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SAFEGUARDING INSPECTOR GENERAL INDEPENDENCE AND INTEGRITY

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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SAFEGUARDING INSPECTOR GENERAL INDEPENDENCE AND INTEGRITY

THURSDAY, OCTOBER 21, 2021

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., via Webex and in room SD–342, Dirksen Senate Office Building, Hon. Gary Peters, Chairman of the Committee, presiding.

Present: Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley.

OPENING STATEMENT OF CHAIRMAN PETERS[1]

Chairman PETERS. The Committee will come to order.

I want to first off thank each of our witnesses for being here today and for your service to our nation each and every day. You have extremely challenging jobs to ensure that government is working effectively and efficiently for the American people. I look forward to hearing from each of you on how this Committee can ensure the independence and the integrity of Inspectors General (IGs) as you continue this work.

As current Federal watchdogs, your perspective will be critical in helping us finalize legislation that will provide you and your colleagues with protections to strengthen independent oversight of the government's effectiveness.

This legislation is, quite frankly, long overdue. For decades, Inspectors General have acted as independent, nonpartisan watchdogs tasked with helping Congress prevent and uncover fraud, waste, and abuse in the Federal Government, and ensure taxpayer dollars are being used appropriately.

The Council of the Inspectors General on Integrity and Efficiency's (CIGIE) recent annual report to Congress estimated that Inspectors General saved American taxpayers more than $50 billion last year alone. It is absolutely vital that our Federal watchdogs are able to work independently and without the threat of political interference.

Current law allows for actions that threaten to undermine this independence, including the removal of Inspectors General from office without sufficient explanation and the appointment of partisan political operatives to serve in these traditionally nonpartisan

[1] The prepared statement of Senator Peters appear in the Appendix on page 41.

roles. These actions, and others, have left Inspectors General, and their critical work, vulnerable to political influence, and that is simply unacceptable.

We must ensure that no administration is able to undercut the independent transparency and accountability that Inspectors General provide to the American people. That is why Ranking Member Portman and I are working together to enact the first significant reforms to support Inspectors General in more than 13 years. I am proud our bipartisan, bicameral effort enjoys broad support from our colleagues and numerous good government groups.

I am grateful to Senators Grassley and Hassan, as well as U.S. House Oversight Chairwoman Maloney, for helping us create these reforms, which will require a more detailed explanation from the President before removing an Inspector General, ensure that Acting Inspectors General are selected from a pool of senior-level employees within the watchdog community, and provide Federal watchdogs the authority to subpoena the testimony of contractors and former Federal officials.

Through these common-sense solutions, this Committee has the opportunity to consider and advance historic, meaningful reforms that strengthen our democracy and promote independent oversight, a goal I know we all share.

I look forward to discussing how we can best protect our Inspectors General and swiftly pass these urgently needed reforms.

The Ranking Member is en route and will be here shortly, so I will swear in the witnesses now.

It is the practice of this Committee to swear in witnesses, so if you will each rise and raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. LERNER. I do.

Mr. WINTERS. I do.

Mr. HOROWITZ. I do.

Chairman PETERS. You may be seated.

Our first witness, Allison Lerner, is the Inspector General of the National Science Foundation (NSF) and Chair of the Council of the Inspectors General on Integrity and Efficiency. In her role, she recommends policies and leads efforts to prevent and detect fraud, waste, and abuse; improves the integrity of the National Science Foundation programs and operations; and investigates allegations of misconduct in science.

Ms. Lerner has 30 years of Federal experience, initially starting her career in the Office of Inspector General (OIG) at Commerce as Assistant Counsel. In 2011, she was designated by President Obama as a member of the Government Accountability and Transparency (GAT) Board.

Welcome, Ms. Lerner. But before we hear your opening comments I would like to recognize Ranking Member Portman for his opening comments.

OPENING STATEMENT OF SENATOR PORTMAN[1]

Senator PORTMAN. Great. Thank you, Mr. Chairman, I appreciate your indulgence, and thank you for convening this hearing today.

Inspectors General are essential to good government. I think everybody understands and agrees with that. Congress has a responsibility, of course, to conduct oversight of the Executive Branch, and that responsibility would be far more difficult without Inspectors General. They are inside the agencies they oversee. They have unique expertise in their agencies' programs and budgets. I really think they are Congress' first line of defense against waste, fraud, and abuse at those agencies.

According to the Council of Inspectors General on Integrity and Efficiency—and we will hear from CIGIE today—in fiscal year (FY) 2020 alone, IGs' work resulted in potential savings totaling $53 billion. That is a lot of waste, fraud, and abuse. We ask IGs to undertake some of the most important and sensitive oversight work. For example, I intend to offer an amendment today to our IG legislation we will consider next week to require the appropriate IGs to review the Administration's Afghan vetting policy. This review would include multiple agencies, complex programs, and evolving information. I think IGs are the best place to do that. They are in the best position to conduct this type of nonpartisan expert review needed to understand an important issue.

This Committee is responsible for protecting IG independence and providing them with the authorities to do that kind of important work. Since 1978, Congress has improved and reformed Inspector General authorities many times. This includes legislation to establish a total of 73 IGs across the Federal Government, bolster IGs' access to information and, of course, to protect whistleblowers. These reforms represent steps in the right direction, but we think more work is still needed.

I requested today's hearing so the Committee can discuss this IG legislation Senator Peters and I plan to consider at next week's business meeting, and I want the Chairman to know I appreciate the fact that you have accommodated the request. I think this will be positive for our legislation and for a general discussion about the importance of IGs.

As noted, we have three very important members of the IG community in front of us here today: the Department of Justice (DOJ) IG and former CIGIE Chair, Michael Horowitz, who all of us know; National Science Foundation IG and current CIGIE Chair, Alison Lerner; and Amtrak IG and CIGIE Integrity Committee (IC) Chair, Kevin Winners.

To start, the legislation that we are going to be talking about provides much-needed protections for Inspector General independence. Many have worked on this, including Senator Grassley. We should notice his work. I will point out that the current law already requires the President to provide Congress the 30 days' notice before removing an IG. We do not change that. It does not increase the time period.

It does, however, preserve the congressional intent and the interest in understanding why that IG was removed by requiring the

[1] The prepared statement of Senator Portman appears in the Appendix on page 43.

President to provide a substantive rationale for removing an IG. Both President Obama and President Trump removed IGs and told Congress they had lost confidence in their removed IG. I do not think we should be satisfied with such a statement, no matter the party of the President.

The legislation also remedies another problem that occurred during the Obama and Trump administrations by requiring that acting IGs be named from the Inspector General community. Both President Obama and President Trump named agency officials as acting IGs, raising questions about the independence of those IGs. An agency official cannot conduct independent oversight of his or her own agencies and actions. Putting an agency official in charge of its IG office also risks exposing whistleblowers and could show future reports of waste, fraud, and abuse.

The legislation also provides testimonial subpoena authority for IGs. This will allow IGs to complete interviews of important witnesses, even if a person has resigned, to avoid participating in an investigation. Unfortunately, that has been a common occurrence within our system, according to IGs. Subpoena authority is a weighty responsibility, though, which is why I have worked with Senator Peters to ensure the bill does provide effective guardrails and effective reporting to Congress.

Additionally, the bill incentivizes filling IG vacancies. Installing permanent IGs is important. They provide more independence and continuity than acting IGs. This May, I sent a letter to President Biden, with the Chairman, and many of this Committee's Members urging him to fill the 13 vacant Senate-confirmed IG positions. I am pleased to see that the President has taken our advice seriously and nominated individuals to fill a number of those vacancies, but all those vacancies need to be filled.

Finally, the legislation provides measures to improve oversight of the IGs themselves, such as requiring that CIGIE report to Congress when it becomes aware of a particularly serious problem at an IG office. I know all three of these distinguished witnesses have much to give us today in terms of their input. They have given us a lot of thought. They understand the need for these proposals for change. I thank each of them for their service and for taking the time to appear before us today and I look forward to your testimony.

Chairman PETERS. Thank you, Ranking Member Portman.

Ms. Lerner, you may proceed with your opening comments.

TESTIMONY OF THE HONORABLE ALLISON C. LERNER,[1] CHAIR, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Ms. LERNER. Thank you. Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee, thank you for inviting me to appear before you today in my role as Chairperson of the Council of in the Inspectors General on Integrity and Efficiency.

Despite the tumult caused by the Coronavirus Disease 2019 (COVID–19) pandemic, our community has remained focused on its

[1] The prepared statement of Ms. Lerner appears in the Appendix on page 45.

vital mission: providing impartial and nonpartisan oversight and transparency into some of the most difficult problems facing the agencies we oversee. Altogether, our work in 2020, as has been noted, resulted in potential savings totaling approximately $53 billion, a $17 return on every dollar invested in IG oversight. For accomplishments like this to continue and expand, action is necessary.

Each Congress, the CIGIE Legislation Committee presents the community's critical reform proposals to strengthen government oversight or resolve challenges that IGs face under current law. This session, our legislative priorities strongly focus on enhancing Inspector General independence, the institutional independence of OIGs, and enhancing OIG oversight. Today I want to highlight some of these initiatives, which are part of H.R. 2662 IG Independence and Empowerment Act, and included in the Peters/Portman substitute amendment.

First, as I noted, it is imperative that Congress take steps to protect the institutional independence of Inspectors General. To be effective, IGs have to be independent in both mind and appearance, and being independent is no less important for individuals temporarily serving as head of an OIG. The IG community urges Congress to amendment the Federal Vacancies Reform Act to prevent the appointment of an acting IG that calls into question the independence of the office.

Currently, a President can fill a Presidentially appointed Senate-confirmed (PAS) IG vacancy with a political appointee or a senior official from the agency the IG oversees. Such appointments, which have occurred under both Democratic and Republican administrations, create actual and perceived conflicts of interest that undermine the IG's independence and stakeholders' confidence in its work; discharge whistleblowers from coming to the IG with evidence of fraud, waste, and abuse; and create a disincentive for the President to appoint a permanent IG.

The proposed change would have the First Assistant of the Inspector General serve during a vacancy but allow the President to designate another IG or senior OIG official to fill the vacancy. This reform would provide an acting IG with the independence necessary to maintain the public's trust and widen the pool of professional oversight officials the President may direct to serve as an acting IG.

This legislation, together with an additional provision requiring notification to Congress when an IG is placed on non-duty status, will greatly improve IG independence. We appreciate that these safeguards are part of the Peters/Portman substitute amendment.

Second, Congress must strengthen oversight tools available to OIGs. The IG community, with bipartisan support from this Committee since at least 2015, has long sought testimonial subpoena authority, an essential tool for IGs to be able to conduct comprehensive oversight. Because most IGs lack this authority, they cannot obtain potentially critical evidence related to alleged wrongdoing from certain individuals unless they voluntarily agree to be interviewed. The fact that we cannot require these interviews undermines our ability to complete investigations and hold individ-

uals accountable for their misconduct, thereby diminishing the public's trust in government.

We are committed to providing technical assistance to develop controls to ensure the effective and appropriate use of this new authority. We want to express our appreciation to Chairman Peters and Ranking Member Portman, as well as Senators Grassley and Hassan, for including this authority in the substitute amendment and otherwise working diligently with the IG community on this needed authority.

Finally, we also support the Committee and Members' efforts to reform OIG semiannual reports by leveraging public information and resources such as oversight.gov, requiring OIG employees to be informed about their whistleblower rights and protections, making needed change to support CIGIE's Integrity Committee, and replacing the current indirect process for funding CIGIE with the direct authorization of an appropriation that affords transparency but does not require additional funding from taxpayers.

In closing, I would like to thank all Members and staff of this Committee for your strong, bipartisan support for our community and for the seriousness with which you take our mission. I look forward to working closely with you all to ensure that Inspectors General continue to be empowered to provide the independent, nonpartisan oversight our agencies, Congress, and the American public so richly deserve.

This concludes my statement, and I am happy to answer any questions.

Chairman PETERS. Thank you, Ms. Lerner.

Our next witness is Kevin Winters, Inspector General of the National Railroad Passenger Corporation (AMTRAK) and Integrity Committee Chair, Council of the Inspectors General on Integrity and Efficiency.

Mr. Winters brings a wealth of experience, formerly serving as a senior executive with National Aeronautics and Space Administration (NASA's) Office of Inspector General from 2005 through 2015. As NASA's Assistant Inspector General for Investigations, his staff of special agents, investigative auditors, and computer forensic examiners focused on allegations of fraud, waste, and abuse affecting NASA's programs.

Mr. Winters also served in the United States Marine Corps (USMC), eventually retiring as a Brigadier General. Subsequently, he held several domestic and overseas assignments, including duties as a prosecutor and defense counsel.

Welcome, Mr. Winters, and thank you for your service.

You may proceed with your opening remarks.

TESTIMONY OF THE HONORABLE KEVIN H. WINTERS,[1] CHAIR, INTEGRITY COMMITTEE, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Mr. WINTERS. Thank you, Mr. Chairman, Ranking Member, and thank you for the opportunity to testify about the important work of CIGIE's Integrity Committee. As you mentioned, I currently serve as Amtrak's Inspector General, and I have been a member

[1] The prepared statement of Mr. Winters appear in the Appendix on page 53.

of the IG community for the past 15 years, to include, as you said, service at NASA, as the Assistant Inspector General for Investigations.

In 2019, the then-CIGIE chair, Michael Horowitz, appointed me to be an IC member. In 2020, the IC membership elected me to serve as the chairperson for a 2-year term.

My testimony today will focus on three topics. First, an overview of the IC's mission and structure—IC is short for the Integrity Committee, by the way. Second, an insight into our workload, recognizing that we cannot discuss ongoing matters. Third, our challenges, which present opportunities for improvement.

By law, IGs have daunting oversight responsibilities over agencies, programs, and operations. Amtrak's, for example, includes a 24/7 nationwide rail service to 46 States and three Canadian provinces and employs 17,000 people. As their IG, Congress entrusted me with tremendous oversight resources, such as powers to audit, to investigate, unfettered access to information, subpoena power, and law enforcement authority. These tremendous powers, by the way, are typical of IGs across the Federal IG community.

To check this tremendous power, Congress, in my view, wisely established the Integrity Committee to ensure that senior IG officials, currently about 468 of them, perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply it to the agencies that they audit and investigate. The IC's mission, therefore, is to receive, review, and refer for investigations allegations of wrongdoing made against an Inspector General or certain senior members of an IG's office.

By statute, the Integrity Committee is composed of six members. Four are serving IGs. Two are Presidentially appointed. The other two are from designated Federal entities. There are two other voting members, a senior official from the Federal Bureau of Investigation (FBI) and the Director of the Office of Government Ethics, or designee, and there is a small CIGIE staff, primarily lawyers, to assist the Integrity Committee, and the Public Integrity Section of the Department of Justice also serves as a legal advisor.

This self-policing of the IG community is a solemn responsibility that requires the Integrity Committee to be vigilant, independent, objective, nonpartisan, and appropriately transparent to maintain the trust of our key stakeholders, which are the public, Congress, whistleblowers and witnesses, and those within our investigative jurisdiction. While there is always room for improvement, the Integrity Committee and its support staff work diligently to uphold this serious responsibility.

Fiscal year 2021 saw a dramatic jump in communications to the Integrity Committee. In 2020, for example, we received 1,152. This year, 3,917. We also saw an increase in complexity and severity of the incoming complaints. We met 19 times in fiscal year 2021, opened 65 cases for review, which involved 30 different agencies.

We completed three investigations which were submitted then for appropriate action to appointed authorities and relevant congressional committees. We also initiated four investigations. As of this hearing, the IC has nine investigations pending completion.

As someone who has spent my professional life in service to our country, both in peace and war, I recognize how fortunate we are

to have a system of government built on adherence to the rule of law and with checks and balances, which includes independent Inspectors General who help ensure the effectiveness of their agencies.

I support H.R. 2662. I am thankful for your interest in the efforts of the Integrity Committee to serve as a credible and trusted check on the tremendous powers entrusted to senior members of the IG community, and I look forward to your questions, recognizing, of course, that we cannot discuss ongoing and open matters. Thank you.

Chairman PETERS. Thank you, Mr. Winters.

Our final witness is Michael Horowitz, Inspector General for the Department of Justice. In his role, Mr. Horowitz oversees a nationwide workforce of more than 500 special agents, auditors, inspectors, attorneys, and support staff, whose mission is to detect and deter waste, fraud, and abuse. He also serves as the Chair of the Council of the Inspectors General on Integrity and Efficiency, an organization comprised of all 75 Federal Inspectors General.

Since the start of the pandemic, he has simultaneously led the Pandemic Response Accountability Committee (PRAC), a committee of 22 Federal Inspectors General that oversee the Federal pandemic-related emergency spending.

Mr. Horowitz, good to see you again. You may proceed with your opening.

TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HOROWITZ. Thank you, Chairman Peters. Good to be here again, and thank you, Ranking Member Portman, and members of the Committee.

Each year, as was noted, independent oversight work by IGs results in billions of dollars in recoveries and savings for the taxpayers. The bipartisan Inspector General Independence and Empowerment Act of 2021 will allow the IG community to build on that success and further protect the public we serve from waste, fraud, abuse, and mismanagement.

I want to address two provisions that are particularly important to my office at the DOJ—expanding my office's jurisdiction to include professional misconduct by DOJ attorneys, and providing IGs with testimonial subpoena authority.

Granting my office authority to investigate alleged professional misconduct by DOJ attorneys has received broad bipartisan support over successive Congresses, because it promotes independent oversight, transparency, and accountability within DOJ for all of its employees, including Department prosecutors.

I am the only Inspector General in the Federal Government that does not have the authority to investigate all alleged misconduct, including professional misconduct by agency attorneys. There is no principled basis, in my view, for granting my office oversight over DOJ law enforcement personnel, such as FBI agents, while excluding DOJ lawyers from that same OIG oversight. Providing my office with such jurisdiction would enhance the public's confidence in

[1] The prepared statement of Mr. Horowitz appear in the Appendix on page 59.

the outcomes of these investigations and provide the OIG with the same authority as every other IG.

The importance of a statutorily independent office within DOJ to oversee allegations of misconduct by DOJ lawyers was even recognized recently by the National Association of Assistant U.S. Attorneys (NAAUSA) in a recent opinion piece. While that organization disagreed with me that such oversight should be done by my office and instead proposed that the head of the Department's Office of Professional Responsibility (OPR) become a Senate-confirmed position, we both agree that independence is necessary to promote public confidence in investigations of department lawyers.

Congress has already created such a statutorily independent entity within DOJ that has a demonstrated ability to conduct such oversight, namely the DOJ OIG. We employ dozens of attorneys, whose backgrounds and experiences are similar to the lawyers in the DOJ OPR, including former prosecutors and Department attorneys specializing in attorney ethics. This group of my attorneys at the Department of Justice OIG led our review of the Foreign Intelligence Surveillance Act (FISA) abuse allegations, the Clinton email and Comey memos investigations, and our overview of Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) Operation Fast and Furious, as well as other sensitive and complex matters.

Further, the OIG would ensure that the process for reviewing attorney misconduct allegations is identical to the OIG system that currently exists across the Department of Justice for non-attorney misconduct allegations. For decades, the OIG has coordinated effectively with the DOJ law enforcement components. Indeed, the disciplinary processes at the FBI and Drug Enforcement Administration (DEA) have substantially improved since the OIG obtained oversight authority over those components in 2002.

These same transparency and accountability mechanisms should apply to DOJ attorneys, and that is why I believe the public would be well served by adopting this legislative change.

Let me turn briefly to testimonial subpoena authority, which I also strongly support. The absence of such authority hinders our ability to potentially obtain critical evidence from former employees, employees of Federal contractors and grant recipients, and other non-government witnesses in investigations involving fraud, waste, abuse, and misconduct.

Recently, Congress granted this authority to CIGIE's Pandemic Response Accountability Committee as it had previously done with the Recovery Accountability and Transparency Board in 2009. Further, the DOD IG was granted this authority by Congress in 2009, and it has used it appropriately and sparingly.

My office has numerous examples in high-profile and not-so-high-profile investigations and reviews where the lack of such authority has undermined our oversight efforts. For example, in our recent review of the FBI's handling of the Nassar investigation, the USA Gymnastics former president refused a voluntary follow-up interview with my office after we had learned additional information about an alleged potential conflict of interest involving a former FBI Special Agent in Charge (SAC). This inability in numerous cases to hold accountable former officials for serious misconduct di-

minishes the public's trust in the government and harms the taxpayers.

