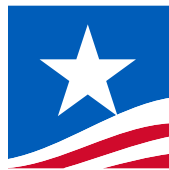




PEACE CORPS
Office of
**INSPECTOR
GENERAL**



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Statement of Kathy A. Buller

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

before the

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

concerning

“Recommendations and Reforms from the Inspectors General”

November 15, 2017

Introduction

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

Thank you for inviting me to appear before you today to discuss the work of inspectors general to promote integrity and efficiency. In my testimony, I plan to share my perspective as both the Inspector General for the Peace Corps and the Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I want to express our appreciation for the years of bipartisan effort this Committee put toward passing the Inspector General Empowerment Act,¹ and for your continued support of our efforts to eliminate fraud, waste, abuse, and mismanagement in Federal government operations.

We are nearing the 40th anniversary of the Inspector General Act of 1978. For almost four decades inspectors general (IGs) have worked towards a better, more efficient government. We detect and prevent waste, fraud, and abuse in the agencies we oversee, and promote integrity and efficiency in government programs and operations. We hold Federal agencies accountable, protect whistleblowers, expose corruption and mismanagement, and help Congress make informed decisions about the agencies within their purview. In fiscal year 2016 alone, the IG community's recommendations to agencies identified over \$25.2 billion in potential savings and our investigative work resulted in \$19.9 billion in investigative receivables and recoveries.

As the Chair of the CIGIE Legislation Committee, I am honored to work with 25 other IGs to communicate on legislative issues and matters of common interest between Congress and CIGIE. We share helpful, timely information about congressional initiatives to the IG community, communicate the views of the community, and provide technical assistance to Congress. We also present CIGIE's views to Congress, the Government Accountability Office, and the Office of Management and Budget (OMB) on legislative issues that affect IGs.

We have enjoyed many years of bipartisan support from Congress for our collective effort to improve the Federal government operations that we oversee. The Inspector General Empowerment Act (IG Empowerment Act) originated with this Committee and is an extraordinary example of that support and collaboration. I will briefly describe the effects of that Act, and our efforts to use the authorities it provided to further our oversight work. I will also describe other legislative initiatives that, if pursued by Congress, would enhance our oversight over Federal programs and operations.

Inspector General Empowerment Act of 2016

The IG Empowerment Act restored our right of unfettered access by reaffirming a fundamental authority provided under the Inspector General Act of 1978 (IG Act): that IGs may access all materials and documents necessary to our oversight work. In addition, the IG Empowerment Act provided several additional authorities that the IG community identified as important for enhancing our ability to detect and prevent fraud, waste, abuse, and mismanagement in the Federal programs and operations that we oversee.

Access to Information

In February, I appeared before this committee to discuss the immediate results of the passage of the IG Empowerment Act. I highlighted the positive effect the IG Empowerment Act had on my dispute with the

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

Peace Corps over my office's access to all agency records. The positive changes that my office has seen with respect to our access to agency information reaffirm the importance of the IG Empowerment Act.

A bedrock principle of the IG Act is that an Inspector General must have access to all agency records and information relating to the programs and operations of the agencies we oversee. This language was seen as clear and unqualified. However, beginning in 2010, a number of Federal agencies, including the Department of Justice (DOJ), the Peace Corps, the Department of Commerce, the Chemical Safety and Hazard Investigation Board, and the Department of the Treasury challenged their respective IGs' right to access all such agency information.

In the past, I appeared before this Committee and others to discuss the struggles my office faced in obtaining the information we needed to do our job. The former General Counsel of the Peace Corps erroneously interpreted a law in a manner that effectively kept OIG, Congress, and the American public in the dark about the program to address sexual assault in the Peace Corps. My office was not alone; other IGs were receiving similar resistance from their agencies.

The July 2015 opinion by the Department of Justice Office of Legal Counsel (OLC) threatened the independence of all Inspectors General and challenged our collective ability to have timely and independent access. It became clear to the IG community that only an act of Congress could restore the Inspector General's broad right of access, and the Inspector General Empowerment Act did just that. The Act further strengthened the access provision and reiterated Congress's intent for IGs: that our access to all agency records really means "all." Further, the IG Empowerment Act made clear that such access must be provided in a timely fashion.

