



Office of the Inspector General  
United States Department of Justice

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*before the*

U.S. Senate Committee on Homeland Security and Governmental Affairs

*concerning*

"Improving the Efficiency, Effectiveness, and Independence of Inspectors General"

February 24, 2015

Mr. Chairman, Senator Carper, and Members of the Committee:

Thank you for inviting me to testify regarding the continued challenges to the efficiency, effectiveness, and independence of Inspectors General (IGs). In January, I also became the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and I am honored to serve the Inspector General community in that position. At a time of belt-tightening across the federal government, our statutory mission at the Council of IGs – to address integrity, efficiency, and effectiveness issues that transcend individual federal agencies – could not be more important.

As the Inspector General for the Department of Justice (DOJ OIG) and Chair of the Council of IGs, I look forward to working with this Committee to ensure that Inspectors General have the independence and tools they need to do their jobs on behalf of the American people, including making sure they have complete and timely access to agency information that is critical to performing their mission. I also look forward to working with the Committee to assist in developing the legislative reforms that will help improve our ability to conduct strong and effective oversight.

### **Achievements of Inspectors General**

Year in and year out, the Inspector General community has demonstrated its ability to root out waste, fraud, abuse, mismanagement, and misconduct through our audits, investigations, inspections, and reviews. Our efforts result in agencies that are more effective and efficient. The foundation for this work is our independence and central to that is our ability to access information that is in the possession of the agencies that we each oversee.

Inspectors General have a track record of delivering measurable and significant benefits to the taxpayers. For example, in Fiscal Year (FY) 2013, the approximately 14,000 employees at the 72 federal Offices of Inspector General conducted audits, inspections, evaluations, and investigations resulting in the identification of approximately \$37 billion in potential cost savings and approximately \$14.8 billion from investigative recoveries and receivables. In comparison, the aggregate FY 2013 budget of the 72 federal OIGs was approximately \$2.5 billion, meaning that these potential savings represent about a \$21 return on every dollar invested in the IGs, in addition to the other valuable guidance we provide in the management of our agencies' operations and programs. And all of this was accomplished during a time of sequestration, when many of us in the Inspector General community, including the DOJ OIG, were faced with significant budget cuts that directly impacted our work. For example, staffing in my office fell by nearly ten percent, which inevitably affected our workflow, and is still below pre-sequestration levels. As we once again face the prospect of sequestration next year, many of us in the Inspector General community are concerned about the potential impact that another period of sharply limited resources could have on our ability to continue to perform the kind and range of audits, inspections, evaluations, and investigations that are expected of us.

Speaking specifically for my Office, the DOJ OIG also has delivered outstanding value to the taxpayer. In FY 2014, the DOJ OIG identified over \$23 million in questioned costs and nearly \$1.3 million in taxpayer funds that could be put to better use by the Department. And our criminal, civil, and administrative investigations resulted in the imposition or identification of almost \$7 million in fines, restitution, recoveries, and other monetary results last fiscal year. This is in addition to the \$136 million in audit-related findings and over \$51 million in investigative-related findings that the DOJ OIG identified from FY 2009 through FY 2013. These monetary savings and recoveries, however, do not take into account some of our most significant reviews, which cannot be translated into quantifiable dollar savings but which address fundamental issues affecting national security, civil liberties, safety and security at federal prisons, effectiveness of law enforcement programs, and the conduct of Department employees. Examples include our reviews of the Federal Bureau of Investigation's (FBI) use of its authorities under the PATRIOT Act and the FISA Amendments Act, the government's information sharing prior to the Boston Marathon bombing, Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast & Furious, the Bureau of Prison's (BOP) management of the compassionate release program, the Department's handling of known or suspected terrorists in the Witness Security Program, the FBI's management of the terrorist watch list, nepotism by Department personnel, and our investigation of the FBI's corrupt relationship with James "Whitey" Bulger.

In addition, the DOJ OIG continues to conduct extensive oversight of the Department's programs and operations. For example, we are conducting reviews of the ATF's oversight of its storefront undercover operations and its Monitored Case Program; the Department's oversight of asset seizure activities focusing on policies, practices and outcomes of such programs; the FBI's use of telephony metadata obtained under Section 215 of the Patriot Act; and the impact of BOP's aging inmate population. The DOJ OIG is also examining how the BOP manages its private contract prisons, whether contract prisons meet BOP's safety and security requirements, and how contract facilities compare with similar BOP facilities in terms of inmate safety and security.

Further, we have initiated a joint review with the Inspectors General for the Intelligence Community and Department of Homeland Security on domestic sharing of counterterrorism information; this review was based on a request from this Committee, the Senate Judiciary Committee, and the Senate Select Committee on Intelligence. We also are conducting a joint review with the Department of State Inspector General regarding the post-incident responses by the Drug Enforcement Administration (DEA) and the State Department to three drug interdiction missions in Honduras in 2012, all involving the use of deadly force. The joint review will address pre-incident planning, the rules of engagement and information provided to Congress and the public by the State Department and DEA.