Importantly, your legislation includes several appropriate and important safeguards which I fully support, including allowing the Attorney General (AG) an opportunity to object to the issuance of a subpoena and an IG panel to oversee the issuance of such subpoenas. I hope the Committee moves this legislation forward.

In conclusion, thank you for your leadership and this Committee's leadership in supporting our independent oversight efforts, and I look forward to the Committee's questions.

Chairman PETERS. Thank you, Mr. Horowitz.

Inspector General independence clearly is vital to our democracy, and Congress must take every effort to ensure your independence is not undermining. That includes providing oversight when an IG is removed from office. Legislation that we are working on, working on with Ranking Member Portman, includes an enhance, 30-day notification requirement for the President to provide a detailed reason for removing an IG, which gives Congress the time to deliberate whether the removal is appropriate and warranted.

Ms. Lerner, I know you mentioned this in your opening comments. If you would like to elaborate we would love to hear, and then I would love to hear from the other two witnesses on your thoughts on this requirement. Ms. Lerner.

Ms. LERNER. Thank you. We appreciate the proposed amendment and the greater clarity that would come from a more in-depth statement than the simple fact that President has lost confidence in an IG. As you note, that gives Congress, in particular, greater insight and makes it much more likely that they will be able to conduct appropriate oversight. We hope that it will also prevent situations where IGs are removed for purely political reasons when it is clear that the President has to articulate a legitimate reason for that removal. This also bolsters, we believe, these reporting requirements, the notice requirements that already exist that relate to removing an Inspector General.

Chairman PETERS. Thank you. Mr. Winters, your thoughts?

Mr. WINTERS. I agree with Ms. Lerner's assessment.

Chairman PETERS. Mr. Horowitz.

Mr. HOROWITZ. Mr. Chairman, the enhanced requirement, because IG positions are different, the need for independence allows Congress to better understand the reasons for the removal, but most importantly, frankly, it allows the public to understand the reasons for the removal. We are there to protect the public and the public fisc and the taxpayers, and so they should know the real reason and the actual reason why IG was removed.

Chairman PETERS. Thank you. I am going to start and ask this question to Mr. Winters but I want to hear from our other two witnesses as well. Under current Federal vacancy law, nothing prevents the President from appointing an acting IG who is not qualified or who has a conflict of interest. In the event of a vacancy, why is it is important to limit who can serve as an acting IG to individuals who already serve in the IG community? Mr. Winters.

Mr. WINTERS. From my perspective it gets down to independence and confidence in doing Federal oversight work. To take someone from the IG community to serve in that role, I think, is a real ben-

efit to the Nation and the agency rather than, for example, someone who comes with a political perspective from their own agency.

Chairman PETERS. Mr. Horowitz.

Mr. HOROWITZ. Mr. Chairman, the Government Accountability Office (GAO) issued a report last year, and the Comptroller General spoke to this problem, which is the inherent clear conflict that exists. It is wholly inconsistent with the IG Act, because as you and Ranking Member Portman indicated, to have overseeing the agency, and a senior official from that agency, whether they are a political appointee or not, there cannot be that level of confidence and trust from the public that it is truly independent oversight, and it also creates issues for whistleblowers. Why would a whistleblower go to an agency to complain about senior officials' misconduct if they knew that IG office was overseen by a senior official, who would know their identity and, of course, as we have seen as IGs, the threat of retaliation, the fear of retaliation is with good reason, because we have seen whistleblowers retaliated against.

Chairman PETERS. Thank you. Ms. Lerner.

Ms. LERNER. The IG Act requires that Inspectors General be appointed without regard to political affiliation and based solely on integrity and their demonstrated excellence in certain specific disciplines. That is important because IGs are in their positions to lead independent and objective units, focused on the IG's twofold mission of preventing and detecting fraud, waste, and abuse, and promoting an economy and efficiency.

The purpose those requirements is completely undermined if an acting IG, who is either a political appointee or in the agency being overseen, is asked to run an Iinspector General's office.

Chairman PETERS. Thank you. Mr. Horowitz, you cited the OIG's lack of testimonial subpoena authority as a reason why individuals with potentially relevant information to an investigation were able to ignore questions from the office. You cited the Nassar example, which unfortunately I am all too familiar with, being from the State of Michigan.

Mr. Horowitz, how would testimonial subpoena authority improve the work of the Inspector General?

Mr. HOROWITZ. I think it would be an extremely important change and helpful to us in a wide range of our work. It is easy for me. I can cite example after example in our high-profile cases, but it happens very frequently in our not-so-high-profile cases, where individuals simply refuse to appear, or we have had occasions where people have resigned a few hours before a compelled interview, precisely because they wanted to avoid speaking to us. We have had two examples like that in the last couple of years.

Whistleblower cases, we have had it both within FBI, where a former senior official would not speak to us about alleged retaliation, and we had it with a contractor, where a contractor claimed that their employer, the contractee claimed that their employer had ripped off the U.S. Marshal's Service. We tried to speak to their supervisor, who had left the contractor. We could not. Those are the kinds of problems we face.

Chairman PETERS. Ms. Lerner, you testified that Inspector General oversight can be substantially hampered by the inability to compel the testimony of witnesses who have information that can-

not be obtained by any other means. A few agency IGs, including the DOD IG already have testimonial subpoena authority, and at least as I understand it that power has so far been used judiciously and sparingly, and simply having the authority means the IGs often rarely have to use it.

How can we ensure that testimonial subpoena authority is not abused?

Ms. LERNER. I think, at a minimum, we start by applying the same standards we use for our documentary subpoenas and we build on that. In my office, for a documentary subpoena to be issued there are six sets of eyes that go one it—three investigators, two attorneys, and then me—and our focus and attention has added a great deal of value there, and in the 30 years of our existence we have never had a subpoena enforced.

We are not alone. Other IGs have this. We build on those procedures. We add additional controls that are appropriate for the stepped-up risk associated with testimonial subpoena authority, and then, obviously, we comply with the additional controls that you all are considering that would require notice to the Attorney General and transparency about the use of this authority through IG semiannual reports and reporting from CIGIE. So we are committed to working with you all to ensure that those protections are in place.

Mr. WINTERS. Mr. Chairman, may I add something on testimonial subpoena authority?

Chairman PETERS. Absolutely.

Mr. WINTERS. From the Integrity Committee's perspective, where we have oversight over senior Inspector General personnel, to include Inspectors General, this would be a great tool for us as well, because like Michael Horowitz testified, we have individuals that leave government but we have the authority and the public interest to investigate them, even after they leave. But if they refuse to testify or to answer our calls then our investigations are somewhat pointless.

To Ms. Lerner's point, in terms of how the Transportation Security Administration (TSA) is checked, the Integrity Committee serves as a check on abuses of testimonial subpoena authority as well.

Chairman PETERS. Great. Thank you. We are in the midst of votes, is why you are seeing our Members come and go, so I need to vote myself. I will turn the gavel over to Senator Hassan and recognize Ranking Member Portman for his questions.

Senator PORTMAN. Thank you, Mr. Chairman. First of all, thank you all for being here and for the testimony you have already provided. It is very helpful. The 30-day notice period and the provisions that we want to include within that so that there is some rationale that Congress and the American people can understand is really important. The testimonial subpoena, we put guardrails in place for a reason, because we think this is a power that could be abused, and we want to make sure it is not.

In that area there is some discussion of putting a sunset on it. I understand if it is a sunset that is very short that it would be hard for it to work operationally. It takes a while to get this process up and going. But what about a sunset of four, or five, or six

years for the testimonial subpoenas? How would you feel about that? Anyone, feel free to chime in.

Ms. LERNER. I will start. Congress always has the ability to revoke an authority that it has granted. Our concern with the sunset provision is that it is a blunt instrument. Our preference would be to have a requirement to have the use of these authorities reviewed byv an independent entity like CIGIE or GAO, and allow the results of that review to inform Congress' decision about whether to continue or to revoke this authority.

But if a sunset date is necessary, and we understand that that is important for some members, we would ask that the period be long enough to enable us to have sufficient numbers of examples to make the case for the use of the authority, since, in many instances, the mere fact that a testimonial subpoena authority could be issued is enough to ensure an individual's compliance with an interview.

So we would prefer, a 10-year period before sunsetting, and then that is in no small part because of the amount of time that it has taken us to obtain this authority in the first place. It has taken us 10 years with congressional support to get this far, and we are worried that we could, with a hard and fast sunset, lose that authority and have great difficulty getting it reauthorized.

Senator PORTMAN. I do think it is important, also, the guardrails we have placed on it, and we will have further discussions about that, because I think this is an important issue for us to try to resolve today, as we go into markup in the next couple of weeks on this legislation.

It is incredibly important that you all have independence, and, we rely on you to conduct some of the most sensitive and important investigations in government, because we believe you are uniquely qualified to be able to do it. I mentioned earlier you have the expertise. You have also got the nonpartisanship, and IGs need to be beyond reproach.

I am going to ask a few questions about one such sensitive and important investigation by your office, Mr. Horowitz, and this is a sensitive topic, I know, but I think it is one that is important for us to talk about today, as we have the leadership of the IG community before us. That is about the investigation of former FBI Deputy Director Andrew McCabe.

Mr. McCabe, as you know, was fired for lacking candor under oath in 2018, shortly before his retirement. Late last week, DOJ reversed its course, settling a lawsuit by Mr. McCabe to restore his employment as a voluntary separation, and to restore his pension.

Mr. Horowitz, could you briefly remind us of the findings of your report regarding Mr. McCabe?

Mr. HOROWITZ. Certainly, Senator. The report concerned an investigation that actually the FBI had initially undertaken involving alleged leaks about information that was potentially damaging to Secretary Clinton during the 2016 Presidential campaign. The FBI internal investigators developed information that led them to believe that Deputy Director McCabe may have lied to them.

They then referred the matter to us——

Senator PORTMAN. Right.

Mr. HOROWITZ [continuing]. Then the position he held at the FBI. We assumed the investigation and concluded, in a public report that remains on our website and the public can see, that Mr. McCabe lied both under oath and not under oath, on several occasions, when he denied, at various points, certain key facts and information, including who was the source of the leak.

Senator PORTMAN. OK. It is my understanding that following that report, which sounds like it was a pretty definitive report, the top career official at the Department of Justice as well as the career head of the Office of Professional Responsibility at DOJ both recommended that Mr. McCabe be fired. Is that correct?

Mr. HOROWITZ. That is certainly correct, I know, as to the FBI's Office of Professional Responsibility head, who as you indicated is a career employee and actually is a former prosecutor. They adjudicate, in the first instance, our findings, so our report goes to them. They decide whether they agree with us. They agreed with us on almost all, but actually not all of our findings, so they made their own independent call that, in fact, he lied on multiple occasions, but they did not fully find everything we found.

Because of Deputy Director McCabe's position there is a different process for him. It went to the Attorney General for review, then-Attorney General Sessions, and this I do not have complete insight to, but my understanding is that the Attorney General asked a career official in the Office of the Deputy Attorney General to handle the review, and that that person recommended removal, as well.

Senator PORTMAN. The senior career person agreed with your finding that the removal was appropriate——

Mr. HOROWITZ. That is my understanding.

Senator PORTMAN [continuing]. Should be a firing. Is that consistent with how the Department of Justice and the Office of Professional Responsibility has handled these sorts of cases in the past?

Mr. HOROWITZ. That is my understanding as well.

Senator PORTMAN. OK. Was your report influenced by President Trump or anyone in the Trump administration, any political considerations?

Mr. HOROWITZ. Absolutely none.

Senator PORTMAN. Did the settlement change any of the findings in your report?

Mr. HOROWITZ. It did not. We actually were not sued by Mr. McCabe, so we were not a party to the settlement. Our findings remain on our website. We stand by our findings. The public can read them. They can go to our website. By the way, the FBI issued a statement stating that they stand by their findings as well, of their OPR, and their conclusions.

Senator PORTMAN. How did this happen, and what kind of message does this send to FBI agents that a former Deputy Director was not held accountable for misrepresenting facts under oath?

Mr. HOROWITZ. I think, as an IG, that it is critical that individuals be held accountable for their wrongdoing, no matter what level they are at in an organization, and that it is particular incumbent upon us to hold accountable senior officials the same way we hold accountable less senior officials and newer officials.

Senator PORTMAN. Do you view this as a double standard, Mr. Horowitz?

Mr. HOROWITZ. I cannot speak to, Senator, the decision of the Department and what evidence they saw in the adjudication, so I am not going to speak specifically to why they settled or how they settled, because I was not a party to that settlement. It is very important—and this is why I think the FBI issued their statement as well—it is very important for employees to understand that we will hold them, at the OIG, accountable, regardless of their position or standing.

Senator PORTMAN. Mr. Horowitz, you were appointed by President Obama. Is that correct?

Mr. HOROWITZ. That is correct.

Senator PORTMAN. How important is your independence as an IG to your ability to make comments like the ones you just made today?

Mr. HOROWITZ. It is central to what we do. In other countries people in my position cannot do that, for fear of being fired, removed, or, frankly, even things worse happening. I have an opportunity to meet, as CIGIE chair, or had an opportunity to meet, as CIGIE chair, with delegations from foreign countries, and it struck me how many times those officials wanted to know what we did and how we did it, because in their countries they might get killed if they did the same kind of work we do.

Senator PORTMAN. My time has expired, but it goes to the importance of the testimony you all are providing today, the legislation we are considering, and the interest in maintaining the independence of the IGs in our system of government. Thank you.

Senator HASSAN. [Presiding.] Thank you, Senator Portman.

Senator Carper, are you available? I see you pulling up your chair. Senator Carper is joining us virtually.

Senator Carper, are you ready to be recognized? I think he is coming.

Senator Carper, you are recognized for your questions, if you are ready.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. I am ready. My first question pertains to our legislation that Senator Braun and I introduced called the Keep the Watchdogs Running Act. That is a good title, is it not? But the legislation would give the Office of the Inspector General authority to continue oversight of agency operations in the event of a government shutdown, to the extent that certain agencies continued to operate. If we have a government shutdown somewhere down the line, there is going to be some agencies that will not shut down and will continue to operate, and we want to make sure that that these Inspectors General keep operating too, to keep in line things there.

Mr. Horowitz, nice to see you again. Ms. Lerner, Mr. Winters. Can each of you take a moment to discuss the importance, please, of ensuring that essential oversight work continues, even during a government shutdown? As much as we hope we never have another one, we probably will. So that is my question, and it pertains to our legislation, bipartisan legislation that Senator Braun and I have introduced.

Go ahead. Mr. Horowitz, why don't you go first.

Mr. HOROWITZ. Thank you, Senator. I am happy to do so, and I agree with you completely about the importance of keeping things running even in the event of a government shutdown.

We have been appreciative of the fact that our appropriators on the CGI Subcommittee have given us authority to carry over up to $4 million in funding, and that, in part, helps us continue running if there is a government shutdown. But, of course, it is a very limited period of time that it would allow us to continue operations.

When the government shuts down, the grants that were given out, the contracts that were given out by the government, all of that work continues, or at least all of those monies continue to flow. At the Justice Department, agents continue to work. Lawyers continue to work, assuming the courts are not shut down. There is oversight work to be done, and it should not be the case that the overseers are shut down while the money continues to flow. I think that we would be able to continue our work.

Senator CARPER. Same question, if I could, for Ms. Lerner, Ms. Lerner and Mr. Winters. Just very briefly, your comments, please.

Ms. LERNER. What I would just note, expanding on what Mr. Horowitz indicated, is, it is wonderful that IGs have independent appropriations, but a downside of that is it limits our ability to continue working in a shutdown situation. Like him, I am lucky enough to have some carryover funding, and that could enable me to keep my folks working for about a week, but my agency, with its many different appropriations, has much greater flexibility and latitude to keep staff working, potentially, and we would not be able to oversee them. I know we are not alone at NSF OIG in that situation. This authority would be of value, not just to us but to the whole IG community, in situations where we face a government shutdown.

Senator CARPER. Thanks, Ms. Lerner.

Mr. WINTERS. Very briefly, from Amtrak's perspective, the trains continue to run during a government shutdown, and as you have seen in the newspapers, this is a very important national function to run a railroad, but there are safety considerations at bay. So to shut down an Office of Inspector General while the trains are running is inconsistent, in my view, with good government.

Senator CARPER. Yes, great point. Thank you, sir. As a frequent rider of Amtrak I say thank you, sir. Next question is pertaining to political interference, and this would be a question for all of you. I will start off, if we could, with Mr. Winters, with you on this. You can be our leadoff here.

The Inspector General's Act of, I think it was 1978, established the Offices of the Inspector General at 12 Federal agencies. It described those offices as—here is the quote, I think out of line—independent and objective units that are charged with investigating waste, investigating fraud, abuse, and promoting much-needed accountability.

As a former Commander in the U.S. Navy, as this Committee considers legislative reforms to the IG Act that would strengthen the independence and integrity of the Inspector General across Federal agencies, could each of you share what you believe is the most important reform that we, in the Congress, may want to con-

sider, given lessons learned under previous administrations? Most important reform that we, in Congress, may want to consider.

Mr. Winters, why don't you lead us off, please.

Mr. WINTERS. In terms of the present bill, the reforms in there, I think the vacancies and the replacement of IGs that are leaving government from—pick a reason, but for example, if the President removes an IG, I think that is a critical juncture in terms of making sure that there is appropriate reform, to ensure that the next IG going in is truly independent.

The other matters in the bill are equally important, but that is the one, to me, that strikes me as the most important.

Senator CARPER. Great. Thank you, sir. Ms. Lerner, what would you is maybe the most important provision?

Ms. LERNER. I have to double down on Mr. Winters' statement about the importance of ensuring that acting IGs have the independence that they need to do their work. When you look at the number of vacancies that we have had over the last five years, and the lengths of those vacancies, you find acting officials in positions for years. It is essential if the work of the office is to continue and to provide value to Congress and the American public that you have someone who had lead that work and whose independence will not be questioned.

Senator CARPER. Great. Thanks, Ms. Lerner. Mr. Horowitz, same question, most important reform that we, in the Congress, may want to consider in this regard?

Mr. HOROWITZ. Thank you, Senator. I think the Vacancies Act piece is the most important, for the reasons previously indicated by Mr. Winters and Ms. Lerner. I will just add, on the testimonial subpoena authority, I think that is critical from the public standpoint, in particular. I think it is very hard to be in a position where we are being asked to investigate alleged wrongdoing, but like occurred in, for example, the Nassar matter, and then when the public wants to know the answer to what happened, we, unfortunately, often have to give the answer, "We are not sure." We do not know, because the employee has left, quit, the contractor who has allegedly retaliated will not talk to us. That leaves significant dissatisfaction, and creates a question for the public about the value of our work if we cannot answer the most basic questions because we cannot get the evidence we need.

Senator CARPER. Good. Madam Chair—I am not sure who is chairing right now——

Senator HASSAN. I am chairing, Senator, so thank you.

Senator CARPER. I have one short question, but I would like them to answer it on the record, but I would like to, if I could, to take 20 seconds to just——

Senator HASSAN. All right. Take 20 seconds and then we will move on.

Senator CARPER. According to the Council of Inspectors General on Integrity and Efficiency, 14 Inspectors General positions remain vacant, 14. President Biden has nominated eight. Could each of you please, for the record, take some time to discuss ways to incentivize well-qualified individuals to consider serving as IGs? Additionally, what do you believe are the essential characteristics of an effective

Inspector General? For the record please. Thank you all. Thanks for what each of you do.

Senator HASSAN. Why don't we start with Ms. Lerner and we will just go right down the line.

Ms. LERNER. I am sorry. I could not hear the question.

Senator HASSAN. I had difficulty hearing it too. Senator Carper, could I suggest that you submit that for the record, and that——

Senator CARPER. That is what I asked to do.

Senator HASSAN. Oh. You are just submitting that question for the record. You are not asking them to answer.

Senator CARPER. That is exactly right.

Senator HASSAN. Terrific. Thank you very much.

