGAL ADVISOR.—The Chief of the Public
4 Integrity Section of the Criminal Division of the De-
5 partment of Justice, or his designee, shall serve as
6 a legal advisor to the Integrity Committee.
7 "(4) REFERRAL OF ALLEGATIONS.—
8 "(A) REQUIREMENT.—An Inspector Gen-
9 eral shall refer to the Integrity Committee any
10 allegation of wrongdoing against a staff mem-
11 ber of his or her office, if—
12 "(i) review of the substance of the al-
13 legation cannot be assigned to an agency
14 of the executive branch with appropriate
15 jurisdiction over the matter; and
16 "(ii) the Inspector General determines
17 that—
18 "(I) an objective internal inves-
19 tigation of the allegation is not fea-
20 sible; or
21 "(II) an internal investigation of
22 the allegation may appear not to be
23 objective.
24 "(B) STAFF MEMBER DEFINED.—In this
25 subsection the term 'staff member' means—

1 "(i) any employee of an Office of In-
2 spector General who reports directly to an
3 Inspector General; or
4 "(ii) who is designated by an Inspec-
5 tor General under subparagraph (C).
6 "(C) DESIGNATION OF STAFF MEMBERS.—
7 Each Inspector General shall annually submit
8 to the Chairperson of the Integrity Committee
9 a designation of positions whose holders are
10 staff members for purposes of subparagraph
11 (B).
12 "(5) REVIEW OF ALLEGATIONS.—The Integrity
13 Committee shall—
14 "(A) review all allegations of wrongdoing it
15 receives against an Inspector General, or
16 against a staff member of an Office of Inspec-
17 tor General; and
18 "(B) refer to the Chairperson of the Integ-
19 rity Committee any allegation of wrongdoing
20 determined by the Integrity Committee to be
21 meritorious that cannot be referred to an agen-
22 cy of the executive branch with appropriate ju-
23 risdiction over the matter.
24 "(6) AUTHORITY TO INVESTIGATE ALLEGA-
25 TIONS.—

1 "(A) REQUIREMENT.—The Chairperson of
2 the Integrity Committee shall cause a thorough
3 and timely investigation of each allegation re-
4 ferred under paragraph (5)(B) to be conducted
5 in accordance with this paragraph.
6 "(B) RESOURCES.—At the request of the
7 Chairperson of the Integrity Committee, the
8 head of each agency or entity represented on
9 the Council—
10 "(i) may provide resources necessary
11 to the Integrity Committee; and
12 "(ii) may detail employees from that
13 agency or entity to the Integrity Com-
14 mittee, subject to the control and direction
15 of the Chairperson, to conduct an inves-
16 tigation pursuant to this subsection.
17 "(7) PROCEDURES FOR INVESTIGATIONS.—
18 "(A) STANDARDS APPLICABLE.—Investiga-
19 tions initiated under this subsection shall be
20 conducted in accordance with the most current
21 Quality Standards for Investigations issued by
22 the Council or by its predecessors (the Presi-
23 dent's Council on Integrity and Efficiency and
24 the Executive Council on Integrity and Effi-
25 ciency).

1 "(B) ADDITIONAL POLICIES AND PROCE-
2 DURES.—The Integrity Committee, in conjunc-
3 tion with the Chairperson of the Council, shall
4 establish additional policies and procedures nec-
5 essary to ensure fairness and consistency in—
6 "(i) determining whether to initiate
7 an investigation;
8 "(ii) conducting investigations;
9 "(iii) reporting the results of an inves-
10 tigation; and
11 "(iv) providing the person who is the
12 subject of an investigation with an oppor-
13 tunity to respond to any Integrity Com-
14 mittee report.
15 "(C) REPORTS.—The Chairperson of the
16 Integrity Committee shall report to the Execu-
17 tive Chairperson of the Council the results of
18 any investigation that substantiates any allega-
19 tion certified under paragraph (5)(B).
20 "(8) NO RIGHT OR BENEFIT.—This subsection
21 is not intended to create any right or benefit, sub-
22 stantive or procedural, enforceable at law by a per-
23 son against the United States, its agencies, its offi-
24 cers, or any person.