In the Peace Corps, the IG Empowerment Act had an immediate impact. We quickly worked with the agency to fully restore our access to the agency's sexual assault risk reduction and response program. Together with the then-Director of the Peace Corps, we sent joint, global communications to all staff and Volunteers informing them of our authority to access all agency records and information, as well as reiterating our commitment to victims of sexual assault. In August, after receiving full, unencumbered access to records, we were able to address a data limitation on a statutorily required review of sexual assault cases issued in 2016. Prior to the passage of the IG Empowerment Act, redacted records limited our ability to determine that the documentation we received for each case of sexual assault was documentation of the agency's response to that case, rather than documentation from a different case. After the IG Empowerment Act restored our access, my office and the agency worked constructively to review a targeted sample of cases where the data had previously been denied, to ensure the accuracy of the redacted documentation the Peace Corps had provided.

In my previous testimony, I also expressed a hope that the IG Empowerment Act would further a culture of openness and transparency between agency staff and my office. As I had mentioned, our access issue had eroded the trust and relationship between my office and the agency. While there is still some work to be done, I am pleased to report that the IG Empowerment Act has produced an appreciable, positive change both in increased access and ongoing progress towards a culture of openness and cooperation. This not only benefits staff, Volunteers, and others who care about or rely on the Peace Corps, but also supports whistleblowers, promotes an open and transparent Peace Corps for the American taxpayer, and ensures that Congress is fully informed of the programs and operations of the Peace Corps.

Beyond the Peace Corps, we know that the IG Empowerment Act provided a robust tool to address access disputes between agencies and their IGs. However, some individual access issues remain and affected IG's will be reporting instances when their agency resisted oversight or delayed access in their upcoming Semiannual Reports to Congress. Continued congressional interest in such incidents helps all IGs ward

off erroneous interpretations of the Inspector General Act and improves our ability to obtain the timely access that we need.

Computer Matching Act

The Inspector General Empowerment Act also exempted IGs and agencies working in a matching program with IGs from the requirements of the Computer Matching and Privacy Protection Act of 1998 (CMPPA). Computerized matching of data from two or more information systems is a proven method of data analysis that can detect and prevent fraud, waste, and abuse in government programs. Such work is commonly used to identify improper payments and potential fraud, especially in Federal benefit programs and activities.

CMPPA required IGs to obtain the approval of the agency's data integrity board to implement a computer matching agreement, potentially undermining IG independence. Though IGs are represented on the board, agency officials on the board could decide whether to prevent the match or to impose undue restrictions on the match. The board approval process also risked exposing sensitive, ongoing IG work. Further, the CMPPA required IGs to undergo a protracted review process that could have precluded IGs from carrying out a match in a timely fashion. By exempting IGs from the CMPPA, Congress ensured that our computer matching activities will be performed more efficiently, independent from potential undue burdens or restrictions by agencies.

Since the passage of the IG Empowerment Act, our community has focused on implementing this new authority responsibly and thoughtfully, as well as building IG capacity to properly utilize the new authority. In June 2017, CIGIE issued guidance to its members, providing an overview of the CMPPA exemption, presenting various matters for IGs to consider when engaging in matching programs, and helping individual IGs perform matches. Additionally, IG community experts have held briefings and presentations to increase the capacity of IG staff interested in matching programs, and an informal working group is exploring developing potential matching programs. Finally, the CIGIE Data Analytics working group is expanding its efforts to catalogue agency data sets to assist IGs in identifying types of data sets maintained at other agencies.

We are encouraged by the steady progress of the IG community towards responsibly using this new authority. For example, the Inspectors General of the Departments of Labor and Veterans Affairs have initiated a data matching project to detect fraud by identify individuals receiving benefits from the Department of Labor Federal Employee Compensation program and disability benefits from the Department of Veterans Affairs. While the project is in its early stages, any future success of this project could be replicated by other agencies for matching their data with the Department of Labor Federal Employee Compensation program.