Senator Johnson, if you are ready I will recognize you for your round of questions.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you. I appreciate that. Welcome, everyone. Thanks for your service, especially General Horowitz. You and I have had this conversation before, where I have made the analogy, which I think is a pretty accurate analogy, to independent auditors that are appointed by the board, oftentimes selected by the Chief Executive Officer (CEO), and they are meant to provide information to the board of directors, who report to the shareholders, is everything on the up-and-up in the corporation.

I kind of look at Inspectors General the exact same way. When I hear "independent," I am just asking the question, independent of who? Who should Inspectors General be independent of?

Mr. HOROWITZ. We have had this discussion. I appreciate it. As you know from our discussion, in private practice I represented and worked with audit committees and independent auditors, and I think the answer on that is independent of the agency leadership from being able to take personnel action against them. That is the system Congress set up. Now I am going to talk about Presidentially appointed, Senator-confirmed IGs, like in my position.

The setup that Congress created was to allow me to operate without fear that the agency leadership can respond in a personnel action against me. I can, of course, be removed at will by the President, and that is entirely appropriate, and none of this legislation changes that.

Senator JOHNSON. OK. So again, it is independent of the agencies, but Inspectors General report to the President. They serve at his pleasure. Correct?

Mr. HOROWITZ. That is correct.

Senator JOHNSON. Unfortunately, over the years—and I have experienced this firsthand as Chairman of this Committee, trying to undertake investigations, issuing subpoenas, for example, to the FBI, they were largely ignored, slow walked. Congressional oversight has been dramatically weakened because we have no enforcement mechanisms. It seems like we have outsourced our oversight, the people's oversight, the people's direct oversight into these agencies to Inspectors General.

I am concerned that Inspectors General, when they take a look at that "independent" moniker that they are thinking that is independent of everybody. The President of the United States is held

accountable to the voters. If he dismisses an Inspector General, the voters will hold the President accountable. I am concerned about the thrust of all the requirements imposed by Congress. Again, we have relied on Inspectors General, and I appreciate the work. I have also worked with Inspectors General who were corrupt and had to leave. OK? I think our other witnesses are aware of that as well, the inspections they are having to do on Inspectors General.

I think this is important to keep in mind, that the Inspectors General report to the President. They do not report to Congress. We use them, but my solution would be to beef up, reclaim congressional oversight power, which we have allowed to lapse, and we have outsourced that to Inspectors General. Do you understand that assessment? Not agree or disagree, but do you understand where I am coming from there?

Mr. HOROWITZ. I certainly understand the concern you outline about what the congressional oversight responsibilities are and how they have been executed. I will just say, this legislation changes nothing about the President's ability to remove an IG. There is no for-cause provision here. There is none of that. And to your point, as CIGIE Chair, one of the things—and Allison has continued this, I know, as Chair—I talk about this all the time with not only my folks at DOJ OIG but with other IGs, we are not free-range actors. I agree with you completely. We are in a constitutional system. We follow the IG Act. We follow the law.

What I think the legislation does, though, particular with the Vacancies Act, is it does not limit the President's ability to remove. The President can remove whomever——

Senator JOHNSON. Just puts reporting requirements on them.

Mr. HOROWITZ. Well, it does on the——

Senator JOHNSON. Again, I have some other issues.

Mr. HOROWITZ. OK.

Senator JOHNSON. One example, I think a glaring example in terms of the weakening of congressional oversight, is, for example, under a Freedom of Information Act (FOIA) request, over 4,000 of Dr. Fauci's emails were provided to an outside group. Now Congress is not subject to the redactions of that information that, again, they were forced to give to an outside group. We asked for those, five of us, on this Committee, using a law that says they shall turn over this information. We are not asking for new documents. We are just asking for the 4,000 pages, unredacted. We have not gotten them unredacted. We are getting then now in dribs and drabs, just little bits and pieces, a couple of pages at a time, in camera. I think that is wrong.

I do want to, before I run out of time here, though, because I have not been able to talk to you about this, since I was Chair and since you issued your FISA report, in your FISA report you talked about how—and this was in the main body of the report, how Bill Priestap had told you, that "the FBI didn't have any indication whatsoever, by May 2017, that Russians were running a disinformation campaign through the Steele election reporting." That was in your FISA report. Correct?

Mr. HOROWITZ. Yes. I do not have it in front of me but I trust you——

Senator JOHNSON. It was. It took us months in a battle to unredact redacted footnotes that completely are contrary to that. I do not want to take time to quote that, but that is in the public record and you are aware of these footnotes.

Mr. HOROWITZ. Yes.

Senator JOHNSON. The question I have for you is, I see nothing in these footnotes that should have been classified or even subject to redaction. Why were those redacted?

Mr. HOROWITZ. I would have to go back and look at the specific footnotes, and I am working on memory, but just on this and all our other reports, we send this to the FBI and the Justice Department leadership and they ultimately make the call, and I am not——

Senator JOHNSON. OK. That is——

Mr. HOROWITZ [continuing]. Not the person who is going to put out information. They say it is classified, obviously and risk getting prosecuted for doing that.

Senator JOHNSON. Right. So again, what I was trying to point out here, this was further cover-up by the FBI and the Department of Justice, wanting to make sure that—it was not in the public domain, very early on. They knew that the source of the Steele dossier had contacts with Russian intelligence services. They knew this as early as October 2016, January 2016, and yet the FBI and the Mueller investigation continued to plod forward and put this country through the political turmoil of the Mueller investigation, even though they knew the source document that prompted the investigation, the corrupt investigation, was very likely a product, or certainly part of a product of Russian disinformation. That is an accurate assessment, is it not?

Mr. HOROWITZ. I will just add, there are many reasons why, as we detail in the report, there should have been greater follow-up and skepticism about reporting.

Senator JOHNSON. But I will say every step of the way, in my investigation, I was frustrated by Members of this Committee, but by FBI Director Wray, that did not comply with my subpoenas, and as a result the American public was kept in the dark about this. I think, and my final point is, congressional oversight capability must be beefed up. As important as IG reforms are and making sure that you can operate independently and uncover corruption within agencies to report to the President, Congress needs the oversight ability to report to the American public.

Chairman PETERS. [Presiding.] Thank you.

Mr. HOROWITZ. And can I just——

Chairman PETERS. Quickly, please.

Mr. HOROWITZ [continuing]. Comment on the Senator's point because I do think it is relevant to today's discussion as well, because as many of the Members know, who were here over the last 10 years, certainly in my first few years, and Senator Johnson chaired, I think, some of these hearings where we talked about my inability to get records, and at the time, just to be clear, one of the areas that was off-limits to me, supposedly, was FISA records.

Back in the day, as you will recall, the only reason that changed is because this Committee, Sen Grassley, and the House moved the IG Empowerment Act (IGEA) legislation in 2016 that overturned

the LLC opinion, the FBI's position, and gave us access to that. If we did not have the access to the records you would not have even had our 600-page report without FISA, because I could not have done it. That is why the reforms here are so important for us to be able to do.

Senator JOHNSON. Thank you.

Chairman PETERS. Thank you, Mr. Horowitz. Senator Hassan, for your questions.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman. I want to thank you and the Ranking Member for holding this hearing, and I want to thank your witnesses, not only for your testimony but your service as Inspectors General. It is obviously incredibly important, and I am very grateful to you and your families for the service you provide. Your important work roots out waste, fraud, and abuse of taxpayer dollars and improves the delivery of critical services to the American people.

I want to start with a question to you, Inspector General Lerner, and I would really like to follow up on the need for the testimonial subpoena authority, because more than 40 years, Inspectors General have been able to issue subpoenas to compel the production of documents to advance their oversight work.

Earlier this year, I introduced the Inspector General Testimonial Subpoena Authority Act with Senator Grassley, to expand the subpoena authority and allow the IG community to also compel in-person testimony from witnesses who refused to cooperate with IG investigations, and we have talked a little bit about that already this morning.

But Inspector General Lerner, how do Inspectors General use the documentary subpoena authority and how would having the testimonial subpoena authority build on the existing authority?

Ms. LERNER. First off, thank you very much for your and Senator Grassley's support for testimonial subpoena authority.

In terms of how IGs use documentary subpoena authority, I think they have used it very successfully over the over 40 years that we have had that authority. As I indicated earlier, most IGs have a strong process built around ensuring the appropriateness of the subpoenas that are being put out, ensuring that they are within the jurisdiction of the office and that they are not overly broad or unduly burdensome.

We know, in asking people to provide us with documents, that that is a burden on them, but, it needs to be outweighed by the benefit that is coming in. I think as court cases have shown, in situations where IGs have issued subpoenas, there have been very few cases where an IG subpoena has not been upheld. I can think of one, and that was a situation where the subpoena was not related to a matter within the IG's jurisdiction.

I think we have an outstandingly strong process of appropriately using our documentary subpoena, and we will build on that and ensure that we appropriately handle testimonial subpoenas.

Senator HASSAN. You have a system in place, and you can use the same kind of parameters and structures and reviews to oversee the documentary subpoena process, so it would not be abused.

Ms. LERNER. Absolutely. We will build on them, because, obviously, what we are asking for here, it takes us a step beyond documentary, and it has a greater impact on people.

Senator HASSAN. Right. You referenced it just a bit, but if concerns are raised about an IG's use of the documentary subpoena authority, how are those concerns addressed?

Ms. LERNER. There are a couple of different avenues. If there is any question of political or partisan or problematic reasons behind a subpoena, that is a matter that could go to CIGIE's Integrity Committee. But I also imagine if we are given this authority we would build steps into our peer review process to examine the use of this by Inspectors General and ensure that they have appropriate procedures in place, and, factor that into the ultimate assessment that happens periodically, of all IGs' investigative operations.

Senator HASSAN. hank you.

Mr. HOROWITZ. Can I add, Senator?

Senator HASSAN. Yes, just briefly, because we have to get to a bunch of other things.

Mr. HOROWITZ. Absolutely. The other mechanism is, frankly, if someone receives a subpoena and thinks it is improper, they can go to court. We cannot enforce it. We would have to go to court——

Senator HASSAN. Got it.

Mr. HOROWITZ [continuing]. And get a judge to do it.

Senator HASSAN. Got it. I appreciate that. I wanted to go a little bit deeper on something that you mentioned, Ms. Lerner, and I will actually ask Inspectors General Horowitz and Winters to reply to this. It is important to note the testimonial subpoena authority is not new, because the Department of Defense Office of Inspector General has had the testimonial subpoena authority for more than a decade.

So, IG Horowitz, you mentioned in your testimony that the Department of Defense IG has used its testimonial subpoena authority sparingly, issuing only three subpoenas for testimony since it received the authority in 2009. How can the DOD IGs' use of this authority serve as a model for how other IGs can use the testimonial subpoena authority in a judicious and thoughtful way?

Mr. HOROWITZ. Excellent question. I think it is very important for us to use it as a model, because it has worked so well, for now a dozen years.

What I would expect to happen, as I understand is happening and has happened at the Defense Department IG, is before an IG signs a subpoena for testimony they engage counsel or the witness themselves, to understand what the concerns are, if there are any issues or problems with testimony. Frankly, we do that now in the voluntary arena. When we are trying to get people to speak to us voluntarily we have those discussions. You do the same thing, and what I understand from the Defense Department IG is the reason they have had to issue so few is they have been able to reach accommodations with witnesses that have avoided the need to issue the subpoena, and to find the parameters of an acceptable voluntary interview.

Senator HASSAN. Excellent. I just wanted to confirm, Inspector General Winters, you mentioned it earlier that your Integrity Com-

mittee of CIGIE can prevent abuse of the testimonial subpoena authority as well.

Mr. WINTERS. Correct. Abuse of authority is squarely within our jurisdictional realm.

Senator HASSAN. OK. To Inspector General Lerner, I appreciated your testimony regarding my work to reform the semiannual reports to Congress. These reforms intend to streamline and simplify the semiannual reports to make them more accessible to Congress and the public and to place greater emphasis on the agency's response to IG recommendations to root out waste, fraud, and abuse.

How would these reforms help the Inspector General community, and are you confident that agencies and Congress will still receive the important oversight information that these reports are intended to provide?

Ms. LERNER. I am absolutely confident that these reforms would not interfere with the transparency that Congress deserves from Inspectors General. In the 40 years since those requirements were enacted, IGs have made tremendous gains in being transparent. We all have websites now. We have places like oversight.gov. These reforms will allow us to more efficiently produce the semiannual reports and leverage those existing resources, and that will ensure that the most important matters are most clearly visible and transparent, and that the time and energy we used to put into doing things that were of lesser interest can be redirected and produce better outcomes for our office and for the people who depend on our work.

Senator HASSAN. Thank you very much, and thank you, Mr. Chair, and again, to all of the witnesses. Thank you for your work.

Chairman PETERS. Thank you, Senator Hassan. Senator Lankford, you are recognized for your questions.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Chairman, thank you. Thank you all for your work. It is vitally important. We very much appreciate the work and would encourage you to stay on it, continue to bring ideas and issues. Inspectors General deal with fraud, make recommendations, bring up ideas of greater efficiency, so Inspectors General that are actually leaning in to an agency, developing those relationships, and proposing ideas help us all, and help the Nation. There is an expectation of that work, and let me just be one of many to be able to say to you, lean in. We need you working well in that task.

I have a whole litany of issues and questions that I want to be able to walk through and try to be able to address. We have talked through several things, but I would tell you what I hear most from people at home, when they talk about Inspectors General and different issues they see in government is why does it seem like no one is held to account?

Now we all know that is not correct. There are some people held to account. But it becomes a very big deal when we see someone like Andrew McCabe, who we have already mentioned earlier, who you found, researched, walked through all the interviews, and found that he clearly lied, was fired by the Department of Justice, and then now has been added back in, his pension is now recovered, back pay is being paid back to him. There is a real sense of,

hey, there is an Inspector General report that came out saying this person lied, and there seems to be no consequence on it.

What we can do to be able to bring you testimonial subpoena authority and to be able to get at some of these things and to get recommendations is of great benefit to just restoring trust into government in the process. I want to drill down on a couple of these.

Mr. Horowitz, you have been through investigations before that crossed jurisdiction. You walked through the issue of Glenn Simpson and Jonathan Winer. It is a State Department issue where you are over on Department of Justice. They were State Department, then they retired and makes this even harder. So can we talk through, when you get into an investigation that may include people from multiple "jurisdictions," from other agencies, and then when they retire, how hard that is to be able to get the testimonial evidence.

Mr. HOROWITZ. It is very hard, and the normal process would be if the employee was still at the State Department, for example, I would reach out to the State IG and they would facilitate my being able to speak to that person, much as I do, actually, on occasions when people call me. But once the employee is gone, the employee is gone, and I have no authority over them. State Department employee does not. The only one who would is the Defense Department IG, and I obviously do not cross over into that realm much.

Senator LANKFORD. Subpoena power to be able to require testimonies is essential for the ongoing work because there are numerous examples of individuals who are under investigation with the Inspector General, they just retired and said, "I am out," and then it becomes the issue of they retire with benefits, everyone knows that there was activity there, there was fraud, there was abuse. That was something whistleblowers have called out but they just retire and leave, and they leave with full benefits.

Mr. HOROWITZ. How do you explain to the complaint who has come in and said, "I was sexually assaulted" or "I was retaliated against as a whistleblower," or "I just reported money was stolen and you are doing nothing about it." The answer is, "Well, we need to get the evidence."

Senator LANKFORD. So we need to get that to you, clearly. There needs to be a balanced perspective on how that is handled. It was handled judiciously by the Department of Justice over the decade that they have had it. I believe that can work, but we have to be able to find a way to be able to hold people to account in the process.

Mr. Horowitz, again for you, you did a very thorough examination on the Woods procedures in the FISA. FISA is an area that you have been excluded from, obviously to take a look at when you are having the opportunity to be able to do it. You are just looking to see whether the standards that have been set for a FISA application process were followed. That is a pretty straightforward issue. Best that I had, when I pulled through this, you sampled 29 FISA applications and you found 400 instances of noncompliance with the Woods procedures. Then it got worse. You went through 7,000 FISA applications that have been authorized in the last 5 years. There were 179 which the Woods file, as was listed from your document, was missing, destroyed, or incomplete. I want to

drill down on a couple of those things. Missing and incomplete is one thing. Destroyed is something totally different. That is a volitional act. Do you have evidence that some of these Woods procedures were destroyed?

Mr. HOROWITZ. We have evidence that some of the files were destroyed. The problem was the FBI, even though they put in place this requirement of creating a Woods file, did not give any guidance on what you should do with it afterwards. We had a situation where our investigators, lawyers went in and found a stack of documents in a corner, and that was, we were told, what comprised the Woods file.

So you cannot have an effective procedure to try and make sure FISA is scrupulously accurate through a Woods procedure and then not ensure the Woods procedures are being followed.

Senator LANKFORD. Right. You made 10 recommendations to the FBI. Five of them they have responded to. Five of them, to the best of our understanding, they have not. Do you have an update from them that they are following through on those recommendations?

Mr. HOROWITZ. They have told us they are following through on them, and through our regular process, in 60 days to 90 days they will owe us a report, and we will continue to update that. We have been doing this, by the way, in some of our other national security reports with the FBI for years and years, because we continue to follow up. That is what it means to have independent oversight. We close them, not the agency.

Senator LANKFORD. Right. Mr. Winters, I want to be able to drill down on something here. The allegations that come from anyone to the Inspector General, from a whistleblower, whoever it may be, sometimes they are factual, sometimes they are not. Sometimes it is harassment from an employee that has found an effective way to be able to harass individuals, and they keep them tied up into investigations. So the Inspector General has a process for determining whether an allegation has merit at the beginning. I call it like a little mini grand jury. You can call it what you want to at that point, but you have to be able to make a decision to have merit.

Can you walk me through that process, because sometimes this is a legitimate investigation and sometimes it is harassment. How do you evaluate this and what do you pass on to other Inspectors General?

Mr. WINTERS. That is an excellent question, Senator, and every Inspector General faces that, and also the Integrity Committee as well, in terms of the weaponization of complaints. But we have a process for it, and particularly in the pandemic we have a lot of complaints coming in. There is a sifting, and we look at, basically, is this a valid complaint that alleges some form of wrongdoing that is actionable? From the Integrity Committee's perspective, whether or not there is a person that is covered, that is basically a senior-level person.

For a typical complaint that comes in, say, for example, to NASA when I was there, or Amtrak, we have a specific section that does that, that has a sifting process that assesses the facts versus the criteria of whether something is actionable or not.

Senator LANKFORD. We obviously want to be able to get you, and we have been very outspoken on this, the testimonial subpoena power, to be able to make sure someone cannot just retire and then avoid any kind of pursuit on this. We talked a lot about trying to get to who is the chain of secession if we need to get to an acting Inspector General. We have spoken frequently about how to be able to get more Inspectors General. This has been an issue of multiple Presidents, that they just do not appoint an Inspector General so they leave it open for a long time and it becomes an issue.

This seems to be a gap that I do not know enough about, and I would be willing to be able to talk about, because I never want the Inspectors General Office to be used as a weapon against somebody unjustly, especially if someone is in their personal capacity and is having to hire their own personal attorney in this process, and someone who is just mad at them for a decision that they made chooses to be able to weaponize the process. That becomes highly disruptive to them personally and discourages people from actually stepping into government, when they know there is a Federal employee that can weaponize this process and just drive them out.

Mr. WINTERS. I absolutely agree with that. As an Inspector General, and I just talk for me personally, we take an oath. I took my first oath in August 1972, to support and defend the Constitution. What that means is adherence to the rule of law, not some partisan narrative. We are very sensitive to those type of complaints, and endeavor, of course, to follow the law and the facts, in terms of those particular complaints.

Senator LANKFORD. OK. Thank you. Mr. Chairman, thank you.

Senator PORTMAN [Presiding.] Senator Lankford, thank you. Thank you for your contributions to the legislation and particularly your work on this testimonial subpoena issue, which is a difficult one to navigate but a very important one. So thanks for your help.

We have a number of people who are on virtually. Senator Ossoff, I believe you are next, if you are with us.

OPENING STATEMENT OF SENATOR OSSOFF

Senator OSSOFF. Thank you, Senator Portman, and thank you to the Inspectors General for your service, your diligent work, for joining us today.

I appreciate this discussion of the legislation pending before the Committee. I also want to drill down on a couple of specific issues within your respective areas of responsibility that you have identified as possible targets for reform legislation or change of practice in the Executive Branch.