1 "(e) APPLICATION.—The provisions of this section
2 apply only to the Inspectors General (and their offices)
3 listed in subsection (b)(1)(A) and (B).".
4 (b) EXISTING EXECUTIVE ORDERS.—Executive
5 Order 12805, dated May 14, 1992, Executive Order
6 12805, dated March 21, 1996, and Executive Order
7 12993, dated March 26, 1996, shall have no force or ef-
8 fect.
9 (c) CONFORMING AMENDMENTS.—
10 (1) INSPECTOR GENERAL ACT OF 1978.—The
11 Inspector General Act of 1978 (5 U.S.C. App.) is
12 amended—
13 (A) in sections 2(1), 4(b)(2), and
14 8G(a)(1)(A) by striking "section 11(2)" each
15 place it appears and inserting "section 12(2)";
16 and
17 (B) in section 8G(a), in the matter pre-
18 ceding paragraph (1), by striking "section 11"
19 and inserting "section 12".
20 (2) TITLE 31, U.S.C.—Section 1105(a) of title
21 31, United States Code, is amended by striking the
22 first paragraph (33) and inserting the following:
23 "(33) a separate appropriation account for ap-
24 propriations for the Inspectors General Council, and,
25 included in that account, a separate statement of the

1 aggregate amount of appropriations requested for
2 each academy maintained by the Inspectors General
3 Council.".

4 **SEC. 5. MISCELLANEOUS ENHANCEMENTS.**

5 (a) OFFICES AS DISCRETE AGENCIES.—Section 6(d)
6 of the Inspector General Act of 1978 (5 U.S.C. App.) is
7 amended to read as follows:

8 "(d)(1)(A) For purposes of applying the provisions
9 of law identified in subparagraph (B)—

10 "(i) each Office of Inspector General shall
11 be considered to be a separate agency; and

12 "(ii) the Inspector General who is the head
13 of an office referred to in clause (i) shall, with
14 respect to such office, have the functions, pow-
15 ers, and duties of an agency head or appointing
16 authority under such provisions.

17 "(B) This paragraph applies with respect to the fol-
18 lowing provisions of title 5, United States Code:

19 "(i) Subchapter II of chapter 35.

20 "(ii) Sections 8335(b), 8336, 8414, and
21 8425(b).

22 "(iii) All provisions relating to the Senior Exec-
23 utive Service (as determined by the Office of Per-
24 sonnel Management), subject to paragraph (2).

1 "(2) For purposes of applying section 4507(b) of title
2 5, United States Code, paragraph (1)(A)(ii) shall be ap-
3 plied by substituting 'the Council of the Inspectors Gen-
4 eral on Integrity and Efficiency (established by section 11
5 of the Inspector General Act) shall' for 'the Inspector Gen-
6 eral who is the head of an office referred to in clause (i)
7 shall, with respect to such office,'.".

8 (b) INSPECTORS GENERAL OF DESIGNATED FED-
9 ERAL ENTITIES.—Notwithstanding any other provision of
10 law, the Inspector General of each designated Federal en-
11 tity (as those terms are defined under section 8G of the
12 Inspector General Act of 1978) shall, for pay and all other
13 purposes, be classified at a grade, level, or rank designa-
14 tion, as the case may be, comparable to those of a majority
15 of the senior staff members of such designated Federal
16 entity (such as, but not limited to, a General Counsel,
17 Deputy Director, or Chief of Staff) that report directly
18 to the head of such designated Federal entity.

19 (c) SUBPOENA POWER.—Section 6(a)(4) of the In-
20 spector General Act of 1978 (5 U.S.C. App.), is amend-
21 ed—

22 (1) by inserting "in any medium (including
23 electronically stored information, as well as any tan-
24 gible thing)" after "other data"; and

1 (2) by striking "subpena" and inserting "sub-
2 poena".
3 (d) LAW ENFORCEMENT AUTHORITY FOR DES-
4 IGNATED FEDERAL ENTITIES.—Section 6(e) of the In-
5 spector General Act of 1978 (5 U.S.C. App.) is amend-
6 ed—
7 (1) in paragraph (1) by striking "appointed
8 under section 3"; and
9 (2) by adding at the end the following:
10 "(9) In this subsection the term 'Inspector Gen-
11 eral' means an Inspector General appointed under
12 section 3 or an Inspector General appointed under
13 section 8G.".