## **Inspector Generals' Access to Documents and Materials**

While the Inspector General community has been able to generate impressive results, we face significant issues and challenges that affect our independence and ability to conduct effective oversight. For example, timely access to information in our agency's files remains an important issue and challenge. As I have testified on multiple occasions, in order to conduct effective oversight, an IG must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This is an issue of utmost importance, as evidenced by the fact that 47 Inspectors General signed a letter in August 2014 to the Congress strongly endorsing the principle of unimpaired Inspector General access to agency records.

The Inspector General Act (IG Act) could not be clearer – Inspectors General are entitled to complete, timely, and unfiltered access to all documents and records within the agency's possession. Delaying or denying access to agency documents imperils an IG's independence, and impedes our ability to provide the effective and independent oversight that saves taxpayers money and improves the operations of the federal government. Actions that limit, condition, or delay access have profoundly negative consequences for our work: they make us less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

My Office knows these problems all too well, and we continue to face challenges in getting timely access to information from Department components. In particular, the FBI continues to take the position it first raised in 2010 that Section 6(a) of the Inspector General Act does not entitle the DOJ OIG to all records in the FBI's possession and therefore has refused DOJ OIG requests for various types of records. As I have indicated in my prior testimony, the DOJ OIG and CIGIE strenuously disagree with the FBI's position, which we have both made clear to the Department's leadership.

In May 2014, in an attempt to resolve this dispute, the Department's leadership asked the Office of Legal Counsel (OLC) to issue an opinion addressing the legal objections raised by the FBI. However, nine months later, we are still waiting for that opinion even though, in our view, this matter is straightforward and could have been resolved by the Department's leadership without requesting an opinion from OLC. I cannot emphasize enough how important it is that OLC issue its opinion promptly because the existing process at the Department, which as described below essentially assumes the correctness of the FBI's legal position, undermines our independence by requiring us to seek permission from the Department's leadership in order to access certain records. The status quo cannot be allowed to continue indefinitely.

We appreciate the strong bipartisan support we have received from Congress in trying to address these serious issues. Most significantly, in December 2014, a provision was included in the Fiscal Year 2015 appropriations law – Section 218 – which prohibits the Justice Department from using appropriated funds to deny,

prevent, or impede the DOJ OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the Inspector General Act. The provision also included a requirement to inform Congress of violations of this section. While the law only recently went into effect, it is clear that the Department has taken notice of it and it has already had a positive impact on our ability to get access to records in certain reviews for some components.

However, despite Congress's reaffirmation in Section 218 of its support for DOJ OIG's access to records in the Department's possession, the FBI continues to maintain that Section 6(a) of the IG Act does not authorize access to certain records in its possession, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act. As a result, the FBI is continuing the costly and time-consuming process it put in place prior to Section 218's enactment of reviewing documents responsive to DOJ OIG requests prior to producing them to us. The FBI has been undertaking this process in order to withhold from the DOJ OIG records that the FBI believes we are not legally entitled to receive, despite the absence of any such limitation in the IG Act. Prior to the enactment of Section 218, this FBI document review process, in addition to consuming the FBI's resources, significantly impacted the FBI's timely production of material to us in several of our matters, including whistleblower retaliation investigations.

On February 3, 2015, and again on February 19, 2015, we had to invoke the Section 218 provision and report that the FBI had failed to provide the OIG with timely access to certain records regarding two whistleblower retaliation investigations, and in our review of the Drug Enforcement Administration's use of administrative subpoena authority. The DOJ OIG will continue reporting to Congress, as we are required to do under Section 218, impediments imposed by the FBI, or any DOJ component, to our timely access to records in the Department's possession that we are entitled to receive under Section 6(a) of the IG Act.

It is long past time to resolve this legal dispute. The FBI's position that Section 6(a) of the IG Act does not authorize the DOJ OIG to have access to various categories of records in its possession contradicts the plain language of the IG Act, Congress's clear intent when it created the DOJ OIG (as confirmed by the recent enactment of Section 218), the FBI's and the Department's practice prior to 2010 of frequently providing the very same categories of information to the DOJ OIG without any legal objection, court decisions by two different Federal District Judges in 1998 and 1999 stating that the DOJ OIG could receive grand jury material, and the reasoning of a 1984 decision by the Office of Legal Counsel concluding that grand jury material could be provided to the Department's Office of Professional Responsibility.

The Department, in response to the FBI's questioning of our legal authority to review these types of records, has imposed a process whereby the Attorney General or the Deputy Attorney General may grant permission to the DOJ OIG to access such records if they conclude that specific reviews will assist them in the

performance of their duties, and they have done so in each such review so far where the issue has arisen. However, no such permission is necessary under Section 6(a) of the Inspector General Act. Moreover, requiring an OIG to obtain permission from agency leadership in order to review agency documents seriously impairs Inspector General independence, creates excessive delays, and may lead to incomplete, inaccurate, or significantly delayed findings or recommendations.

We remain hopeful that the OLC opinion that has been sought by the Department's leadership will conclude that the IG Act entitles Inspectors General to independent access to the records and information to which we are entitled under the express terms of the IG Act. However, should OLC interpret the IG Act in a manner that undercuts Congress's clear intent and limits the DOJ OIG's access to documents, I would be pleased to work with the Committee to develop a legislative remedy to address this issue.