Mr. Horowitz, thank you for your collaboration and communication with my office as we have developed bipartisan legislation to reform the security camera systems in Bureau of Prisons (BOP) facilities. I would note that that legislation passed the Senate last night.

You have also made recommendations with respect to single-cell confinement for incarcerated persons with mental illness and recommendations with respect to pharmaceutical purchases by BOP facilities and cost of outside medical care. Could you briefly outline those recommendations to the Committee?

Mr. HOROWITZ. Certainly, Senator, and I also noted that the bill passed last night that will, I think, have a potentially important impact on the prison camera system.

With regard to single-celling of inmates, we identified significant concerns with how it impacted individuals' mental health at the BOP, the BOP's policies for how to deal with inmates who were disruptive. This is what it involved. It involved individuals who were disruptive and who the BOP put in special housing units, and in some instances, single-celled them. That is something the BOP says it does not look to do, that it does not put individuals in solitary confinement, yet we identified numerous instances where that occurred.

We made a variety of recommendations that the BOP agreed with. As I sit here today, Senator, I do not know the status of those but I can certainly follow up with you on that.

On the pharmaceutical side and the cost side, we have issued a number of reports identifying how the BOP has not taken the steps it could take to reduce some of its costs so that it could save money in various areas that it is spending, particularly on the pharmaceutical side. For instance, what we found is that there are four agencies that receive what is called the "big four pricing," which is favorable pricing on pharmaceuticals, but that the BOP, even though it has one of the largest health care systems, if you will, because it has to take care of the 150,000 or so Federal inmates, does not get that preferred pricing.

We also made the recommendation to the Department that it consider coming to Congress to seek legislation to also be able to obtain that favorable pricing, which could save tens of millions of dollars for the BOP.

Senator OSSOFF. Thank you, Mr. Horowitz. There has been some discussion at today's hearing about testimonial subpoena power and the ability to compel testimony from personnel who retire amidst or in advance of an investigation. Could you also comment, Mr. Horowitz, on some of the other issues related to retirement of Federal personnel amidst investigation, how that can interrupt or terminate the investigative process, and the implications for their personnel records when they may seek employment once again in the same or another Federal agency?

Mr. HOROWITZ. Absolutely, Senator. It is an issue that we have been very concerned about for years. In fact, we issued a report about this about three weeks ago, concerning specifically how the FBI was handling adjudications of employees who had retired or resigned during the course of the investigations.

The way the process goes is we investigate, or the FBI investigates, misconduct. It completes its work and sends it to the FBI's Office of Professional Responsibility for adjudication, which is to determine what penalty or discipline to impose. What we found is that the FBI regularly, with limited exception, closes its adjudication if an employee resigns or retires, and we found, in 2017 and 2018, that that occurred in more than 10 percent of the cases.

That is concerning because, as you indicated, what happens is, in many instances, employees resign or retire and then either get hired as contractors, because they are working for a contracting of-

fice, or go to another government agency to work, or, in the law enforcement case, might go to State and local law enforcement.

It is important that the FBI and other Justice Department agencies, and frankly across the entire Federal Government, that when individuals leave you have engaged in wrongdoing or misconduct, that those matters get adjudicated and that the findings be included in their personnel files. I will add, it also is important in the case where the individuals are found not to have committed misconduct, because, by the way, in those more than 10 percent of the cases I mentioned, in some of them the OIG had actually found that the individual did not engage in the misconduct, yet they were not cleared, formally and fully cleared, because the matter was not adjudicated.

Senator OSSOFF. Thank you, Mr. Horowitz.

Mr. Winters, the bipartisan infrastructure legislation that passed the Senate earlier this year included some significant investment in passenger rail. I am a strong advocate for expanding passenger rail capacity in the United States, and particularly in the Southeast, to connect, for example, Atlanta-Macon-Savannah, Atlanta-Charlotte, Atlanta-Nashville, and additional commuter rail options for rural and suburban and urban communities across the State of Georgia.

You have made recommendations, and I think alarming observations, with respect to the cybersecurity of Amtrak's train control systems. Could you please detail, in my remaining time, those observations and recommendations for the Committee?

Mr. WINTERS. In this public setting, Senator, I cannot go into a lot of detail on it, and I would be happy to meet with you privately regarding some of those particular details on that.

I will say this, that Amtrak is not alone, in terms of having challenges with cybersecurity. Train control systems, of course, are critical to the safety of passenger rail, and our office conducts very aggressive oversight in that space.

Senator OSSOFF. Thank you, Mr. Winters. My staff will reach out to yours to set up a classified forum to get into more detail on that. Thank you again for all of your service and your diligent work, and I yield back.

Senator PORTMAN. Thank you, Senator Ossoff. Senator Scott.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. I want to thank Senator Portman for hosting this hearing, and I want to thank each of you for doing what you do. I have been up here 2 years and 9 months, and I have really appreciated the IGs, because I believe the oversight function of this Committee and Congress is really important. I am a business guy. I liked internal audit. I am not sure everybody liked it but I thought it was always helpful, to make sure we knew exactly what was going on.

One of the questions I have is, how important is this subpoena power and is it necessary, and if each of you could sort of address if you have seen situations where an IG investigation has been hindered, obstructed, halted because they are not able to compel a person to submit to questioning.

If we could start with Mr. Horowitz.

Mr. HOROWITZ. Absolutely. Good to see you again, Senator, and thank you for the question.

Senator SCOTT. Thanks for what you guys do, by the way. I am appreciative of it.

Mr. HOROWITZ. Yes, no, and as you well know, and as I know, the State of Florida has the largest IG system in the country, and a very impressive one, and we have worked with the——

Senator SCOTT. They are really helpful if you are the Governor.

Mr. HOROWITZ. We have worked with the IGs there and they have been very helpful to us on the Federal level.

On the testimonial subpoena authority, I can highlight high-profile matters, like our Nassar investigation, where the USA Gymnastics president refused a second interview with us so we could ask about allegations involving the FBI Special Agent in Charge and whether there was a conflict of interest. In the FISA review we could not reach certain State Department employees, who had left, as well as others who were never government employees but who had highly relevant information. I could go all the way back to Fast and Furious, where the U.S. attorney quit rather than speaking—or quit and then would not speak to us.

But most importantly, I think it is in the routine, day-to-day ones that do not get those kinds of attention that, as you know, we do all the time, like whistleblower retaliation investigations. I have authority over FBI whistleblower retaliation. It happens there, where people resign or retire, and I cannot talk to key witnesses. It happens with contractors who are alleged to have stolen money.

Senator SCOTT. I was going to ask you about that.

Mr. HOROWITZ. Contractors, stolen money. Congress gave us authority to do that kind of work, precisely because of your concern in making sure we could oversee allegations of theft and wrongdoing. If we cannot subpoena non-government employees—even if they work at the contractor, I cannot compel them to talk to me. I can compel a DOJ employee. I cannot compel one of their contractors. If they leave the contractor it is even harder to get that person to agree to speak with us.

Sexual harassment cases, I could detail multiple ones where the employee left rather than speak to me.

Senator SCOTT. You just could not pursue it.

Mr. HOROWITZ. Yes. I have no authority to do it.

Senator SCOTT. You have information, I guess.

Mr. HOROWITZ. I have the information, the allegation. So are there times I can confirm it? Absolutely, through other mechanisms, but it takes us longer. In several of our investigations, by the way, like the FISA one, the Clinton email one, and others, people did speak to us voluntarily, but they waited until very late to speak to us, and so it delays our work.

Even in those instances where you see us actually hearing from people, it could take us a lot of time to get them to speak to us. It is a very important tool. I very much appreciate, as I mentioned, that the Committee has built in place protections, because there should be safeguards. It should not be something we just run around and are able to use. There are three IGs who are going to have to review it. I am going to have to review it, as the IG at Jus-

tice. I am going to give it scrutiny. It is not going to go on to the three IGs unless I have put a lot of oversight and look into it.

I think it is a critical tool for us. Frankly, for the public, they want to know what happened. They do not want to know that someone stiffed us and we could not figure it out, or I think this is what happened but I cannot definitively know because I cannot get the evidence.

Senator SCOTT. Mr. Winters.

Mr. WINTERS. Senator, one thing I have learned, after serving in NASA for nine years, running their investigations, now Amtrak, and now on the Integrity Committee, is we carefully decide whether or not to investigate or not. There is a reason that we are doing that, and it is not just some whim, that there is a real public interest in finding out the truth. How frustrating it was, in those nine years at NASA, and at Amtrak, and now at the Integrity Committee, that we cannot really get to the truth because we do not have the tools to do that. So we appreciate your help in that regard.

Ms. LERNER. Yes, I just want to underscore what Kevin said. It is one of the most frustrating things for my investigative staff when we have an allegation. We had a situation once, we were looking into a small business that had allegedly defrauded NSF, and we were told by one of the employees that he had fabricated the timesheets that we were given to support time. That ended the voluntary cooperation from all of the people at the recipient. We had the documentary evidence of it but we were not able to engage with the people that could give us greater insights and take that case to closure.

It is extremely demoralizing for our investigative staff when those matters come. There are so many benefits that could come from this authority, and some are internal to our own offices.

Senator SCOTT. You there are enough safeguards that it will not get abused?

Mr. HOROWITZ. Yes. I think the safeguards you have added are very important. That is clearly a very reasonable, legitimate concern. There are going to be a three-IG panel. IGs are going to have to approve these personally. There is the Integrity Committee, if people are abusing it, they are available, and these are not self-enforcing subpoenas. If a recipient thinks we are abusing the authority they can go to court, and we are going to have to convince the Justice Department Civil Division. We do not have litigating authority, so we have to tell the Justice Department Civil Division, "Defend this subpoena." There is that layer of protection as well. So you have to convince me, you then have to convince three IGs, if a recipient thinks we are doing something wrong and they want to go to court I have to convince the Civil Division at the Justice Department, and then they have to convince a judge.

I do think that is the case, and I will just add, Senator, that the Defense Department IGs had this authority for 12 years now. They have used it very rarely, a handful of cases. They have not, to my understanding, lost a case that way. You have given it to me, as the Chair of the Pandemic Response Accountability Committee. We are overseeing $5 trillion. You gave it previously to the Recovery Act in 2009. In none of those instances has it been abused, so I

think there is a track record as well, which is why I am concerned, and we talked about the sunset issue earlier. I think that track record with those protections on top of the concerns that IG Lerner mentioned earlier, I think should hopefully give comfort to people that this will be used appropriately. We are also going to notify the Attorney General, by the way.

Ms. LERNER. Can I just build on what you said. The bottom line is all of us IGs, who are going to be the ones signing those authorities, we know what is at stake here. It has taken us 10 years, if we are lucky, to get this authority, and we know our use of it is going to be scrutinized. We are going to be hyper-focused on ensuring that we stay on the right side of the law here.

Senator SCOTT. Thank you very much. I appreciate it.

Senator PORTMAN. Thank you, Senator Scott.

Chairman PETERS [Presiding.] Senator Padilla, you are recognized for your questions.

OPENING STATEMENT OF SENATOR PADILLA

Senator PADILLA. Thank you, Mr. Chairman. I want to also thank each of our witnesses for our testimony and for your public service. As several colleagues have recognized, and I want to associate myself with their comments as well, Inspectors General play a key role in our democracy by independently and objectively working to expose waste, fraud, and abuse. Again, also acknowledged earlier in the hearing, Congress did pass the Inspector General Act in the wake of the Watergate scandal as a means of ensuring integrity and accountability in the Executive Branch.

For over 40 years, Congress and the public have relied on the work of Inspectors General to speak truth to power. In recent years, those truths have included, for example, shedding light on the inhumane treatment of immigrants, including children, in Federal detention centers, and the shortcomings of our COVID pandemic response.

However, administrations have exploited some gaps in law and undermined the efficacy of the Inspectors General, and I appreciate the Chairman and Ranking Member's calling attention to the issue.

Now as you know, this Committee is considering legislation that grants Inspectors General the authority to subpoena witnesses for testimony. At present, most Inspectors General lack the authority to compel testimony from certain categories of individuals, including contractors and former Federal employees.

My first question is for Mr. Horowitz. Mr. Horowitz, you highlighted in numerous investigations the lack of testimonial subpoena power hampered your work. You referenced, in particular, the investigation you led regarding the former administration's family separate policy, which resulted in nearly 4,000 family separations. Using that as a great example, not in a good way, how would testimonial subpoena power have aided your investigation of the family separation policy?

Mr. HOROWITZ. Thank you, Senator, and you are right. That is one of the reviews that we have done and investigations that we have done that warrant our ability to have this authority. I think it is fair for us, as IGs, when we are looking at a policy implemen-

tation, to be able to speak to those who were responsible for the policy.

In that particular case, the Zero Tolerance Policy was announced by then-Attorney General Sessions, we got broad cooperation from throughout the Justice Department, from employees at the Department, and if I recall correctly from some employees who were no longer at the Department. But we could not get testimony from former Attorney General Sessions, who was obviously very central to that discussion.

Our inability to do that meant that there were certain items, certain issues, certain discussions that he was a part of that we were not able to get his recollection of events. There were few notes of some of those meetings. Our inability to do it diminished from our ability to fully assess what had occurred.

Senator PADILLA. I appreciate you sharing that, and I know that on the flip side there are folks who say, any subpoena power can also be abused. The next question is for Ms. Lerner and for Mr. Winters. Do you think that the legislation we are considering has the adequate checks to ensure that the authority not misused?

Ms. LERNER. I will start. Certainly I think that requiring notification to the Attorney General and utilizing an IG panel, this is above and beyond what we ordinarily do. We are building on a very strong foundation that we have in place for our use of documentary subpoenas.

By adding, these additional requirements of consultation with the Attorney General's Office and the approval of three-person IG panel and stepped-up reporting requirements, I think that the evidence will be there that will clearly incentivize everyone to use this properly, not that I think that incentive is necessary.

As I mentioned earlier, all of us, as IGs, recognize the stakes if we are granted this authority, and are committed to exercising it wisely. But we appreciate your interest in common-sense controls to help ensure it is not misused. Kevin.

Mr. WINTERS. I agree that those controls are adequate, and I also add that the CIGIE's Integrity Committee, which was designed by Congress, is another check on abusing that authority.

Senator PADILLA. Great. I appreciate that. One more question in the time remaining, also for Ms. Lerner and Mr. Winters, but I will sort of tee up the question. Ensuring that government agencies maintain a strong cybersecurity posture has never been more important. I think we would all agree to that. Numerous breaches of government and critical infrastructure have inspired a significant push to ensure that our agencies have the resources and the information they need to effectively guard their systems. We also need to be sure that the agencies are complying with existing cybersecurity requirements.

The question again to both of you is what role do Inspectors General play in enhancing the cybersecurity of Federal agencies, and how would the reforms that have been discussed today help strengthen that work?

Ms. LERNER. Most Inspectors General are required by law to conduct the audits of the agencies' information systems securities under the Federal Information Security Modernization Act (FISMA). So you have our independent eyes examining the agen-

cies' systems in accordance with criteria that is laid out by National Institute of Standards (NIST), and, I believe, potentially the Department of Homeland Security (DHS).

You have our independent eyes, using independently determined standards, and there is a great deal of value that comes from that. In many instances there is penetration testing done as part of that process, and so that adds real insight into the strength of individual agencies' information systems. Kevin.

Mr. WINTERS. I agree with Ms. Lerner's commentary on those tools. I will also add that within CIGIE we have a separate committee called the Tech Committee that we share the best practices of oversight of critical infrastructure information technology (IT) requirements.

Senator PADILLA. Thank you both for your responses, and thank you again for your work. Mr. Chairman, thank you.

Chairman PETERS. Thank you, Senator Padilla. Senator Rosen, you are recognized for your questions.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Chair Peters, Ranking Member Portman for holding this hearing. This Committee really does some great bipartisan work, and I am grateful to both of you to have the opportunity to have this discussion about something really important.

As we all know, reforming how Inspectors General function in the Federal Government is fundamentally a good government issue. Simply put, IGs make government work better for the American people and ensure agencies are good stewards of taxpayer dollars. Having independent watchdogs ensures that Federal agencies carry out their public service missions with integrity and efficiency.

I was pleased to see, in Ms. Lerner's testimony, that the work of the IGs and their staff generated potential taxpayer savings of about $53 billion in fiscal year 2020, a $17 return on every dollar invested in the Offices of Inspectors General. I am going to ask a little bit more about that in a moment.

I really want to thank my colleagues for their serious attention to this issue, thank each of the witnesses for their public service and commitment to transparency and accountability, not just to the taxpayers in Nevada but, of course, across the country.

I want to speak about the savings to taxpayers from IG oversight. Ms. Lerner, as I mentioned, I was really interested to read your testimony about the significant taxpayer savings generated by the work of IGs. Can you tell us more about how you track and calculate the savings to taxpayers as a result of the work of the IG offices?

Ms. LERNER. Certainly. All IGs report semiannually to Congress on the work of our audit, and included in the tables in the semiannual reports are the outcomes of our audits and inspections that can yield funds that are questioned, as being, dubious expenditures, and also funds that could be put to better use. There are also financial returns to government that come from our investigative work when, for example, there are fines, penalties, and restitution that come through criminal cases, or in the case of false claims act investigations, potentially treble damages can be returned to the

government, the singles going to the agency and the rest going to the Treasury.

There are many ways that our work yields quantifiable financial returns to the government.

Senator ROSEN. I can tell you that a lot of people that are watching today and a lot of the questions we get is really how are we spending people's money, and they are worried that we are wasting it. Maybe, could you share with us some examples of wasteful spending or other inefficiencies that you have identified from a Federal agency, and how do you think then Congress can help in preventing this?

Ms. LERNER. I think that there are so many ways that people can misuse money. Speaking from my own agency's experience, NSF is a large grantmaking agency, and what we find sometimes is grant recipients take NSF's money but they do not ensure that they use it for the purposes for which it was given. We have had instances where people proposed doing scientific research and are funded by NSF to do that, but it turns out that they have actually done that scientific research already and they are going to take our money and use it for other purposes. In situations like that we pursue a grant fraud investigation and work with prosecutors to hold those people to account for their misuse of government funding.

There are other situations that do not rise to the level of criminal or civil wrongdoing that involve people who have perhaps misunderstood the rules governing the funding that they are receiving, and in those instances we question that through an audit process.

I think that much of the improvements that are necessary in situations like that reside within the agency in ensuring that people who receive funding understand their obligations and understand what is expected of them, in terms of managing the money. But I would be happy to get back to you with more concrete ideas about whether there are mechanisms for Congress as well in that process.

Senator ROSEN. Thank you. I would look forward to that. The other thing is I know that you need a lot of help to do these investigations, so I want to talk about recruiting and retaining qualified IGs, because in my view, one of the most important services that the Council of the Inspectors General on Integrity and Efficiency provides is ensuring that IGs and their staff are qualified to do your jobs. We have talked a lot today about the importance of IGs who are really making sure that they are truly independent from the President, from agency heads.

But I would like to hear a little bit more about what you all think about what makes someone qualified to be an IG and how we can ensure a pipeline of talented individuals to fill these jobs. Ms. Lerner, as chair of CIGIE, could you comment how we can improve and build on the pipeline for oversight talent, please?

Ms. LERNER. I think one of the best things that we can do is ensure that people who are my daughters' age—I have a daughter in college and on in law school—that they understand the opportunities that are available in the oversight community and see us as viable career paths. We have many people who are going to be aging out of leadership roles, and we have to ensure that we have a new generation coming forward that are willing to engage with

us. Doing a better job on our part of getting the word out about our mission will help us there.

We also, in CIGIE, have a great IG Candidate Panel that supports both the President and agency heads in seeking to fill IG positions. They look at the experience. Obviously, in the statute, there are certain discipline-related types of expertise that IGs are supposed to have, but you also want to know that someone who is interested in being an IG understands how hard it can be to be independent, how difficult it can be to sit at the top of an organization where you are part of, but at a distance from, your own agency and also committed to engaging with Congress. You need to be responsive and respectful to both of those sides of your reporting obligations, but you need to maintain your own integrity in doing your work the way that it is appropriate within the IG Act.

We ask a lot of questions focused on that of people who are interested in being IGs as well.

Senator ROSEN. Thank you, and I see my time is up, so Mr. Horowitz and Mr. Winters, I will submit the same question to you for the record, and hopefully we can build a good pipeline of qualified, caring people to do this very important job for the United States government.