14 **SEC. 6. PROGRAM FRAUD CIVIL REMEDIES ACT.**

15 Section 3801(a)(1) of title 31, United States Code,
16 is amended by striking "and" after the semicolon at the
17 end of subparagraph (C), by adding "and" after the semi-
18 colon at the end of subparagraph (D), and by adding at
19 the end the following:
20 "(E) a designated Federal entity (as such
21 term is defined under section 8G(a)(2) of the
22 Inspector General Act of 1978).".

1 **SEC. 7. APPLICATION OF SEMIANNUAL REPORTING RE-**
2 **QUIREMENTS WITH RESPECT TO INSPECTION**
3 **REPORTS AND EVALUATION REPORTS.**

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

6 (1) in each of subsections (a)(6), (a)(8), (a)(9),
7 (b)(2), and (b)(3)—

8 (A) by inserting ", inspection reports, and
9 evaluation reports" after "audit reports" the
10 first place it appears; and

11 (B) by striking "audit" the second place it
12 appears; and

13 (2) in subsection (a)(10) by inserting ", inspec-
14 tion reports, and evaluation reports" after "audit re-
15 ports".

○

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION AND PROCUREMENT

CHAIRMAN EDOLPHUS TOWNS

FACT SHEET JUNE 2007

Inspectors General: Questions of Independence and Accountability

Inspectors General in federal departments and agencies are charged with investigating evidence of waste, fraud, and abuse in the Executive Branch. Over the last 25 years, investigations by IGs have saved taxpayers billions of dollars.

To effectively carry out their mission, Inspectors General must be independent and objective, which requires that they be insulated from improper management and political pressure. To preserve the credibility of the office, Inspectors General must also perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.

In 2004 and 2005, Committee staff prepared a report titled "Politicization of Inspectors General," which found that Inspector General appointments have become increasingly politicized since 2000.[1] Over 60% of the IGs appointed by President Bush had prior political experience, such as service in a Republican White House or on a Republican congressional staff, while fewer than 20% had prior audit experience. In contrast, over 60% of the IGs appointed by President Clinton had prior audit experience, while fewer than 25% had prior political experience.

However, politicization is only one element that threatens the independence of Inspectors General. Interference by agency management, the absence of input or control by IGs into their office budgets, and campaigns by management to remove IGs who are aggressive in their investigations all jeopardize the independence of the Inspector General. At the same time, a lack of consistent and credible mechanisms for investigating and resolving allegations of misconduct by IGs may threaten accountability and credibility.

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[1] House Committee on Government Reform, Minority Staff, *Politicization of Inspectors General* (Oct. 21, 2004; revised Jan. 7, 2005) (online at http://oversight.house.gov/documents/20050111164847-37108.pdf).

As part of the Subcommittee's oversight of Inspectors General, Subcommittee staff have reviewed Congressional testimony and correspondence, reports of the President's Council on Integrity and Efficiency, Government Accountability Office, and Office of Special Counsel, and press accounts to identify incidents in the past five years that raise questions about the independence and accountability of Inspectors General.

The following current and recent situations involving Inspectors General demonstrate challenges to IG independence, IG accountability, or both:

NASA

NASA IG Robert Cobb allegedly suppressed investigations and penalized his own investigators for pursuing allegations of theft, safety violations, and other wrongdoing. After a six-month investigation, the Integrity Committee of the President's Council on Integrity and Efficiency determined that Mr. Cobb had abused his authority and created a hostile work environment, and had not maintained an appearance of independence from NASA officials.[2] All members of the committee believed that disciplinary action, up to and including removal, could be appropriate.

At a joint House-Senate hearing, former IG employees testified about Mr. Cobb's abusive behavior and its negative effects of morale and productivity, his close relationship with top NASA officials, and his interference with both audits and investigations, which resulted in either weakening or stopping audit conclusions and investigative work.[3] In testimony before the Integrity Committee, Mr. Cobb stated that he believed that his relationships with NASA officials assisted him in his work, and that he would attempt to have the same relationship with the current NASA Administrator if he had the opportunity.