### **Agency Classification Claims and Delays**

The mission of Inspectors General is to inform the public, Congress, and agency leadership about fraud, waste, abuse, mismanagement, and misconduct in the federal government. It is important to make our findings accessible to American taxpayers. Therefore, there is great concern when an agency tries to redact information that is not classified and where the agency has not articulated a satisfactory reason to the OIG why the information is particularly sensitive.

At DOJ OIG, we have frequently been faced with proposed redactions to our national security reports that were over-inclusive, inconsistent with classification determinations made in connection with our prior reports, and involved information the government had already made public. For example, we faced this issue with the Department in the joint Boston Marathon Bombing report, as well as in our recent reviews of the FBI's use of National Security Letters and Patriot Act Section 215 orders for business records. With the exception of the Boston Marathon Bombing report, we ultimately came to a resolution with the relevant agency. However, to reach these resolutions, we unnecessarily expended substantial resources and had to engage in protracted discussions that went on for many months, thereby delaying the public release of our reports. Maintaining transparency in its operations and in the contents of its reports is crucial for an OIG to provide credible oversight.

### **Strengthening Tools of Inspectors General**

The Council of IGs will shortly be providing the Congress with a letter identifying the legislative priorities for the entire Inspector General community. Let me briefly mention a few areas where the ability of Inspectors General could be enhanced in order to conduct strong and effective oversight.

One such area where legislation could enhance the ability of Inspectors General to conduct strong and effective oversight is in addressing the limitations on our ability to obtain and match readily available information across Executive

Branch agencies in furtherance of our efforts to combat fraud and misconduct. These limitations arise out of the Computer Matching and Privacy Protection Act (CMPPA). The information at issue currently exists within the possession of government agencies – it does not require any further collection of documents or information – and Inspectors General of the agency are already entitled to access it under the IG Act. Yet the CMPPA contains provisions that impact the ability of Inspectors General to efficiently obtain information from another agency and to share it with each other. The timely use of such data by Inspectors General to identify those who improperly receive federal assistance, federal grants or contracts, or duplicative payments will improve program efficiency, enhance recovery of improper payments, and empower Inspectors General to better address waste, fraud, and abuse in federal programs. In my view, exempting Inspectors General from the CMPPA would greatly assist our ability to ensure that federal programs are effective and efficient without undermining the purposes of that law.

Another such area is the capacity of Inspectors General to obtain testimony from former agency employees, contractors, and grant recipients. While the IG Act provides us with the ability to subpoena documents and records from those individuals, we are unable to require them to provide testimony, even if they have critical evidence of fraud or of agency misconduct. I have seen several instances during my tenure as Inspector General where former employees of the Department (including those who resigned or retired immediately prior to a DOJ OIG interview), contractors, and grant recipients have refused to speak with the DOJ OIG, thereby impeding our ability to gather potentially valuable and relevant evidence. While I believe any authority granting Inspectors General the ability to compel testimony should include protections to ensure the authority is used appropriately and only when necessary, and that it does not inadvertently impair Justice Department prosecutions, I am confident based on my years as a former federal prosecutor and as a senior official in the Department's Criminal Division that such protections can readily be developed while also empowering Inspectors General to carry out their responsibilities. I look forward to discussing this issue further with the Committee.

We also believe several changes to the Program Fraud Civil Remedies Act (PFCRA), which is often referred to as the "mini False Claims Act" because it provides administrative civil remedies for false claims of \$150,000 or less and for false statements in cases DOJ does not accept for prosecution, could make PFCRA a faster and lower-cost alternative to recover damages in smaller dollar fraud cases. As such, CIGIE will be proposing several statutory changes, which have been developed in consultation with key stakeholders, such as the Armed Services Board of Contract Appeals and Boards of Contract Appeals.

We also need to address the concerns that have been raised recently relating to the work of CIGIE's Integrity Committee, including with respect to the timeliness of its work and the transparency of its efforts. One of my first meetings as Chair of Council of IGs was with the Assistant Director of the FBI, who chairs the Integrity Committee, in order to discuss ways to address these issues. Inspectors General must maintain the highest levels of accountability and integrity, and as Chair of the

Council of IGs, I will make it a top priority to improve the procedures for the Integrity Committee.

Finally, I would like to note that there are currently several vacancies in the Inspector General community – including at the Central Intelligence Agency, the U.S. Agency for International Development, the Department of Veterans Affairs, the General Services Administration, and the Department of the Interior. As this Committee has recognized previously, acting Inspectors General and career staff carry on the work of the offices during a vacancy, and they do it with the utmost of professionalism; however, a sustained absence of confirmed leadership is not healthy for any office, particularly one entrusted with the important and challenging mission of an Inspector General and one that requires independence and authority to speak with a strong voice. On behalf of the Inspector General community, I would encourage swift action with respect to selecting and confirming candidates for current and future vacant IG positions.

### **Conclusion**

In conclusion, I look forward to working closely with this Committee to ensure that Inspectors General continue to be empowered to provide the kind of independent and objective oversight for which they have become known, and which the taxpayers deserve.