Thank you, Mr. Chair.

Chairman PETERS. Thank you, Senator Rosen. Ranking Member Portman, I know you had some closing questions.

Senator PORTMAN. Thank you very much, Mr. Chairman. I will not take the full time. I just want to say that I think this has been a terrific hearing and exchange of views, and it seems to me that of all the issues we have touched on, probably the one that has had the most potential controversy is the testimonial subpoenas. I appreciate your initial response, Ms. Lerner, to my questions and to Chairman Peters' questions on that.

I think it is important to lay out what the guardrails are, because we have talked a lot about guardrails without getting into detail, and I do think there are some safeguards here that Senator Peters and I have included in our bill that are quite effective, because I do think that it is an enormous responsibility that the IGs would be taking on to subpoena people after they leave.

No. 1, the Attorney General would review any subpoena going out and would be able, in that case, as I understand it, to provide information as to any potential conflicts with other investigations that might be ongoing, and I think that is important. That information could be considered by this panel. It is a panel of IGs. Three Senate-confirmed IGs would have to approve it. The CIGIE chair is responsible for selecting those three Senate-confirmed IGs to review it.

Third, it would only be available for audits, evaluations, inspections, and investigations that the IG was undertaking, so not some fishing expedition, and also would have to be reasonably related to that case. Fourth, CIGIE was being asked to issue standards, which they have done before in other areas, and those standards, I think, would be consistent with standards we have laid out before, including that it be reasonably related.

And fifth, there would be a congressional reporting requirement. Now these are semiannual reports to Congress, so it is not a report

prior to the issuance. But it is a report to Congress to let us know how it is working and what is going on, and Ms. Lerner, you talked about that earlier as maybe a potential way for Congress to be able to understand without having a sunset put into the legislation itself.

Finally, I would just say, and Mr. Horowitz, you mentioned this earlier this morning, that people still have access to the courts, with regard to these subpoenas.

Anyway, Mr. Chairman, I appreciate you letting me do that. I think our bill is balanced and I think it is a good way to ensure independence of IGs but also ensure that these investigations can continue. Thank you.

Chairman PETERS. Thank you, Ranking Member Portman, and I agree. I look forward to moving it forward.

Mr. HOROWITZ. Senator, can I just comment briefly?

Chairman PETERS. Absolutely.

Mr. HOROWITZ. OK. Because I just want to expand on one of the items you mentioned, which is AG review. As the Justice Department IG, and I have now been IG under five different Attorneys General, that has meaning, even though it is not a veto, for example.

I should just note, we, as IGs, in our law enforcement responsibilities and our investigative responsibilities, work regularly with the Justice Department prosecutors and leadership. The fact that the Attorney General would come into one of the IGs who wanted to issue a subpoena and say, "If you issue that subpoena it could cause is a problem with an ongoing criminal investigation, civil matter, or national security matter," which would probably be a rare instance, the former might be, I cannot imagine a scenario where we would not say we are not looking to interfere with anything that you are doing, in terms of a criminal or civil case.

I think that is actually a very important process, and I appreciate you mentioning that, Senator, because I think that is of great significance.

Chairman PETERS. Thank you. Senator Hawley, you are recognized for your questions.

Senator HAWLEY. Thank you very much, Mr. Chairman. Thanks for waiting for me, and thanks to the witnesses for being here today. It is good to see all of you.

Ms. Lerner, I want to start with you, if I could. Are you familiar with the report from WilmerHale, their independent investigation regarding allegations of misconduct by three DHS OIG employees regarding the nomination of Dr. Cuffari?

Ms. LERNER. I am aware of the report.

Senator HAWLEY. Have you read it?

Ms. LERNER. A very heavily redacted version.

Senator HAWLEY. My office has been contacted by multiple whistleblowers who allege widespread misconduct, including, I am afraid, you, and I want to give you the chance to respond to those. I always take whistleblower complaints very seriously, and they pointed me to the WilmerHale report, which I have now read, which I have to say is very disturbing. I mean, for those who do not know, it is 108 pages here, 70 interviews conducted, 42,000 documents reviewed. What WilmerHale found is that a number of

DHS OIG employees improperly interfered in the Presidential nomination and Senate confirmation process regarding Dr. Cuffari to be the IG at DHS.

WilmerHale notes, at the outset of their investigation, or the outset of their report, rather, that, of course, any citizen has the right to question a Presidential nomination in their personal capacity. Federal employees, in their capacity as private citizens, have a First Amendment right to express their political opinions and may contact lawmakers to do so, and, of course, that is very important.

They go on. "However, it is a misuse of authority for a Federal employee to use his or her public office to interfere with a Presidential nomination or the Senate confirmation process." Then they say, "Federal employees should not use their government resources, including the email system or access to lawmakers or other government officials, for personal gain or for any other unauthorized purposes."

WilmerHale further reports, in their investigation, following their investigation, that these individuals who were opposed to Dr. Cuffari's nomination within DHS OIG came to you, Ms. Lerner, to discuss the nomination. They wrote to you saying that they had a sensitive matter related to the DHS IG nominee to discuss. You all agreed to speak on the phone, and following the conversation Ms. Costello, one of the complainants, sent you a link to a report regarding California Coast University. I guess the complaint here was that Dr. Cuffari's Ph.D. was no from a suitably prestigious university.

During the interview, Ms. Costello spoke to Ms. Lerner about Dr. Cuffari's nomination, stated they were doing so because it was in the best interest of the agency. Ms. Lerner agreed that they had an obligation to protect the organization and figure out whether others knew that Dr. Cuffari's degree was issued by a diploma mill.

What WilmerHale has found here is that you were on government property at the time, using government resources, on government time, that you encouraged what WilmerHale concludes was a serious interference with the Presidential nomination process and the Senate confirmation process, and a pretty serious misuse of government resources.

I know you did not sit for an interview. WilmerHale said they tried to interview you and you would not sit for an interview. But we have you here. These are serious allegations. I thought I would give you a chance to respond.

Ms. LERNER. I appreciate you giving me the chance to do that. The most that I can say right now is that statement of the conversation is not consistent with my recollection of it.

Senator HAWLEY. So you deny that you encouraged them to spread around complaints, using government resources, that Dr. Cuffari was unqualified for the position, that his degree was issued by a diploma mill?

Mr. HOROWITZ. Senator, may I jump in for a second?

Senator HAWLEY. I would like an answer to my question.

Ms. LERNER. I did not encourage—I did not take the actions as described in the statement made by Ms. Costello.

Senator HAWLEY. Did you improperly use government resources to interfere with the Presidential nomination——

Ms. LERNER. No.

Senator HAWLEY [continuing]. Senate confirmation process?

Ms. LERNER. I did not.

Senator HAWLEY. Did you use any government resources—email, telephone, government property? Did you work on this project on government time?

Ms. LERNER. In my capacity as Vice Chair, and Michael can speak to this as well, in his capacity as Chair, we would frequently be called by individuals working in OIG offices who had questions or concerns that they thought that we could shed light on, and we would endeavor to answer those questions.

We take calls from people who have a concern, and try to steer them in the right direction, and that is all that I did here with these individuals. I think that is consistent with our obligation as leaders of CIGIE, and, at no point was I trying to undermine the nomination of anyone for a PAS position.

Senator HAWLEY. Why did CIGIE not open an investigation into these allegations? Why did there have to be an outside investigation, which found evidence of wrongdoing?

Ms. LERNER. That is a question best directed to the Integrity Committee, because——

Senator HAWLEY. It was part of your decision, was it not, not to open an investigation?

Ms. LERNER. No. I am not a member of the Integrity Committee, and the leadership of CIGIE is purposefully separate from the Integrity Committee, to preserve its independence to conduct investigations of OIG folks.

Senator HAWLEY. When the report says that it is a misuse of authority for a Federal employee to use his or her office to interfere with the nomination or confirmation process and that Federal employees should not use their government resources, including email systems or access to lawmakers or other government officials, for any unauthorized purpose, you are saying definitively, for the record, under oath, you did not ever do any of those things?

Ms. LERNER. I did not undermine anyone's nomination for a PAS position.

Senator HAWLEY. You did not use the email system, access to lawmakers, or any other government resources for any unauthorized purpose?

Ms. LERNER. I used the email systems to respond to questions from individuals about a situation in their office, and just attempt to steer them in the right direction and provide guidance to them as they confronted a challenge. That is not, in my view, inconsistent with my obligations as a public servant.

Senator HAWLEY. I am disappointed that we are here and that this is, frankly, it has come to this impasse that we have this report from WilmerHale that is quite extensive and quite lengthy. You did not sit for an interview with them. They were not able to get your views on any of this. I noticed neither did you, Mr. Horowitz.

I frankly think it is very disappointing, and I think the fact that we now have multiple whistleblowers coming to us about this series of events, I mean this is harrowing reading, to be honest with you, and it is disturbing reading that this would be happening. I

want to say, I am going to try to get to the bottom of it, but I am disappointed that it has come to this, and in this setting.

Ms. LERNER. I appreciate your concern, but I would say that Mr. Horowitz and I engaged with people on both sides of that situation who had concerns and wanted to protect both the privacy of both of the entities that we were involving so that people would feel comfortable coming to us for counseling in situations like that.

Mr. HOROWITZ. Senator, let me respond to that, because the serious issue—Joe Cuffari, by the way, used to work in the DOJ OIG, as you may know. He was an agent. I talked with Joe both while his confirmation was pending and after he became IG, and he can explain to you however much he would like. I would be happy for him to do that. How much time I spent with him, as did Allison on several of those calls, to help him as the IG, to get settled in, and to deal with some of the challenges he was dealing with.

In terms of that, I also talked to him, actually, as he can describe to you, if you would like, and I think it may be even in that report, when he wanted to move forward and sought to move forward with the allegations and how to deal with them.

With regard to WilmerHale's reach-out to us, and to me in particular, we engaged with the lawyers and asked them to give us some idea of what they were looking to speak to us about. As Ms. Lerner just indicated, as CIGIE Chair and as Vice-Chair, I regularly receive calls from IGs, from others in the IG community, to give them advice, guidance, views on how they can proceed. Some of it was as routine as career advice. Some of it was far more significant.

The question I had for WilmerHale lawyers was, what information, generally, in the areas that they were looking at and to get at, because we do have an obligation to ensure that discussions we have, like I had with Mr. Cuffari, are maintained in confidence when the individual who comes to us would like them to be in confidence, and then assess whether there is a need for the investigators to have that information. I have to understand a little bit more before I just sit for an interview as CIGIE chair, and be asked about a variety of conversations that I have had with people who come to me.

Frankly, view it again as to the IG Act provisions that are in the law, that as DOJ IG—let me put it this way. As DOJ IG, if those individuals had come to me, there is an IG Act provision that requires confidentiality. I have to think long and hard about that before making a decision on what to speak to. I never ruled it out. But the question was, until the end, until there was an unwillingness to have that discussion.

But that was my concern, is that we did not have a dialog, and I was not comfortable at the time knowing what I was to speak to, because frankly, I did not have first-hand knowledge of a lot of what I ultimately ended up reading about in the WilmerHale report at the time they reached out to me. I was not familiar with it.

Senator HAWLEY. My time has long expired here, and the Chairman has been very indulgent. I will have some additional follow-up questions for you, for the record.

I cannot adjudicate your dispute with WilmerHale as to why you did or did not sit for an interview. I am just noting a fact, that they say that you had relevant information. Even particularly you, Ms. Lerner, likely had information about these discussions and would have been able to shed light. You did not sit for an interview. that is your prerogative.

But the fact is this is serious. This is serious, what I read in this report. I hope this is not normal. It sure as heck should not be, and I think we have some more work to do to get answers here.

Thank you, Mr. Chairman.

Mr. HOROWITZ. Senator, I am happy to come meet with you and talk to you in person.

Ms. LERNER. As am I.

Chairman PETERS. Mr. Winters, did you have any anything to add?

Ms. LERNER. Mr. Horowitz's recollection of the back-and-forth with WilmerHale Counsel, yes, is accurate, and I share his willingness to come and engage with you more on this.

Chairman PETERS. Thank you, Senator Hawley. I want to thank again our witnesses for joining us here today and for our Committee Members for engaging in this critical issue.

We have an opportunity before us to advance some of the most significant reforms to strengthen independent Inspector General oversight in a decade. The legislation that Senator Portman and I have been working on has strong bipartisan as well as bicameral support, and I am grateful for the leadership of colleagues like Senator Grassley and Senator Hassan, who have long championed independent oversight, as well as the work of Chairwoman Maloney, who is leading this reform effort over in the House.

The bipartisan legislation pending before our Committee would take important steps to protect the IG from undue interference and ensure that they have the tools to conduct effective oversight for American taxpayers. Many of the provisions included in the bill have received strong bipartisan support in both the House and the Senate in recent years, and I hope to build on that momentum with the legislation that will be before us shortly.

I appreciate my colleagues' diligence on this important issue and I look forward to continuing to work together to harness the opportunity before us to pass these bipartisan reforms and strengthen the roles of our nation's independent watchdogs.

The record for this hearing will remain open for 15 days, until 5 p.m. on November 5, 2021, for the submission of statements and questions for the record.

This hearing is now adjourned.

[Whereupon, at 12:23 p.m., the hearing was adjourned.]

APPENDIX

Chairman Peters Opening Statement As Prepared for Delivery
Full Committee Hearing: Safeguarding Inspector General Independence and Integrity
October 21, 2021

Thank you to each of our witnesses for being here today and for your service to our nation. You have extremely challenging jobs to ensure that government is working effectively and efficiently for the American people.

I look forward to hearing from each of you on how this Committee can ensure the independence and integrity of Inspectors General as you continue this work.

As current federal watchdogs, your perspective will be critical in helping us finalize legislation that will provide you and your colleagues with protections to strengthen independent oversight of the government's effectiveness.

This legislation is long overdue. For decades, Inspectors General have acted as independent, nonpartisan watchdogs tasked with helping Congress prevent and uncover fraud, waste, and abuse in the federal government, and ensure taxpayer dollars are being used appropriately.

The Council of the Inspectors General on Integrity and Efficiency's recent annual report to Congress estimated that Inspectors General saved American taxpayers more than $50 billion last year alone.

It's absolutely vital that our federal watchdogs are able to work independently and without the threat of political interference. Current law allows for actions that threaten to undermine this independence, including the removal of Inspectors General from office without sufficient explanation, and the appointment of partisan political operatives to serve in these traditionally nonpartisan roles.

These actions, and others, have left Inspectors General, and their critical work, vulnerable to political influence. That is unacceptable.

We must ensure that no Administration is able to undercut the independent transparency and accountability that Inspectors General provide to the American people.

That is why Ranking Member Portman and I are working together to enact the first significant reforms to support Inspectors General in more than 13 years. I'm proud our bipartisan, bicameral effort enjoys broad support from our colleagues and numerous good government groups.

I'm grateful to Senators Grassley and Hassan, as well as House Oversight Chairwoman Maloney, for helping us create these reforms, which will require a more detailed explanation from the President before removing an Inspector General, ensure that acting Inspectors General are selected from a pool of senior-level employees within the watchdog community, and provide federal watchdogs the authority to subpoena the testimony of contractors and former federal officials.

Through these commonsense solutions, this committee has the opportunity to consider and advance historic, meaningful reforms that strengthen our democracy and promote independent oversight, a goal I know we all share.

I look forward to discussing how we can best protect our Inspectors General and swiftly pass these urgently needed reforms.

Opening Statement of Ranking Member Rob Portman

"Safeguarding Inspector General Independence and Integrity"

October 21, 2021

Thank you, Mr. Chairman. I appreciate your indulgence and thank you for convening this hearing today. Inspectors General are essential to good government. I think everybody understands and agrees with that. Congress has a responsibility, of course, to conduct oversight of the executive branch and that responsibility would be far more difficult without Inspectors General. They're inside the agencies they oversee. They have unique expertise in their agencies' programs and budgets. And I really think they're Congress's first line of defense against waste, fraud, and abuse at those agencies.

According to the Council of Inspectors General on Integrity and Efficiency, or CIGIE, and we'll hear from CIGIE today, in Fiscal Year 2020 alone, IGs' work resulted in potential savings totaling $53 billion. That's a lot of waste, fraud, and abuse. We ask IGs to undertake some of the most important and sensitive oversight work. For example, I intend to offer an amendment today to our IG legislation we will consider next week to require the appropriate IGs to review the administration's Afghan vetting policy. This review would include multiple agencies, complex programs, and evolving information. I think IGs are the best place to do that. They're in the best position to conduct this type of nonpartisan expert review needed to understand an important issue.

This committee is responsible for protecting IG independence and providing them with the authorities to do that kind of important work. Since 1978, Congress has improved and reformed Inspector General authorities many times. This includes legislation to establish a total of 73 IGs across the federal government, bolster IGs' access to information and, of course, to protect whistleblowers. These reforms represent steps in the right direction, but we think more work is still needed.

I requested today's hearing so the Committee can discuss this IG legislation Senator Peters and I plan to consider at next week's business meeting, and I want the Chairman to know I appreciate the fact that you've accommodated the request. I think it will be positive for our legislation and for a general discussion about the importance of IGs. As noted, we've got three very important members of the IG community in front of us here today. The Department of Justice IG and former CIGIE Chair Michael Horowitz, who all of us know. National Science Foundation IG and current CIGIE Chair Alison Lerner and Amtrak IG and CIGIE Integrity Committee Chair Kevin Winners.

To start, the legislation that we are going to be talking about provides much-needed protections for Inspector General independence. Many have worked on this, including Senator Grassley. We should notice his work. I will point out that the current law already requires the President to provide Congress the 30 days' notice before removing an IG. We don't change that. It does not increase the time period. It does, however, preserve the congressional intent and the interest in understanding why that IG was removed by requiring the President to provide a substantive rationale for removing an IG. Both President Obama and President Trump removed IGs and told Congress they had lost confidence in their removed IG. I don't think we should be satisfied with such a statement, no matter the party of the president.

The legislation also remedies another problem that occurred during the Obama and Trump administrations by requiring that acting IGs be named from the Inspector General community. Both President Obama and President Trump named agency officials as acting IGs raising questions about the independence of those IGs. An agency official cannot conduct independent oversight of his or her own agencies and actions. Putting an agency official in charge of its IG office also risks exposing whistleblowers and could show future reports of waste, fraud, and abuse.

The legislation also provides testimonial subpoena authority for IGs. This will allow IGs to complete interviews of important witnesses, even if a person has resigned to avoid participating in an investigation. And unfortunately, that has been a common occurrence within our system according to IGs. Subpoena authority is a weighty responsibility, though, which is why I've worked with Senator Peters to ensure the bill does provide effective guardrails and effective reporting to Congress.

Additionally, the bill incentivizes filling IG vacancies, installing permanent IGs is important. They provide more independence and continuity than acting IGs. This May, I sent a letter to President Biden with the Chairman and many of this Committee's members urging him to fill the 13 vacant Senate-confirmed IG positions. I'm pleased to see that the President has taken our advice seriously and nominated individuals to fill a number of those vacancies, but all those vacancies need to be filled.

Finally, the legislation provides measures to improve oversight of the IGs themselves, such as requiring that CIGIE report to Congress when it becomes aware of a particularly serious problem at an IG office. I know all three of these distinguished witnesses have much to give us today in terms of their input. They've given us a lot of thought. They understand the need for these proposals for change. I thank each of them for their service and for taking the time to appear before us today and I look forward to your testimony."

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Statement of Allison C. Lerner
Chairperson, Council of the Inspectors General on Integrity and Efficiency
Inspector General, National Science Foundation

before the

Senate Homeland Security and Governmental Affairs Committee concerning

"Safeguarding Inspector General Independence and Integrity"

October 21, 2021

Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee:

Thank you for inviting me to appear before you today in my role as the Chairperson of the Council of the Inspectors General on Integrity and Efficiency, known as CIGIE. Since January 1, 2021, I have had the honor of serving as CIGIE's Chairperson, and for 6 years prior to that I served as its Vice Chair. My testimony today will focus on actions to strengthen IGs' independence and the tools to help ensure integrity in Federal government programs and operations.