Mr. Cobb has rejected the findings of the Integrity Committee and the PCIE. In a highly unusual move, NASA's general counsel, who had been meeting with Mr. Cobb to discuss the investigation while it was on-going, performed a *de novo* review of the Integrity Committee's work and determined that there had been no abuse "of the office" and no ethical violations by Mr. Cobb. The NASA administrator recommended that Mr. Cobb attend a management training school and work with an "executive coach" to improve his management style. Mr. Cobb remains in office.

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[2] Letter from James Burrus, Chair, Integrity Committee, President's Council on Integrity and Efficiency to Clay Johnson, Chair, President's Council on Integrity and Efficiency (Jan. 22, 2007) (online at http://democrats.science.house.gov/Media/File/Reports/PCIE%20Report%20on%20NASA%20IG.pdf).

[3] Joint Hearing of the Subcommittee on Investigations and Oversight, House Committee on Science and Technology and Subcommittee on Aeronautics, Space and Related Sciences, Senate Committee on Commerce, Science and Transportation, *Oversight Review of the Investigation of the Inspector General of the National Aeronautics and Space Administration* (June 7, 2007).

Department of Commerce

Commerce IG Johnnie Frazier is under investigation for taking trips with no apparent official purpose at government expense, retaliating against employees who objected and refused to sign the travel vouchers, and destroying emails after he was informed of an investigation into his travel.[4] A report from the Office of Special Counsel recently concluded that he illegally retaliated against employees who challenged his conduct by demoting them.[5] Mr. Frazier is also alleged to have traveled to casinos accompanied by subordinates on government time.[6]

The investigations have had a serious impact on morale in the Commerce IG's office. One employee reports "a continuous and escalating pattern of harassment and retaliation," and the Deputy Secretary of Commerce convened a meeting of all OIG employees to ask them to cooperate with the investigations and report any retaliation or security concerns.[7]

Mr. Frazier recently announced that he will retire at the end of June.[8]

Special Inspector General for Iraq Reconstruction

Special Inspector General for Iraq Reconstruction Stuart Bowen was appointed in 2004 and has identified extensive waste, fraud, and abuse by U.S. government employees and contractors in Iraq.

In 2006, Congress included in a military authorization bill a provision terminating the office effective October 1, 2007.[9] This provision was reportedly inserted at the last minute in a closed-door conference, and "generated surprise and some outrage among lawmakers who say they had no idea it was in the final legislation."[10] Congress quickly repealed the provision after the circumstances surrounding its passage became public.[11]

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[4] House Committee on Energy and Commerce, Press Release, *Committee Opens Investigation into Allegations Of Misconduct by Commerce IG* (May 2, 2007) (online at http://energycommerce.house.gov/Press_110/110nr31.shtml).

[5] Letter from Scott J. Bloch, Special Counsel, to President George W. Bush (May 25, 2007) (online at http://energycommerce.house.gov/Press_110/110-ltr.060707.DOC.Frazier.SCtoPOTUS.pdf).

[6] *Commerce Dept. Inspector General's Casino Trip Probed*, Washington Post (Jun. 9, 2007).

[7] *Commerce Inspector General Broke Whistle-Blower Law, Report Finds*, Washington Post (May 16, 2005).

[8] *Commerce Dept. Inspector General's Casino Trip Probed*, Washington Post (Jun. 9, 2007).

[9] National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364.

[10] *Congress Tells Auditor in Iraq to Close Office*, New York Times (Nov. 3, 2006).

[11] Iraq Reconstruction Accountability Act of 2006, Pub. L. 109–440.

The PCIE and Rep. Tom Davis are currently investigating complaints by employees about management and procurement practices in the office.[12] The allegations under investigation by the PCIE reportedly include "a payment to a contractor that the employees believed was unjustified; a project to produce a type of report on reconstruction that they maintain is outside the Congressional mandate of the office; and what the employees contend is an inflated estimate of how much money investigations by the office have saved American taxpayers."[13]

Environmental Protection Agency

Acting EPA IG Bill Roderick recently announced plans to cut 60 of 360 staff positions in the IG's office due to potential budget cuts. However, the IG office budget increased for FY 2007, and Congress has not yet acted on appropriations for FY 2008. Mr. Roderick also reportedly received a $15,000 bonus last year.[14]