Paperwork Reduction Act

The Inspector General Empowerment Act similarly exempted the IG community from the Paperwork Reduction Act (PRA), a reform which the IG community had recommended for over a decade. The IG community expressed concern that the PRA required that information collections, such as IG surveys, be subject to approval from a "senior official" of the agency and then from OMB. This conflicted with our statutory mission to be independent. The PRA requires a lengthy and burdensome approval process for Federal agencies to collect information. The protracted approval process affected our ability to carry out congressional requests or congressionally mandated work in a timely and effective manner. There were instances where by the time the survey was approved the character of the issue under review had changed. In some cases, IGs discontinued using surveys and gathering information that would enhance the effectiveness and quality of a review. This exemption ensures that IGs will be able to conduct surveys and

other information collection with the requisite independence, and to do so without unnecessary delay or burdens.

As with the CMPPA exemption, the IG community is focused on implementing this new authority responsibly and thoughtfully. Shortly after the Act was passed, CIGIE convened a PRA working group to assist OIGs with implementing the exemption. As a result of their work, in August 2017 CIGIE issued guidance to help members conducting surveys as part of their work. The guidance will assist OIGs with conducting high quality surveys that will yield useable results with minimal participant burden.

Legislative Priorities

The IG community looks forward to working with Congress to further improve our ability to perform the oversight mission that Congress and taxpayers expect from us. We have enjoyed productive conversations about matters of joint interest to Congress and the IG community. One matter of great interest to both CIGIE and Congress is strengthening whistleblower rights and protections. CIGIE supports repealing the sunset provision for the Establishment IG Whistleblower Ombudsman function enacted through the Whistleblower Protection Enhancement Act. We have appreciated the opportunity to work with this Committee and your Senate counterparts as Congress looks to repeal that sunset provision and further enhance the role of Offices of Inspector General (OIGs) in educating and protecting whistleblowers. In addition, CIGIE will continue to encourage appropriately prioritizing risk-based oversight that meets the oversight needs of Congress while being mindful of the finite resources of OIGs.

Each new Congress, the CIGIE Legislation Committee publishes the legislative priorities for the IG Community. While not an exhaustive list, the IG community has identified the following five issues as priority areas:

- Protecting cybersecurity vulnerability information from public disclosure
- Granting Testimonial Subpoena Authority for IGs who do not already possess it
- Amending the Program Fraud Civil Remedies Act (PFCRA)
- Establishing a congressional notification requirement for the use of paid or unpaid, non-duty status in cases involving an IG
- Amending the Privacy Act to facilitate oversight

Protecting Cybersecurity Vulnerability Information from Disclosure

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

CIGIE hopes to continue to engage with your staff on finding a narrowly tailored solution that keeps the public and Congress informed about the cybersecurity deficiencies at agencies while protecting information that would give malicious individuals or entities a roadmap to agency cybersecurity vulnerabilities.

Testimonial Subpoena Authority

The resignation of Federal employees has substantially hampered audits, investigations, or other reviews into matters within the scope of that individual's responsibilities. However, IGs can also have trouble accessing key information during the course of an inquiry into other individuals or entities with whom the Federal government does business. Examples include where subcontractors or subgrantees have no direct contractual relationship with the Federal government but are suspected of defrauding a Federally funded program, when employees of contractors who refuse to provide information to the IG, or interviewees who have destroyed important documents but have knowledge of the matter they are covering up.

CIGIE believes that providing all IGs with the authority to subpoena the attendance and testimony by certain witnesses, including any former Federal employee, would support our oversight activities. The new authority would be most effective if it mirrored the existing documentary subpoena authority set forth in the IG Act. The predecessor version of the Inspector General Empowerment Act² passed unanimously by the House of Representatives included this authority; however, it did not appear in the final version of the Inspector General Empowerment Act. We are encouraged by this Committee's consideration and bipartisan support of the benefits to IG oversight that this authority would bring.