Despite the tumult caused by the pandemic, our community has remained focused on its vital mission. In fiscal year 2020, our auditors, inspectors, and evaluators issued more than 3000 Reports, and the work of OIG investigators and investigative attorneys led to more than 4000 indictments and informations and almost 1300 successful civil actions. In response to our recommendations, agencies made more than 4000 suspensions and debarments and took more than 3,500 personnel actions. Altogether, our work in FY 2020 resulted in significant improvements to the economy and efficiency of programs governmentwide, with potential savings totaling approximately $53 billion—a $17 return on every dollar invested in the OIGs.

Inspectors General also strive to provide another valuable service that cannot be quantified with a dollar figure return on investment. We strive to provide impartial oversight over, and transparency into, some of the most difficult issues faced by the agencies we oversee. Our success in doing so depends on the trust that administrations, Congress, and the American people place in Inspectors General (IGs), a trust that we will perform our work without regard to partisanship and that we uphold the independence required of us. That trust allows IGs to be a

critical, credible source for answers when controversial allegations of mismanagement or wrongdoing arise.

Last week, our community gathered to present 87 awards for excellence in areas such as auditing, evaluations, investigations, information technology, and law and legislation to individuals and teams from CIGIE's 75 member agencies. We also presented 7 Special Category Awards, including ones for work focused on maintaining the public's confidence in air travel in the wake of crashes involving Boeing 737 MAX aircraft; for promoting integrity in the USDA's National Organic Program; for ensuring the health and safety of US military family housing; and for providing independent and effective oversight of Federal programs in the Trans Sahara regions of West Africa and in Overseas Contingency Operations. The variety of the actions honored by these awards gives a hint of the depth and breadth of the work of our community. For accomplishments like this to continue and expand, action is necessary. My testimony will detail some of the steps CIGIE believes will help ensure our community's continued success.

Oversight Priorities

The IG community has been working and continues to work with this Committee and Congress as a whole to address oversight challenges that range across government. With your assistance, we seek to enhance our ability to provide the independent, non-partisan work that Congress and the American people expect from the IG community. During the beginning of each new Congress, the CIGIE Legislation Committee presents to the Office of Management and Budget and Congress a set of legislative initiatives.[1] If addressed, these initiatives would enhance government oversight and integrity or address legal challenges that the Inspector General community faces.

CIGIE's priorities strongly focus on IG independence because that aspect of our work is essential in order for IGs to be impartial, credible sources for oversight of agency spending, and provide answers when controversial allegations of mismanagement or wrongdoing arise. Today I want to highlight some of those initiatives which are part of HR 2662 and included in the Peters/Portman substitute amendment.

Strengthen the Independence of Inspectors General

Vacancies Act Reform and Notification when an IG is Placed on Non-Duty Status

To be effective, IGs must be independent both in mind and appearance. Being independent is no less important for individuals temporarily serving as head of an OIG. Under the Federal Vacancies Reform Act of 1998 (Vacancies Act), the IG's selected deputy and career oversight official typically assumes leadership of an OIG upon the departure of the Presidentially appointed, Senate-confirmed (PAS) IG. However, the Vacancies Act does not limit the selection

[1] https://www.ignet.gov/sites/default/files/untracked/CIGIE_Legislative_Priorities_117th_Congress.pdf

of an acting IG to that individual or someone in the oversight community. The Vacancies Act allows the President to direct a PAS appointee or a senior management employee from the agency overseen by the OIG to temporarily serve as acting IG. The possibility of a political appointee or an agency management official serving as an IG presents both actual and apparent conflicts that undermine the acting IG's ability to maintain independence and act in a non-partisan fashion. Such appointments may also erode whistleblowers' trust that their identities will be protected, making them less inclined to provide much-needed evidence of fraud, waste, or abuse to the OIG. Finally, the appointment of such individuals may create a disincentive for the President to nominate a successor IG—a fact which could extend the length of the vacancy, as well as the associated concerns about the acting IG's impact on the independence of the OIG. Accordingly, CIGIE recommends that the Vacancies Act be amended to require that the "first assistant" to the IG (i.e., the deputy) assume leadership of an office if the IG position becomes vacant.

In 2020, CIGIE wrote to Congress on two occasions,[2,3] to ask that Congress take action to legislatively ensure the independence of acting Inspectors General. Of particular concern to the IG community was the selection of an agency or political official as an acting Inspector General. The May 2020 designation of a State Department PAS official and the subsequent September 2020 designation of a Foreign Service officer and appointed Ambassador to serve as the acting IG at the State Department raised independence concerns, as did similar appointments in past administrations. In May 2020, the Deputy IG at the U.S. Department of Transportation was replaced as the acting Inspector General with a PAS official who was also serving as the head of the Department's Federal Pipeline and Hazardous Materials Safety Administration. Addressing independence principles for Inspectors General, GAO noted in June 2020 that "the extended use of temporarily assigned agency management staff to head an OIG can affect the perceived independence of the entire office in its reviews of agency operations…. the practice is not consistent with the independence requirements of generally accepted government auditing standards, other professional standards that IGs follow, and the purposes of the IG Act." In the same report, GAO recognized the potential for significant threats to independence posed by IGs with "dual-hatted" roles.

This concern is not new, nor is it limited to one administration, nor is it unique to CIGIE. At a 2015 hearing to discuss OIG vacancies, Chairman Johnson and multiple witnesses discussed the perception that the State Department's acting IG, a career Foreign Service Officer and former ambassador under President Clinton, had failed to conduct independent and effective oversight of then-Secretary Clinton because of the acting IG's temporary appointment and the inherent conflict of interest created when an official serves in both a management and an oversight role simultaneously.[4] Similarly, in a letter to CIGIE and then-Secretary of State Kerry in 2015,

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[2] https://www.ignet.gov/sites/default/files/files/S3994_CIGIE_Views_letter_07082020.pdf
[3] https://www.ignet.gov/sites/default/files/files/CIGIE-Views-Letter-House-NDAA-HR-6395-Sec1115_10082020.pdf
[4] Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs (June 3, 2015). https://www.govinfo.gov/content/pkg/CHRG-114shrg95656/html/CHRG-114shrg95656.htm

Senator Grassley raised specific concerns about the performance of the State Department's acting IG, noting, "[a]s these examples demonstrate, an inspector general must be independent, because agencies cannot be trusted to investigate themselves."[5]

CIGIE recommends that, if there is no "first assistant," the President be allowed to direct another PAS IG or senior official within any OIG to serve as acting IG. Enacting CIGIE's recommended changes to the Vacancies Act would deter politically motivated removals, or removals because the IG was doing their job, because the person serving as acting IG (the first assistant, another presidentially appointed IG, or a senior official in the IG community) would continue to provide independent oversight. Moreover, such reforms would ensure that an acting IG is sufficiently independent in mind and appearance to maintain the public's trust and would provide a wide pool of professional oversight officials eligible to manage the OIG until the next IG is nominated and confirmed.

CIGIE also recommends requiring congressional notification when an IG is placed on non-duty status, whether that status is paid or unpaid. Sections 3(b) and 8G(e) of the IG Act include language intended to protect the institutional independence of OIGs by requiring congressional notification on the reasons for removal no later than 30 days before the removal or transfer of an IG. These unparalleled safeguards were recently described GAO as critical components to support IG independence. However, these safeguards are undermined when an IG is placed on "administrative leave" or "suspended without pay." Therefore, CIGIE recommends amending the IG Act to require congressional notification if the Inspector General is placed in either a paid or unpaid non-duty status. Such a notification does not limit the President's or agency head's ability to change the IG's status; rather, it ensures that Congress understands the basis for that decision so it can decide how best to respond.

We appreciate that these safeguards are part of the Peters/Portman substitute amendment to HR 2662. The bill would put in place a number of protections which support IG independence, including provisions that bolster the congressional notification requirements when removing or transferring an IG and requirements for congressional notification when an IG is placed on non-duty status. The bill would also modify the Vacancies Reform Act so that acting Inspector Generals are the first assistant to the IG by default, but with the flexibility for the President to direct another senior oversight professional who is either a PAS IG or senior-level employee from the IG community to serve in that role. We note that Senator Grassley, along with eleven bipartisan cosponsors, including Chairman Peters, Ranking Member Portman, Senator Hassan, Senator Romney, Senator Sinema, Senator Lankford, and Senator Carper, initially introduced the bill in the Senate as the Securing Inspector General Independence Act (S. 587).[6]

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[5] Letter from Senator Charles Grassley to the Honorable Michael Horowitz and the Honorable John Kerry (August 27, 2015). https://www.grassley.senate.gov/sites/default/files/news/upload/2015-08-27%20CEG%20to%20CIGIE%20and%20State%20Dept%20%28IG%20Vacancy%29.pdf

[6] https://www.congress.gov/bill/117th-congress/senate-bill/587?q=%7B%22search%22%3A%5B%22s+587%22%5D%7D&s=1&r=1

Strengthen Oversight Tools and Integrity

Expansion of Testimonial Subpoena Authority

Inspector General oversight can be substantially hampered by the inability to compel the testimony of witnesses who have information that cannot be obtained by other means. Congress could address this concern by providing IGs with the authority to subpoena the testimony of certain witnesses as necessary in the performance of OIG oversight. This authority is especially important in cases where a Federal employee resigns or retires. Without testimonial subpoena authority, that employee's resignation or retirement can limit an IG audit, investigation, or other review into matters pertaining to that individual's former responsibilities. IGs can also face difficulty accessing key information during an inquiry into other individuals or entities with whom the Federal government does business. Examples include contractors, grantees, guarantors, volunteers, and entities that have no contractual relationship with the Federal Government but are suspected of defrauding a federally funded program. In these cases, IGs have limited recourse if these individuals refuse to provide information to the IG. CIGIE recommends that testimonial subpoena authority for IGs mirror the IGs' current documentary subpoena authority, similar to the testimonial subpoena authority recently granted to the Pandemic Response Accountability Committee of CIGIE.

We want to express our appreciation to Chairman Peters and Ranking member Portman for including this authority in the substitute amendment. We greatly appreciate the initial introduction of a Senate bill authorizing IG testimonial subpoena authority S. 1794 by Senator Hassan and Senator Grassley. Providing Inspectors General with testimonial subpoena authority has been a bipartisan effort in this committee since at least 2015, when the Committee put forward the IG Empowerment Act. Then in 2018 the House passed H.R. 4917.[7] We are committed to continuing to work with you and providing technical assistance, as appropriate, to help ensure the effectiveness of this oversight tool and the judicious exercise of the authority.

Reform of OIG Semiannual Reports

Since the IG Act was enacted in 1978, IGs have been required to report semiannually on the major activities of their offices. The original IG Act semiannual requirements were just six broad reporting requirements calling for descriptions or summaries of major activities or findings, and a list of all audits. While the speed and methods by which information about OIG work is shared have evolved in the intervening decades, the semiannual reporting requirements have not kept pace. To the contrary, despite the availability of much OIG work on OIGs' websites and

[7] In 2018, the U.S. House of Representatives unanimously passed H.R.4917, the IG Subpoena Authority Act. The Act was strongly supported by CIGIE, see: https://www.ignet.gov/sites/default/files/files/CIGIE%20Views%20letter_HR4917_June7_2018.pdf . Previously, under Chairman Issa's leadership the House Committee on Government Affairs passed the Inspector General Empowerment Act of 2014 (H.R.5492) which included testimonial subpoena authority for Inspectors General and was supported by CIGIE. See https://www.ignet.gov/sites/default/files/files/CIGIE Views - H_R_ 5492.pdf

Oversight.gov, over the years many more requirements have been incorporated into the relevant legislation, and substantial IG resources that could be applied elsewhere more effectively are devoted to preparation of the semiannual report. CIGIE recommends reforming OIG semiannual reports to allow OIGs to focus on the most significant activities of the OIG and the most critical issues facing the agencies they oversee. The Committee's legislative proposal would streamline and enhance the semiannual reporting requirements. Improving the content, clarity, and relevance of information reported in the semiannual report will increase transparency. IGs will also have more flexibility to use the semiannual report as a conduit for already public information and leverage existing resources such as Oversight.gov. We appreciate the interest of Congress in helping us reform this process, in particular the efforts of Senator Hassan in highlighting this issue.

Protection of Whistleblowers

Our work as IGs would be far less impactful without the information provided to us by whistleblowers. Indeed, in 2019, CIGIE issued a report that illustrated the importance of individuals coming forward to report waste, fraud, abuse, and misconduct to OIGs.
As CIGIE Chairperson, I want to assure the Committee that I will encourage all OIGs to prioritize internal whistleblower education for OIG employees. Just as we encourage agency employees to come forward to assist OIGs with our investigations, audits, and reviews, it is also critical that OIG employees feel empowered to blow the whistle if they see wrongdoing within their own office and that they fully understand the process for making a disclosure and filing a retaliation complaint. I note that OIGs have historically been leaders in these internal education efforts, and nearly all OIGs have completed the U.S. Office of Special Counsel's whistleblower certification process under 5 U.S.C. § 2302(c), often well before their agencies. I also support the language in the Peters/Portman substitute amendment that would codify these and related internal education efforts, by requiring Whistleblower Protection Coordinators to inform OIG employees of their whistleblower rights and protections, including the process for filing a complaint or disclosure with CIGIE's Integrity Committee.

Accountability of Inspectors General and Their Senior Leaders

Just as Inspectors General oversee our agencies, we are committed to accountability within our own community, which is essential to maintain the public's trust. For this purpose, Congress established within CIGIE an Integrity Committee (IC) to oversee Inspectors General and senior OIG officials and ensure that they "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."[8] Service on the IC is among the most serious responsibilities asked of Inspectors General, and support for the IC and continued improvement of its processes is one of my highest priorities.

[8] Committee on Oversight and Government Reform, Improving Government Accountability Act, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354).

The IC is composed of four IGs, selected by the CIGIE Chairperson; a senior FBI official; and the Director of the Office of Government Ethics (or the Director's designee). The IC elects one of the four IG members as IC Chairperson for a two-year term. Having served on the IC from 2012 until 2015, I can speak to the many improvements that have occurred since the IG Empowerment Act (IGEA) transferred full responsibility for the IC from the FBI to CIGIE. The IC is now more transparent, and its oversight is more rigorous. It coordinates with the Office of Special Counsel on matters of mutual interest, and its workload has increased dramatically, in large measure because of outreach conducted by the IC's leadership. We appreciate the support of Congress for the Integrity Committee's work as reflected in HR 2662 and the Peters/Portman substitute amendment and recognize the important role of Congress in oversight of the IG community.

The IC's work has increased steadily over the past 5 years. In 2020, the IC considered 81 matters, double the number that it handled in 2016. Moreover, the cases have grown increasingly complex, as the typical matter now combines multiple allegations and discrete facts. Often, new allegations come to light during an investigation, which must then be pursued. These cases demand increasing staff time and other resources. At an average cost of $202,000 per investigation, the nine matters in progress at this time are projected to cost more than $2 million. CIGIE currently dedicates two full-time staff members to support the IC: a senior counsel and a program manager. Given the growing caseload, we have determined that this approach is not sustainable, and we are exploring ways to alleviate it with additional support, such as adding a senior investigative attorney to the team. Overseeing these investigations requires enormous commitment from the IC's Chairperson, Inspector General Kevin Winters. To the great benefit of the public, Mr. Winters, after a lifetime of service in the Marine Corps from which he retired as a Brigadier General, now performs two full-time jobs: IG of Amtrak and Chairperson of the IC. I want to thank IG Winters for his service, and I understand that his testimony will address how the IC conducts its critical role in more depth.

Improving CIGIE Transparency and Accountability through a Single Appropriation

Acting as the collective body of IGs, CIGIE has a two-fold mission: (1) to address integrity, economy, and effectiveness issues that transcend individual Government agencies and (2) to increase the professionalism and effectiveness of IG community employees. While CIGIE has steadily increased the amount and scope of its work over its first 10 years of existence, this independent agency is still primarily funded through an inefficient and complicated process of interagency collections individually deposited into a revolving fund. This indirect appropriation mechanism was directed by Congress in the 2008 amendments to the IG Act that created CIGIE. Indeed, the President's annual proposed budget to Congress includes funding for CIGIE through requested appropriations for the 75 OIG members; using this process in FY 2021, CIGIE received through its member OIGs appropriated funds of $11.2 million. The Peters/Portman substitute amendment codifies an authorization for an appropriation process that has been in place since 2009 and would not require additional funding from taxpayers.

Ultimately, we believe that Congress would benefit from a direct, annual appropriation for CIGIE which will streamline and make more transparent the process by which CIGIE is funded. With a direct, annual appropriation, Congress and the President can better align funding with CIGIE's responsibilities, and the work congressional stakeholders frequently ask of it.

CIGIE has leveraged to great effect the appropriations for enhancements to Oversight.gov. We appreciate the support that Congress and this Committee have provided to Oversight.gov, which was launched by CIGIE in October 2017 and provides a publicly accessible, searchable website containing the latest public reports from the IG community. Last year, Congress appropriated $850,000 for Oversight.gov and mandated that CIGIE maintain the site and that OIGs post their reports on a timely basis to the website. This requirement is now included in Section 11 of the Inspector General Act. If authorized an appropriation for its operations, CIGIE would be equally dedicated to the efficient and effective use of those funds and providing the cross-government coordination and oversight support role that our stakeholders are seeking.

Conclusion

For over 40 years, Inspectors General have worked tirelessly to ensure the integrity, efficiency, and effectiveness of their agencies' programs and operations. The trillions of dollars invested in those agencies in response to the economic and public safety crises caused by the COVID-19 pandemic have made the work of OIGs more relevant and important than ever. Thank you for your strong bipartisan support for our community and for the seriousness with which you take our mission. I look forward to working closely with this Committee and the Administration to ensure that Inspectors General continue to be empowered to provide the independent, non-partisan oversight for which they are known, and which the taxpayers so richly deserve.

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Statement of Kevin H. Winters
Chairperson of the Integrity Committee,
Council of the Inspectors General on Integrity and Efficiency
Inspector General, National Railroad Passenger Corporation (Amtrak)

before the

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

"Safeguarding Inspector General Independence and Integrity"

October 21, 2021

Thank you for inviting me to appear before you today to testify about the important work of the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Integrity Committee (IC). The Inspector General Act of 1978 (IG Act), as amended, established the IC to receive, review, and refer for investigation allegations of wrongdoing made against an Inspector General (IG), certain designated senior members of an Office of Inspector General (OIG), and the Special Counsel and Deputy Special Counsel of the U.S. Office of Special Counsel (OSC).

I currently serve as Amtrak's Inspector General, and I have been a member of the IG community for over 15 years, with previous roles as a Deputy IG and Counsel, and as an Assistant Inspector General for Investigations at NASA OIG. In May 2019, the CIGIE Chairperson appointed me to be an IC member and, on June 4, 2020, the IC membership elected me to serve as its Chairperson for a two-year term.

My testimony today will focus on the IC's mission and processes; its accomplishments since assuming the administration of this function from the FBI in 2016; and the IC's challenges, which present opportunities for improvement.

Congress established the IC to ensure that senior officials—currently about 468—in the IG community "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."[1] This self-policing of the IG community is a solemn responsibility that requires the IC to be vigilant, independent, non-partisan, and appropriately transparent to maintain the trust of our key stakeholders: the public, Congress, witnesses and whistleblowers, and those within our

[1] Committee on Oversight and Government Reform, *Improving Government Accountability Act*, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354).

investigative jurisdiction. The IC and its support staff work diligently to uphold this responsibility to ensure the fair, consistent, timely, and impartial disposition of allegations that fall within the IC's statutory authority.

IC Composition and Process

By statute, the IC is composed of a total of six members: four IGs, appointed by the CIGIE Chairperson and representing both establishment and designated Federal entities; a senior official from the Federal Bureau of Investigation; and the Director of the Office of Government Ethics (or the Director's designee). The IC elects one of the four IG members as IC Chairperson for a two-year term of office. There is a small CIGIE staff to assist the IC, and a member of the Public Integrity Section of the U.S. Department of Justice (DOJ) serves as a legal advisor.

The IC operates pursuant to section 11(d) of the IG Act and statutorily required policies and procedures. Incoming complaints that involve the approximately 468 personnel under the IC's purview are reviewed by the Allegation Review Group (ARG), a three-member panel of representatives from the IC, the DOJ, and the OSC. This diverse panel ensures that the equities of each agency are respected before a matter is referred to the IC for review.