Mr. Roderick became acting IG after the resignation of former IG Nikki Tinsley, who left in part because she was not eligible for bonuses and as a result was paid tens of thousands of dollars less than her subordinates.[15] As Inspector General, Ms. Tinsley issued multiple reports critical of EPA management, including findings that EPA officials made inaccurate statements about air quality in New York City after 9/11 in response to intervention from White House officials.[16]

General Services Administration

GSA IG Brian Miller has investigated allegations of improper procurement practices and potential Hatch Act violations by GSA Administrator Lurita Doan. Mr. Miller states that his relationship with Ms. Doan has been difficult. Ms. Doan reportedly referred to IG audits and investigations as "terrorism," stating: ""There are two kinds of terrorism in the U.S.: the external kind and internally, the IGs have terrorized the regional administrators."[17] Ms. Doan also proposed significant decreases in funding for Inspector General audits, instead reprogramming auditing funds to "surveys" by outside contractors.[18]

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[12] *Inspector of Projects in Iraq Is Now Under Investigation*, New York Times (May 4, 2007); *U.S. inspector general for Iraq under investigation*, Reuters (May 2, 2007).

[13] *Inspector of Projects in Iraq Is Now Under Investigation*, New York Times (May 4, 2007).

[14] Letter from Rep. John Dingell to EPA Administrator Stephen L. Johnston (Apr. 23, 2007) (online at http://energycommerce.house.gov/Press_110/110-ltr.042307.EHM.Roderick.pdf).

[15] *Outgoing EPA inspector general tells of search for accountability*, Govexec.com (Mar. 6, 2006).

[16] Environmental Protection Agency, Office of Inspector General, *Evaluation Report: EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement*, Report No. 2003-P-00012 (Aug. 21, 2003).

[17] Testimony of Brian Miller, Inspector General, General Services Administration, Hearing of the House Committee on Oversight and Government Reform, *Allegations of Misconduct at the General Services Administration* (Mar. 28, 2007).

[18] *Id.*

Legal Services Corporation

Legal Services Corporation IG Kirt West was considered for dismissal by the LSC board after he issued audit reports questioning spending on travel and expenses for LSC board meetings.[19] While Mr. West was conducting a continuing investigation of board expenses, the board summoned him for "informal feedback" and told Mr. West that he took a prosecutorial stance toward management, issued inflammatory reports and was not a positive help to LSC.[20] Mr. West perceived this feedback as an improper attempt to persuade him to back off his investigation.[21]

After Rep. Chris Cannon introduced legislation to require a supermajority vote for the LSC board to remove the Inspector General and held a hearing on the legislation, the LSC board did not proceed with removal.[22]

Smithsonian Institution

Former Smithsonian Institution Inspector General Debra Ritt stated that former Smithsonian Secretary Lawrence M. Small tried to pressure her to drop an audit of high-ranking officials and their business expenses.[23] Ritt moved ahead with the audit, which found excessive spending on travel and other expenses by top Smithsonian officials and led to Small's resignation.[24] However, Ritt resigned as Smithsonian IG shortly afterward, in response to cuts in the IG office budget.[25]

In response to this situation, the Smithsonian changed its governance structure so that the IG is selected by and reports directly to the Smithsonian Board of Regents, not the Secretary.[26]

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[19] *Gov't Watchdogs Under Attack From Bosses*, Washington Post (Dec. 27, 2006).

[20] Statement of Kirt West, *Legislative Hearing on H.R. 6101, the Legal Services Corporation Improvement Act*, Subcommittee on Commercial and Administrative Law, House Committee on the Judiciary (Sep. 26, 2006).

[21] *Id.*

[22] *Id.*

[23] *Former IG Says Small Asked Her To Drop Audit*, Washington Post (Mar. 20, 2007).

[24] *Id.*

[25] *Id.*

[26] Smithsonian Institution, Press Release, *Sprightley Ryan Named Smithsonian's Inspector General* (Mar. 5, 2007) (online at http://newsdesk.si.edu/releases/si_ryan_named_IG.htm).