Program Fraud Civil Remedies Act Amendments

For years, a key administrative tool for recovering damages in smaller dollar fraud cases has been underutilized. The PFCRA,³ or the 'mini False Claims Act,' provides administrative civil remedies for false claims of \$150,000 or less and for false statements in cases DOJ does not accept for prosecution. PFCRA cases are adjudicated before Administrative Law Judges. The PFCRA permits a \$5,000 recovery for each false claim, allows for double-damages, and authorizes civil money penalties for false statements even if there has been no claim for payment of money. PFCRA reform promises to make this a significant tool to recover fraudulent expenditures for the benefit of taxpayers.

PFCRA is a potentially faster and lower-cost alternative to recovering damages in smaller dollar fraud cases. However, the statute remains a relatively underutilized tool, as noted in a 2012 report from the Government Accountability Office (GAO).⁴ According to the report, many agencies were not using the PFCRA for reasons including: a lack of familiarity with the statute; insufficient resources; cumbersome and time-consuming procedures; availability of alternate remedies; and the absence of Administrative Law Judges in certain agencies that could hear PFCRA cases. A subsequent CIGIE-conducted survey of the IG community revealed that a number of the GAO concerns remain, thus underscoring the continuing challenges that inhibit widespread use of the PFCRA to combat fraud.

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

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

Sections 3(b) and 8G(e) of the IG Act provides specific processes for removing or transferring an IG, and requires congressional notification not later than 30 days before any such removal. These standards provide a critical safeguard to protect the independence of IGs to carry out our oversight work. However,

³ 31 U.S.C. Chapter 38.

⁴ *Program Fraud Civil Remedies Act: Observations on Implementation*, "GAO-12-275R (January 27, 2012).

this safeguard does not apply when an IG is placed in a paid or unpaid, non-duty status (such as “administrative leave” or “suspended without pay”).

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

Amendment to the Privacy Act to facilitate oversight

One new addition to the CIGIE Legislative Priorities is our proposal to amend the Privacy Act of 1974 (Privacy Act) to clarify that the prevention of fraud in Federal benefits programs is an inherent purpose in administering and collecting information for the benefits program. Currently, when an investigation produces evidence that fraud was committed in a Federal benefits program, an IG may submit the investigative reports to their parent agency to take administrative action. That investigative report may include records controlled by another agency’s Privacy Act system of records. If an agency prohibits the use of records covered by the Privacy Act for administrative purposes because fraud prevention is “not compatible with the purpose for which the information was collected,” such outcome could frustrate the capacity of an agency to take administrative action against an employee for defrauding the program. This results in overall reduced accountability and integrity of Federal programs.

This problem is not theoretical. For example, the Department of Labor has claimed that the Privacy Act may prohibit a Federal agency from using records related to the Federal Employee Compensation Act (FECA) for disciplinary purposes because fraud prevention is “not compatible with the purpose for which the information was collected.” Subsequently, the OLC opined that the Department of Labor has the exclusive authority to control and limit the disclosure of FECA records held by another agency.⁵ Such determinations can result in a chilling effect on both oversight efforts and the ability for agencies to hold individuals accountable for defrauding Government programs. The proposed amendment would solve the problem with a straightforward solution: expanding on the current definition of “routine use” in the Privacy Act to clarify that program records collected by Federal agencies can be used to take administrative action against those who allegedly defrauded a Federal benefits program.

Conclusion

The Inspector General community is grateful for the steadfast, bipartisan support we have received from Congress. Personally, our collaboration with this Committee and its tremendous staff, both for the Inspector General Empowerment Act and other legislative initiatives, has been incredibly constructive. From our training initiative “Meet the Inspector General,” to the regular technical assistance that our Committee provides on your legislation or oversight work, our proactive discussions and mutual efforts to keep each other informed have resulted in our productive collaboration. We look forward to continuing to be an important resource to this Committee and other Congressional stakeholders as you pursue your oversight and legislative work.

⁵ See Memorandum for the Solicitor, “Whether the United States Department of Labor Has the Authority to Control the Disclosure of Federal Employee Compensation Act Records Held by the United States Postal Service,” November 16, 2012.