The IC typically meets every three weeks (*i.e.,*18-19 meetings per year) to provide a prompt and independent review of each allegation referred to it using its threshold standard for investigation to determine whether the alleged misconduct constitutes an abuse of authority in the exercise of official duties; gross mismanagement; gross waste of funds; a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity expected of a senior OIG official.[2]

Prior to each meeting, IC members review an agenda and an average of 1,047 pages of evidentiary materials so that they can engage in an informed discussion of the allegations and make fair, consistent, rigorous, and impartial decisions. While some allegations are complex, detailed, and with substantial evidentiary support, others are far less clear as to the wrongdoing alleged or the basis for the allegations. Whatever the substance or source of the allegations, the IC addresses them in a fair, consistent, timely, and impartial manner.

The IC members and staff take seriously the obligation to discharge their duties independently and in a nonpartisan manner and to act without regard to political affiliation or other biases. Given the relatively small size of the IG community, it is not unusual for one or more IC members to know the individuals who make, or are the subject of, allegations before the IC. To avoid conflicts of interest, or even the appearance thereof, the IC members, including our IC staff, disclose all potentially significant relationships at our meetings and recuse themselves from matters, as appropriate. Recusal is not left solely to the discretion of the individual IC member concerned; rather, the IC may vote to recuse a member where it deems prudent, and a recused IC

[2] Section 7.A., Integrity Committee Policies and Procedures – 2018. Application of this threshold standard ensures that the IC focuses its attention and resources on serious allegations of wrongdoing that may call into question the fitness of an IG or senior OIG official. Many of the allegations referred to the IC do not meet this threshold. They may include management decisions within the reasonable discretion and authority of an IG or senior official; general disagreements with the outcome of a particular investigation or audit; and routine employment disputes.

member does not vote or otherwise participate in the consideration of the matter from which the member is recused.

A quorum of four IC members is required for the IC to deliberate or take any action concerning an allegation. After thoroughly reviewing the complaint and supporting materials, the IC will take one or more of the following actions: ask the complainant for additional information, if the complaint was not made anonymously; ask the subject to respond to the allegations, as long as doing so would not compromise the identity of confidential complainants or witnesses; determine the allegations do not allege wrongdoing within the scope of the IC's threshold standard for investigation and close the matter; or refer the allegations to the IC Chairperson for investigation. Experience shows that the IC often receives allegations that do not amount to wrongdoing or misconduct but may instead indicate management issues within an OIG. The IC has the discretion to refer such matters to the CIGIE Chair for appropriate intervention, typically counseling or offers of assistance.

As Chairperson, I communicate IC decisions in writing. For matters referred to me by the IC for investigation, I seek OIGs that are without conflicts of interest as to the allegations, are of sufficient size to conduct a prompt, objective, and independent investigation, and have any special capabilities that may be required. Under the IG Act, the investigating OIG conducts its work at the Chairperson's direction and reports periodically on its progress. Such reports may include new allegations that have arisen and any obstacles the investigators have encountered during their investigation. OIGs conducting investigations on behalf of the IC are directed to follow the facts and report their findings objectively, just as they would for matters concerning their own agency. Upon completion of their fieldwork, the investigating OIG prepares a draft report of its findings for the IC. After the IC reviews the draft report, a redacted version is shared with the subject(s) for their review and comment. The subjects' comments may be extensive and take issue with aspects of the draft report, and it is not unusual for them be represented by private counsel. The IC considers the entire record, with particular attention to the subject(s) comments, and makes a final determination, submitting written findings and recommendations to the appointing authority for appropriate action and to the congressional oversight and authorizing committees.

IC Improvements

Since the Inspector General Empowerment Act of 2016 (IGEA) transferred full responsibility for the IC from the FBI to CIGIE, the IC has made progress in the efficiency of its process. While recognizing that more work needs to be done, some of the IC's organizational improvements include the following:

First, the IC built a structure and operation to manage its responsibilities; hired staff support; stood up a new case and records management system; revised CIGIE's Privacy Act and Freedom of Information Act regulations; published a new System of Records Notice; and developed and implemented a new Federal records schedule.

Second, the IC promulgated substantial revisions to its statutorily mandated policies and procedures to improve timeliness, transparency, and accountability; standardized terms and requirements for OIGs performing investigations; and recently memorialized the long-

established expectation that IGs and their staffs provide timely and complete access to information and witnesses requested by the IC or its representatives.

Third, the IC has continued to increase its outreach to stakeholders. The IC expanded its annual report to Congress to describe the kinds of allegations received in the past year; the positions of the persons against whom allegations were made; and the number of OIGs and individuals that were the subject of allegations. The report also states the number of matters considered by the IC, the stage of the process at which they were resolved, the status of the IC's docket as of year-end, and includes summaries of completed investigations. This level of detail provides a thorough overview of the incoming allegations and how they were handled by the IC. In addition, IC representatives meet with Members of Congress and their staff, provide monthly reports to Congress on the status of any matters that have exceeded the IGEA's deadlines, and respond to other congressional inquiries. The IC also created a significantly more interactive, informative, and helpful website, which includes improved guidance for complainants regarding the IC's purview and the information required for a clear, actionable complaint, and has provided multiple training sessions on IC processes and policies to IGs and senior members of the IG community. The IC also provides orientation for new IGs and acting IGs to ensure that they fully understand the IC's procedures and their intersection with them.

Finally, the IC continues to streamline and clarify its procedures to move matters more quickly through the system. For example, the IC recently adopted an expedited process to resolve matters that involve mostly documentary evidence and do not require extensive witness interviews. In addition, the IC and OSC worked closely to establish a process to handle matters in which both offices have equities, resolving a longstanding ambiguity.

IC Challenges

Timeliness and Lack of Resources

While we are proud of our progress, the IC still has significant challenges. Foremost is improving the timeliness of its work. Our Annual Reports to Congress indicate that the IC's work has increased steadily over the past 5 years. In Fiscal Year (FY) 2021, we continued to see an increase in the complexity and seriousness of allegations, which often include multiple unrelated factual bases. The number of incoming communications to the IC also rose dramatically during that time, from 1,152 in FY 2020, to 3,917 in FY 2021. For FY 2021, the IC met 19 times and opened 65 cases for review, involving 30 different agencies and 63 persons within our jurisdiction. The IC initiated 4 investigations during FY 2021 and completed 3 others, submitting its findings and recommendations for appropriate action to the appointing authorities and relevant Congressional committees. As of this hearing, the IC has 9 matters under investigation. While we cannot be exactly sure as to why our workload has increased, we are reasonably confident it stems from successful outreach to stakeholders who now turn to the IC for redress. Some of the increase is likely attributable to the public attention on IGs and their work. Regardless, the increased workload presents a strain on limited IC resources.

The IC continually looks for ways to save time and streamline its processes while preserving the fairness and thoroughness of its reviews and investigations. Over the past two years we have made some progress by reducing the amount of time it takes for the IC to take final action on matters that come before it. We have also reduced our processing times for routine

administrative actions and responding to FOIA requests. Nevertheless, the IC continues to face challenges with the timeliness of its products, especially its investigations.

Investigations are particularly demanding; some require almost real-time interaction with investigators who are assisting the IC. It is not unusual for new allegations to surface during IC investigations, which must be appropriately processed by the IC. One timeliness and efficiency hurdle that I did not have at NASA OIG—or currently have at Amtrak OIG—is that I must find another OIG to conduct the investigation, trusting that the assisting IG will give me extremely experienced and qualified investigators to do the job. That said, it has become increasingly difficult to find an OIG with the resources available to handle a large and complex investigation for the IC on a timely basis. Many OIGs are stretched thin and skilled investigators are in great demand, particularly at a time when many OIGs face increasing workloads stemming from pandemic oversight. To help address this, CIGIE intends to add another investigative counsel to the IC's permanent staff.

The IGEA imposed aggressive time limits for the resolution of IC matters, and it is not unusual for IC investigations to exceed the statutory 150-day time-limit, despite the IC's best efforts. As stated above, many of the IC's investigations are complex, involve multiple allegations, and require the assembly, review, and evaluation of substantial records and interviews of numerous witnesses and subjects, often in coordination with their counsel. More time is often needed when new allegations arise during the investigation. Some matters involve national security issues with records that are classified, extending the time for review.

The IC appreciates the importance of prompt action on the serious matters before it and makes every effort to meet the time limits set by the IGEA. As IC Chairperson, I will continue to look for ways to streamline the IC's processes and to marshal additional resources to address timeliness. At an average cost of $202,000 per investigation, the nine matters in progress at this time are projected to cost more than $2 million.

Impediments to Access

The IC recently confronted unprecedented challenges to its authority, which also delayed resolution of important investigations. While there is a strong consensus among CIGIE members that the IC has the same investigative authorities as any individual OIG, there are some within the OIG community who do not share that view and have questioned the IC's legal authorities and refused to produce witnesses and assertedly privileged documents. They did this despite the fundamental principle that the party subject to oversight cannot credibly or fairly be the one who decides what information is made available to federal investigators, in this case, the IC.

This is the first time in over 30 years where the IC experienced such a determined impediment to its oversight responsibilities. Unfettered access to information deemed relevant by an investigating IG is a fundamental requirement for thorough and credible oversight. This standard is embodied in CIGIE's Quality Standards for Investigations, which govern the work of individual OIG investigators and of the IC. Within our individual agencies, IGs routinely obtain access to the most sensitive information, just as the IG Act contemplated. OIG's have a corresponding duty to comply with information requests in connection with an IC inquiry or investigation. In the IC's view, it should be disqualifying for an oversight professional to impede IC access to information.

Supported by an overwhelming consensus of CIGIE's members, the IC amended its policies and procedures to ensure that any such impediment can be quickly addressed. The IC's policies now memorialize the requirement that all IGs and their staffs provide timely and complete access to information and witnesses requested by the IC or its representatives, and expressly state that denying the IC access to information can be considered misconduct. When an improper impediment occurs, the IC need not wait to complete the underlying investigation before reporting the impediment to the appointing authority. Instead, the IC can immediately find that the denial of access itself is misconduct and call on the appointing authority to act in accordance with its gravity.

The IC appreciates Congress's recognition of this challenge by including in proposed legislation a requirement for the IC Chairperson to report particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of an OIG.

The IC also appreciates the additional proposed legislation to increase the protection of whistleblowers. The IC recognizes that whistleblowers often hesitate to come forward with allegations against senior government officials, and it frequently receives allegations from insiders who express reasonable fears of retaliation should their identities be exposed. Like our individual OIGs, the IC's work depends on reporting by individuals who are exquisitely sensitive to the possibility of exposure. Any reporting on specific allegations or pending IC investigations that may inadvertently reveal confidential identities will undermine the very accountability that is the IC's overarching goal. Premature disclosures about pending investigations may also influence witness testimony or facilitate interference by subjects or their allies. These concerns, including compliance with the Privacy Act, the IC's commitment to fairness, impartiality, and nonpartisan oversight, underpin our policy to not report on pending matters and to wait until a matter is concluded before making public disclosures.

Conclusion

As someone who has spent the past 45 years of my professional life in service to our country in both peace and war, I recognize how fortunate we are to live in a country where we have a system of government built on adherence to the rule of law and with checks and balances—which includes independent OIGs who help ensure the integrity, efficiency, and effectiveness of their agencies' programs and operations.

I am thankful for your interest in the efforts of the IC to serve as a credible and trusted check on the tremendous powers entrusted to senior members of the IG community, and I look forward to continuing the IC's important accountability mission while working with Congress and our partner agencies to provide our nation's taxpayers with assurance of the independence and integrity of the Federal oversight community.



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

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

concerning

"Safeguarding Inspector General Independence and Integrity"

October 21, 2021

Chairman Peters, Ranking Member Portman, and Members of the Committee:

Thank you for inviting me to testify about this Committee's efforts to safeguard Inspector General (IG) independence and integrity. Each year, the independent oversight work of Inspectors General results in billions of dollars in recoveries and savings for taxpayers. The Committee's bipartisan Inspector General Independence and Empowerment Act of 2021 will enhance the Inspector General community's ability to more effectively perform that work on behalf of the public that we serve. I therefore strongly support the legislation and encourage you to advance this good government reform without further delay. The IG Community depends on the bipartisan support demonstrated by this Committee to ensure that we have the tools necessary to root out waste, fraud, and abuse in the federal government. The Inspector General Independence and Empowerment Act of 2021 does just that by incorporating critical provisions from three previously introduced bills: S. 587, the Securing Inspector General Independence Act; S. 1794, the IG Testimonial Subpoena Authority Act; and the House of Representatives' version of the IG Independence and Empowerment Act, H.R. 2662.

I am honored to appear today alongside my colleague, IG Allison Lerner, the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I concur with the views expressed by IG Lerner, and appreciate CIGIE's efforts in support of your legislation. My testimony today will emphasize two provisions in the Inspector General Independence and Empowerment Act that are particularly important to the Department of Justice (DOJ) Office of the Inspector General (OIG): (1) expanding DOJ OIG's jurisdiction to cover investigations of professional misconduct by DOJ attorneys; and (2) providing IGs with testimonial subpoena authority. Additionally, based on my six years as CIGIE Chair, I would like to discuss and echo IG Lerner's strong support for the legislation's amendments to the Federal Vacancies Reform Act.

DOJ OIG's Jurisdiction to Investigate Allegations of Professional Misconduct by Department Attorneys

I want to start by thanking the Committee for incorporating the provisions of the Senate's IG Access Act, S. 426, into its legislative package. This legislation also was included in the House of Representatives' version of the IG Independence and Empowerment Act. The IG Access Act extends DOJ OIG's jurisdiction to include allegations of professional misconduct by Department attorneys. Last Congress, as one of its first legislative actions, the House of Representatives passed the IG Access Act by unanimous voice vote with no opposition and the Senate Judiciary Committee subsequently moved the legislation to the floor of the Senate by a near unanimous vote. The current Senate version of this legislation has the support of nearly every Democratic and Republican member of the Senate Judiciary Committee, including its lead sponsors, Chair Richard Durbin and Senator Mike Lee, as well as a broad coalition of non-governmental organizations, such as the American Civil Liberties Union, the American Conservative Union, the Government Accountability Project, and the National Taxpayers Union.

The IG Access Act has received broad, bipartisan support over successive Congressional sessions because it promotes independent oversight, transparency, and accountability within DOJ for all of its employees, including Department prosecutors. The DOJ OIG is the only Inspector General in the federal government that does not have the authority to investigate alleged misconduct, including professional misconduct, by attorneys who work in the agency it oversees. As I have stated many times in past Congressional testimony, there is no principled basis for authorizing OIG oversight of DOJ law enforcement personnel, such as agents of the Federal Bureau of Investigation (FBI), while

excluding DOJ lawyers from that same OIG oversight. Providing the DOJ OIG with the authority to exercise jurisdiction in attorney professional misconduct cases would enhance the public's confidence in the outcomes of these investigations and provide the OIG with the same authority as every other IG.

The importance of having an independent office within DOJ to oversee allegations of misconduct by DOJ lawyers was recognized by the National Association of Assistant United States Attorneys (NAAUSA) in an opinion piece published by Law360 on April 14, 2021. The opinion piece states, "the National Association of Assistant United States Attorneys supports establishing the [Office of Professional Responsibility] as a completely independent office, similar to the OIG, that is not subject to the supervision of the attorney general." Instead of providing the OIG with jurisdiction to conduct oversight of DOJ lawyers, the NAAUSA proposed that "the chief of professional responsibility would be a presidential appointment with U.S. Senate confirmation, just like the inspector general, and outside the chain of command of the attorney general." While I completely agree with the NAAUSA that independence is necessary to promote public confidence in investigations of Department lawyers, Congress already created a statutorily-independent entity within DOJ that has a demonstrated ability to conduct such oversight, namely the OIG, and in my view there is no reason to create a parallel independent entity within DOJ in order to achieve that important principle.

If this legislation were enacted, the OIG would handle this new authority consistent with its responsibilities under the Inspector General Act and conduct lawyer-related misconduct investigations as follows:

- **The OIG would assign only attorneys to review professional misconduct cases, using the same standards currently used by the DOJ Office of Professional Responsibility (OPR).** The primary goal of the IG Access Act is not to upend the standards that are applied when reviewing attorney misconduct allegations but rather to promote public confidence in those investigations by authorizing a statutorily independent OIG to conduct them where necessary. The OIG employs dozens of attorneys whose backgrounds and experiences are similar to the lawyers in OPR, including former prosecutors and Department attorneys specializing in attorney ethics, in both the OIG's leadership and our Oversight and Review Division, which would be handling the professional misconduct allegations. This group of OIG attorneys are from the same OIG division that led our review of the FISA abuse allegations, the Clinton email and Comey memos investigations, our review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious, and other sensitive and complex matters. They have also handled the numerous ethics issues that have arisen in our reviews and investigations. Moreover, the OIG is committed to adopting the same substantive criteria currently used by OPR to ensure consistency in how professional misconduct allegations are assessed by our offices. In short, if the IG Access Act is adopted, there will continue to be only one standard applied in attorney misconduct cases, and those matters will only be investigated by experienced attorneys.

- **The OIG would work effectively and efficiently with OPR to review attorney misconduct allegations, as it has done with the internal affairs offices at each of the Department's components.** The IG Access Act would ensure that the process for reviewing attorney misconduct allegations is identical to the system that currently exists across DOJ for non-attorney misconduct allegations, such as for those involving FBI agents. The OIG would

develop a standard process with OPR, as exists with each of the other internal affairs offices across the Department's law enforcement components, for reviewing incoming allegations and the OIG would then decide whether it would investigate the allegations. For decades, the OIG has coordinated effectively with the internal affairs offices at the FBI, ATF, Drug Enforcement Administration (DEA), Federal Bureau of Prisons, U.S. Marshals Service, and other Department components. Our processes with the other components have not resulted in different investigative standards or inconsistent application of legal standards. In fact, the disciplinary processes at the FBI and DEA, in particular, have substantially improved since the OIG obtained statutory oversight authority over those components in 2002, in significant part due to the greater transparency and accountability that has resulted from the OIG's oversight. From a good government standpoint, the process for identifying the investigating office in attorney misconduct matters would become more efficient, not less, because the legislation would clarify the OIG's ability to investigate these matters, and eliminate the sometimes painstaking, inefficient discussions that currently take place between the OIG and Department leadership when an allegation is made that lies somewhere in between the OIG's and OPR's current jurisdiction.

- **The OIG would no longer need to request DOJ leadership approval to investigate serious allegations of professional misconduct by lawyers, which to date the Department has consistently denied.** Although existing Department regulations allow the OIG to request authority from the Deputy Attorney General to conduct a professional misconduct investigation, the reality is that in every instance where the OIG has made a request pursuant to the regulation, the then Deputy Attorney General has denied the OIG's request. That includes, most recently, the OIG's request to investigate the circumstances under which Jeffrey Epstein received a non-prosecution agreement from the Southern District of Florida. Moreover, requiring the OIG to request permission from Department leadership to handle a matter, and empowering the Deputy Attorney General to "block" OIG oversight of a serious misconduct allegation, undermines IG independence and is inconsistent with the Inspector General Act.

For these reasons, I thank you for including this critical reform as part of your broader IG legislative package and believe the public would be well-served by its adoption.

Testimonial Subpoena Authority

Within your legislation, another critical good government reform for both my office, and the IG community more broadly, is the authority to subpoena witnesses for testimony in IG investigations and reviews. As I have noted on multiple occasions in testimony before this Committee, both in my past role as CIGIE Chair and as the DOJ IG, I strongly support granting IGs testimonial subpoena authority because the absence of such authority hinders the ability of OIGs to conduct complete oversight. Without this authority, OIGs are unable to obtain potentially critical evidence from former federal employees, employees of federal contractors and grant recipients, and other non-government witnesses unless they voluntarily agree to be interviewed.