Department of Defense

DOD IG Joseph Schmitz resigned in 2005 during a Congressional investigation into whether Mr. Schmitz had blocked criminal investigations of senior Pentagon officials.[27] Sen. Charles Grassley also investigated whether Mr. Schmitz had submitted a report to the White House for review before it was issued.[28] Senior officials in the IG's office reportedly used code names in referring to persons under investigation, out of fear that Mr. Schmitz would tip off Pentagon officials to pending investigations.[29]

Mr. Schmitz also faced allegations of waste and mismanagement, including a charge that he was "obsessed" with researching the history of Baron Friedrich von Steuben, the Inspector General of the Continental Army for General George Washington, and spent months personally redesigning the seal of the DOD IG to include elements of the von Steuben family coat of arms.[30]

Mr. Schmitz left the Pentagon to become general counsel for the parent company of Blackwater USA, a major government and defense contractor.[31]

Department of Homeland Security

Clark Kent Ervin was the first IG at the Department of Homeland Security, moving to the newly-created DHS from his Senate-confirmed post as IG at the Department of State. At DHS, Mr. Ervin issued several reports critical of DHS programs, including findings that the performance of airport screeners in detecting weapons had not improved, the Transportation Security Administration spent $500,000 on an employee awards ceremony and awarded excessive bonuses to executives, and DHS failed to carry out its mandate to consolidate multiple terrorist watch lists maintained by different agencies.[32]

According to Ervin, DHS Secretary Tom Ridge complained that IG reports focused on the negative and called him in "to intimidate me, to stare me down, to force me to back off, to not look into those areas that would be controversial, not to issue critical reports."[33] Ervin served at DHS on a recess appointment. He left office at the end of 2004 after the Senate failed to confirm him and the White House did not renominate him.[34]

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[27] Letter from Sen. Charles Grassley to Secretary of Defense Donald Rumsfeld (Jul. 27, 2005) (online at http://www.pogo.org/m/gp/gp-2005-Grassley-Schmitz.pdf).

[28] Letter from Sen. Charles Grassley to DOD IG Joseph Schmitz (Aug. 8, 2005) (online at http://www.pogo.org/m/gp/gp-2005-Grassley-Schmitz.pdf).

[29] *The Scrutinizer Finds Himself Under Scrutiny*, Los Angeles Times (Sep. 25, 2005).

[30] *The Scrutinizer Finds Himself Under Scrutiny*, Los Angeles Times (Sep. 25, 2005).

[31] *US: Pentagon's Chief Watchdog Joins Company that Owns Blackwater*, Reuters (Sep. 1, 2005).

[32] *Ex-official tells of Homeland Security failures*, USA Today (Dec. 27, 2004).

[33] *Nightline*, ABC News (May 2, 2006).

[34] *Ex-official tells of Homeland Security failures*, USA Today (Dec. 27, 2004).

Department of Health and Human Services

Former HHS IG Janet Rehnquist, the daughter of late Supreme Court Chief Justice William Rehnquist, resigned in 2003 amid investigations into charges of interfering with an investigation and mismanagement.

Allegations included forcing out senior staff members, improperly storing a gun in her office, questionable travel expenses charged to the government, and delaying an audit of a Florida pension fund until after an election at the request of Governor Jeb Bush's top aide.[35] Rehnquist also bypassed civil service procedures in selecting an individual for a top civil service position.[36] Furthermore, documents potentially related to the investigation by the General Accounting Office were shredded.[37] Investigations by the PCIE and GAO substantiated the allegations against Ms. Rehnquist.[38]

U.S. Postal Service

Postal Service IG Karla Corcoran resigned in 2003 amid Congressional and PCIE investigations of wasteful spending. Ms. Corcoran required employees to attend elaborate team-building and awards programs for which millions of dollars were spent on travel and salaries.[39] IG employees were required to dress up in animal costumes and build gingerbread houses.[40] Videotapes from these sessions show "public servants dressed up as the Village People, wearing cat costumes, doing a striptease, and participating in mock trials – all on official time, all at the public's expense."[41]

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[35] Government Accountability Office, *Department of Health and Human Services: Review of the Management of Inspector General Operations*, GAO-03-685 (June 2003).

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Goofy games cost public millions as stamp prices soar*, N.Y. Daily News (Mar. 9, 2003).

[40] Letter from Sen. Byron Dorgan and Sen. Ron Wyden to Postal Board of Governors Chair David Fineman (May 1, 2003) (online at http://dorgan.senate.gov/newsroom/extras/050103fineman.pdf).

[41] *Id.*

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