For example, a federal employee's resignation or retirement enables the former employee to avoid being interviewed by an OIG about serious misconduct the former employee allegedly engaged in while working for the federal government. It also has an impact on the ability of law enforcement components to adjudicate misconduct cases. Indeed, a recent OIG review found that, in more than

10% of the misconduct cases pending before the FBI's Office of Professional Responsibility in FY 2017 and FY 2018, the FBI employee retired or resigned prior to the disciplinary process being completed. We further found that the FBI's Office of Professional Responsibility closed those cases without regularly documenting substantiation decisions. Further, an OIG's inability to compel testimony from federal contractors and grant recipients can result in the OIG being unable to gather sufficient evidence to hold the contractor or grant recipient accountable for waste, fraud, and abuse in connection with the use of federal funds, and therefore affects our ability to recover misused federal funds. In addition, an OIG's access to relevant testimony from witnesses who are former federal employees, or employees of contractors and grant recipients, is often essential in order for OIGs to conduct complete investigations of employees, including conducting effective whistleblower retaliation investigations.

Recently, Congress granted this authority to CIGIE's Pandemic Response Accountability Committee, as it had previously done with the Recovery Accountability and Transparency Board in 2009. Further, the Department of Defense IG was granted statutory authority by Congress in 2009 to compel testimony from former agency employees and third party witnesses in its investigations, and has used that authority sparingly and only to advance its efforts to curb government waste, fraud, and abuse.

Moreover, in nearly every significant review my office has completed since I became the IG in 2012, beginning with our "Review of ATF's Operation Fast and Furious and Related Matters," we have noted how the lack of testimonial subpoena authority has either undermined our efforts, or significantly delayed completion of our work. For example, most recently, in our review of the FBI's handling of the allegations against Former USA Gymnastics Physician Larry Nassar, we noted that the former President of USA Gymnastics, Steve Penny, refused our request for a voluntary follow up interview that we sought after the OIG learned additional information about his and a former FBI Special Agent in Charge's actions and potential conflict of interest. Additionally, the DOJ OIG noted in its December 2019 "Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation" that we would have directly benefited from the ability to subpoena former government and non-government individuals who had direct knowledge about the election reporting by Christopher Steele. Similarly, we noted that our ability to assess the Department's "zero tolerance policy" on immigration enforcement was impacted because former Attorney General Sessions did not agree to be interviewed by the OIG, and we could not compel his testimony. And these refusals to testify by former DOJ employees happen all too frequently in many of our less-high profile, but also significant matters, as we have noted in numerous public summaries of these investigations (*See, e.g.,* "Findings of Misconduct by former FBI Special Agent in Charge for Making Two False Statements," April 19, 2021, available at: https://oig.justice.gov/sites/default/files/reports/21-062.pdf). As a result, our ability to hold former officials fully accountable for serious misconduct is often undermined, thereby diminishing the public's trust in its government and harming the taxpayers.

As these examples indicate, the need for this authority has crossed administrations of both parties. Indeed, CIGIE first supported IG testimonial subpoena authority during the first year of the Obama administration, shortly after CIGIE was created.

I also note that your legislation contains several appropriate and important safeguards, which I fully support, to ensure the judicious exercise of testimonial subpoena authority by IGs, including allowing the Attorney General an opportunity to object to the issuance of a subpoena and an IG

panel to oversee the issuance of testimonial subpoenas. In sum, this bill would greatly enhance the OIGs' ability to access important evidence, while also putting in place appropriate safeguards to protect against both misuse by an Inspector General and any negative impact to the Department of Justice's criminal law enforcement equities. That is why I support its enactment.

Promoting IG Independence by Amending the Federal Vacancies Reform Act of 1998

Finally, I strongly support amendments to the Federal Vacancies Reform Act of 1998 that would require that any individual who is designated by the President to serve as an acting IG be a senior individual who currently serves in an OIG. As CIGIE Chair, I wrote previously to this Committee on this important amendment and noted that this provision will improve the institutional independence that is critical to effective IG oversight.

Under the Federal Vacancies Reform Act of 1998 (Vacancies Act), the IG's selected deputy typically assumes leadership of an OIG when an office becomes vacant. However, under the Vacancies Act's current provisions, the President lawfully may elect to direct a political appointee or a senior employee in the agency overseen by the OIG to serve as acting IG. The appointment of a political appointee from the administration or the appointment of a senior employee in the overseen agency risks creating both actual and apparent conflicts that negatively affect the ability of the acting IG to maintain the required independence. This is wholly inconsistent with the core principles underlying the IG Act and should not be allowed.

For example, a critical function of IGs is to receive information from whistleblowers about fraud, waste, and abuse in their agency and the IG Act mandates that IGs protect the identify of those whistleblowers. There can be little doubt that agency employees would be reluctant to blow the whistle on agency fraud, particularly by agency supervisors or senior officials, if the acting IG is also a senior agency employee or political appointee who has access to their complaints and their identity.

Your legislation would preclude such appointments by limiting who is eligible to temporarily serve as acting IG to either the IG's designated deputy or another senior oversight professional from within the IG community. Doing so would prevent the conflicts inherent in asking individuals to serve in a managerial or political role in their agencies while also exercising independent oversight.

Last year, Jack Goldsmith, the former head of DOJ's Office of Legal Counsel during the George W. Bush Administration, wrote that amending the Vacancies Act to prohibit political appointees and agency officials from serving as an acting IG was an effective, "clearly constitutional" way to promote IG independence. More recently, Professor Goldsmith and former White House Counsel Bob Bauer noted that these amendments to the Vacancies Act are the "single most important step Congress can take to secure inspector general independence."

Indeed, agencies themselves benefit when an acting IG is independent in both fact and appearance. That independence allows IGs to be a critical, credible source for answers when controversial allegations of mismanagement or wrongdoing arise in an agency.

The concern about political appointees or management officials serving in an acting capacity as IG is not new. Rather, this concern has stretched across Administrations, as indicated in multiple Government Accountability Office (GAO) reports. This is perhaps best highlighted by concerns that have been raised across three successive Administrations regarding the Inspector General position

at the Department of State.

In a 2007 report, the GAO expressed concern that from January 2003 through April 2005, four management officials from the State Department served as the acting IG, all four of whom had served in the Foreign Service in prior management positions, including political appointments as U.S. ambassadors to foreign countries.[1] Then, in January 2008, following the departure of the Senate-confirmed Inspector General, another Foreign Service Officer was appointed to serve as acting IG. That individual remained in the position for over five years, until Steve Linick's confirmation as Inspector General in September 2013. The GAO, in its 2007 report, and again in a 2011 report, noted that "the appointment of management and Foreign Service officials to head the State OIG in an acting capacity for extended periods of time is not consistent with professional standards for independence."[2] In a 2011 hearing to discuss GAO's findings and recommendations, the then-Chair and Ranking Member of the House Committee on Foreign Affairs expressed serious bipartisan reservations about the effectiveness of the State Department's acting IG, on account of his concurrent role as a senior Foreign Service officer.[3]

These concerns persisted until a permanent IG, Steve Linick, was nominated by the President and confirmed by the Senate in 2013. For example, at a hearing to discuss OIG vacancies, then Chairman of this Committee, Senator Ron Johnson, and multiple witnesses discussed the perception that the State Department's acting IG had failed to conduct independent and effective oversight of then Secretary Hillary Clinton because of the acting IG's temporary appointment and the inherent conflict of interest created when an official serves in both a management and an oversight role simultaneously.[4] Similarly, in a letter to CIGIE and then-Secretary of State Kerry in 2015 seeking information about the extended time that passed between Senate-confirmed IGs at the State Department while the position was filled by a career foreign service officer, Senator Grassley, who is a lead sponsor of this legislation, raised specific concerns about the performance of the State Department's prior acting IG, noting, "As these examples demonstrate, an inspector general must be independent, because agencies cannot be trusted to investigate themselves."[5]

The May 2020 designation of a State Department political appointee and the subsequent September 2020 designation of a Foreign Service officer and appointed ambassador to serve as the acting IG at the State Department following IG Linick's removal again raised independence concerns at that Office, as had been the case during the George W. Bush and Obama Administrations. However, this challenge is not unique to the State Department. As the GAO again noted in its most recent report on this issue, from June 2020, "the extended use of temporarily assigned agency management staff to head an OIG can affect the perceived independence of the entire office in its reviews of agency operations. . . . the practice is not consistent with the independence requirements of GAGAS, other

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[1] Government Accountability Office, "Inspectors General: Activities of the Department of State Office of Inspector General," GAO-07-138. Mar. 23, 2007.
[2] *See, e.g.* Government Accountability Office, "State Department Inspector General: Actions to Address Independence and Effectiveness Concerns Are Under Way." GAO-11-382T. April 5, 2011. (available at: https://www.gao.gov/assets/130/125878.pdf).
[3] Committee on Foreign Affairs. U.S. House of Representatives. "Watching the Watchers: The Need for Systemic Reform and Independence of the State Department Inspector General." April 5, 2011.
[4] Committee on Homeland Security and Governmental Affairs. U.S. Senate. "Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years." June 3, 2015.
[5] Letter from Senator Charles Grassley to the Honorable Michael Horowitz and the Honorable John Kerry. August 27, 2015.

professional standards that IGs follow, and the purposes of the IG Act."[6] The Committee's legislation would address this issue, which has been a bipartisan concern for over a decade, and I hope that it is enacted promptly.

Conclusion

In conclusion, I want to again thank the Committee for its bipartisan efforts to support both my office and the IG Community. As I noted at the outset, the long tradition of bipartisan support from this Committee for IG reform is necessary so that we can fully carry out our important missions on behalf of the U.S. taxpayers.

I understand that a number of amendments to Chairman Peters and Ranking Member Portman's managers amendment to the IG package have been offered, and I would be pleased to discuss any of these with you. Thank you for the opportunity to testify, and I would be pleased to answer any questions that you may have.

[6] Government Accountability Office, "Inspectors General: Independence Principles and Considerations for Reform." GAO-20-639R. June 8, 2020. (available at: https://www.gao.gov/assets/710/707412.pdf).

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NAAUSA Responds to Senate Hearing Regarding Inspector General Access Act

FOR IMMEDIATE RELEASE
October 25, 2021

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WASHINGTON, DC – Steven Wasserman, President of the National Association of Assistant U.S. Attorneys (NAAUSA) - representing the interests of Assistant U.S. Attorneys (AUSAs) working in the 94 U.S. Attorney Offices – issued the following statement regarding the Senate Homeland Security & Government Affairs Committee's October 21, 2021 hearing entitled "Safeguarding Inspector General Independence and Integrity" as it relates to the Inspector General Access Act:

"The Inspector General (IG) Access Act is deeply flawed and does more to create a perceived sense of accountability than an actual one. As Inspector General Horowitz acknowledged during his opening statements, NAAUSA agrees with the need for independent oversight of attorney misconduct at the Department of Justice. But Horowitz, nor any other advocate for this legislation, can point to any evidence of politicization in the current Office of Professional Responsibility (OPR) process that makes this change necessary. Cases consistently show OPR reaches conclusions based on an impartial application of clearly defined principles understood by attorneys across the Department," said NAAUSA President Wasserman. **"When a legitimate concern of politicization arises, the Deputy Attorney General has the authority to move the case to the Inspector General, as has effectively occurred recently. Simply put, the system is not broken."**

"OPR employs experienced attorneys uniquely equipped to navigate the complex web of legal and ethical standards applicable to DOJ attorneys. While Inspector General Horowitz asserted only other attorneys would review attorney misconduct cases and would only use same process currently used by OPR, this promise only lasts as long as Horowitz is the Inspector General. Nothing in the Act requires consistency. When a new Inspector General decides to change the process, it will be AUSAs and DOJ attorneys who suffer without recourse," Wasserman explained.

"Inspector General Horowitz rejects our call for an independent, Senate-confirmed OPR head in arguing an independent, Senate-confirmed head investigator already exists with the Inspector General. While this is true, the role is not the same and viewing them in tandem is precisely the problem. The Inspector General is responsible for fraud, waste, and abuse; not attorney professional misconduct. Attorney professional misconduct is a serious issue and OPR has decades of precedent and practiced procedure that has led to the formation of a highly professional and skilled Office. OPR should be led by an independent, Senate-confirmed leader who

has the unique skill set necessary for the cases they handle, it should not be folded into another, different investigative entity," Wasserman continued.

"Congress cannot put the livelihood of attorneys on the line by experimenting with a solution to perceived problems. We call upon Congress to identify a real problem before attempting to impose a solution. This issue has not been subject to review by Government Accountability Office (GAO) in decades. A GAO review of the current OPR investigative process would assist Congress in identifying the exact accountability deficiency and the proper steps for improvement," Wasserman furthered.

"Advocates of the IG Access Act claim only the most politically charged cases of national importance would be subject to OIG review, while the rest remain with OPR. In the same breath, they claim OPR is unaccountable and politicized. Assuming briefly these statements are true, it is entirely unclear why public perception deems one attorney eligible for access to a better system of review than other. At its heart, this proposal creates two systems of justice and where an attorney's case falls is at the whim of the Inspector General at the time," Wasserman concluded, **"NAAUSA calls upon Congress to commission a GAO report to review this issue and then decide the best course of action. We are confident such review will find a more appropriate solution to be a statutorily independent OPR, not providing the Inspector General jurisdiction over OPR cases."**

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Post-Hearing Questions for the Record
Submitted to Allison Lerner
From Ranking Member Rob Portman

"Safeguarding IG Independence and Integrity"
October 21, 2021

1. A report on allegations of misconduct at the Department of Homeland Security (DHS) Office of the Inspector General, issued by the law firm WilmerHale on December 14, 2020, references a conversation you had with one of the subjects of the investigation about then–DHS Inspector General nominee Joseph Cuffari, at the time his nomination was pending. During the Committee's October 21 hearing, you acknowledged that the subject of the investigation called you to discuss Dr. Cuffari's nomination. Is there any additional information you believe will help the Committee understand your role and responsibilities in this matter? If so, please provide it.

   Response: In my capacity as CIGIE Vice Chairperson I was contacted by several people who were concerned that an individual nominated to fill a Presidentially appointed IG position had obtained a degree from an institution a Government Accountability Office report had identified as unaccredited. To the best of my recollection, these individuals contacted me because they believed that CIGIE was responsible for vetting people nominated for IG positions and they wanted to ensure that the issue they had identified was appropriately considered. I explained CIGIE's actual role in the filling of vacant PAS IG positions: CIGIE's IG Candidate Recommendations Panel, which I chaired, identified individuals who appeared to have the talent and experience to be a successful IG to the White House. After assessing the individuals recommended by CIGIE, the White House determined which individuals it wanted to nominate, at which point the in-depth vetting process, conducted by the White House and not CIGIE, began. I told the individuals that the concern they had identified could be relevant to the White House and agreed that they should share the information so the White House could determine what impact, if any, it would have on the nomination.

   I provided this advice because the President's interest in the qualifications and integrity of the individuals he nominates to serve as his appointees does not end once a nomination is made but continues throughout the confirmation process. If information exists that could raise concerns about a pending nomination (for example, if it appears that a nominee harassed a co-worker, defrauded an employer, or falsified a portion of their resume), it is appropriate to provide the White House with that information so it can assess it and decide what impact, if any, that information should have on the nomination.

2. The WilmerHale report lists you as one of the witnesses who "refused to be interviewed and could not otherwise be compelled to participate." It goes on to say that:

   > *Ms. Lerner is the Inspector General for the National Science Foundation, and she is the Vice Chair of CIGIE. Ms. Costello and Ms. Ouzts contacted Ms. Lerner to discuss IG Cuffari's nomination before he was confirmed. Ms. Lerner would*

> *likely have information about these discussions, and in particular, whether she recommended Ms. Ouzts contact the DHS White House liaison. In July 2020, WilmerHale contacted Ms. Lerner to inquire as to whether she would agree to an interview. On September 15, 2020, Atticus Reaser (General Counsel of CIGIE) notified WilmerHale that Ms. Lerner was "not in a position to" sit for an interview related to this investigation.*

Is this accurate? Please explain and include any other information you believe would be helpful in your response.

Response: I did not decline any of WilmerHale's interview requests.

In July and August 2020, attorneys from WilmerHale indicated that they wanted to interview both the CIGIE Chairperson and me about three matters: our conversations with IG Cuffari about the issues he was encountering in his office, the IG community's perception of those issues, and CIGIE's Integrity Committee (IC) process generally and as it related to matters that were submitted by DHS OIG to the IC. I was concerned that conversations about the first two topics could include questions about matters that had been brought to us in confidence by individuals other than IG Cuffari. With respect to those two topics, in September 2020 CIGIE's General Counsel informed WilmerHale that while the Chairperson and I were concerned about protecting the confidentiality of individuals who contacted us to share concerns or seek counseling, we understood the importance of individual OIGs being able to investigate allegations affecting their office and would discuss being interviewed if WilmerHale concluded that it had a substantial need for information from either of us and it could not obtain substantially equivalent information by other means. WilmerHale subsequently informed CIGIE's General Counsel that that they believed the Chairperson and I were "uniquely in possession of substantially relevant information to our investigation," however their request did not provide information to substantiate that belief. CIGIE's counsel immediately followed up with WilmerHale and discussed the assertion. After that conversation, it remained unclear to CIGIE why information substantially equivalent to the information being sought could not be obtained by other means and the confidentiality concerns remained. Ultimately this issue was left unresolved: CIGIE did not decline the interview and there were no further substantive communications between CIGIE and WilmerHale on the request to interview me or the Chairperson about these matters.

With respect to the importance of protecting confidentiality, in my capacity first as CIGIE's Vice Chairperson and now as its Chairperson, I have been frequently called upon to provide advice and counsel to CIGIE members and/or their senior leadership and to listen and respond to their concerns about activities in their organizations. These conversations enable me to help IGs and their senior staffs solve problems before they spin out of control, distracting staff from their important work and potentially causing significant reputational harm to the office. They can also surface issues that should be referred to the IC, so it can determine if the matter fits within its jurisdiction, or to other entities such as the Office of Special Counsel. In order to promote frank discussion and meaningful feedback and ensure that individuals sharing concerns are not subject to harassment or retaliation, it is important that these conversations occur confidentially, especially if the individuals with whom I'm speaking could be considered

whistleblowers. If CIGIE members and their senior leadership are unable to rely on an expectation of privacy when seeking the assistance of the CIGIE Chairperson and Vice Chairperson, I am concerned that those conversations would be profoundly chilled, which would deter individuals from sharing concerns or seeking guidance and undermine our ability to resolve problems at the earliest possible moment. This approach is consistent with and analogous to the IG Act's requirement to protect the identities of agency employees who raise concerns to the IG. Section 7(b) of the IG Act.

Mr. Reaser's statement that I was "not in a position to" provide information requested by WilmerHale related to the third topic the law firm had sought to discuss with Chairperson Horowitz and me: CIGIE's Integrity Committee (IC) process generally and as it related to matters that were submitted by DHS OIG to the IC. With respect to that request, Mr. Reaser told WilmerHale that because the IC deliberates independently from the CIGIE Chairperson and Vice Chairperson, Mr. Horowitz and I were "not in a position" to provide the information WilmerHale was seeking. Instead, he offered to connect the law firm with one of CIGIE's Senior Assistant General Counsels, who had in-depth experience with the IC, could readily provide a general overview of IC processes and might be able to provide information on any matters that might have been submitted by DHS OIG to the IC, depending on the posture and the nature of the matter. It is my understanding that connection was made and the CIGIE attorney in question subsequently engaged with WilmerHale and provided the assistance they requested.

Post-Hearing Questions for the Record
Submitted to Allison C. Lerner
From Senator Josh Hawley

"Safeguarding IG Independence and Integrity"
October 21, 2021

1. On December 14, 2020, WilmerHale published a report of an independent investigation into allegations of misconduct by three employees at the Department of Homeland Security (DHS) Office of Inspector General (OIG). This reportedly cost over $1.3 million to produce and consisted of a 108-page report that was the result of 70 interviews and the review of 42,000 documents.
    a. Were you or anyone else at CIGIE aware of any allegations addressed in the report that were referred to CIGIE prior to DHS retaining WilmerHale to conduct this investigation?

Response: I do not recall seeing an unredacted copy of this report and therefore do not have a clear understanding of all the allegations that were examined. With respect to allegations that might have been considered by CIGIE's Integrity Committee (IC), that committee functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct this question to Mr. Winters.

    b. Why did CIGIE decline to investigate these allegations, many of which were ultimately substantiated by the WilmerHale report? Please provide specific case numbers and address the merits of these referrals with particularity.

Response: Decisions about whether to investigate allegations against an Inspector General or his/her direct reports are made by CIGIE's Integrity Committee, which functions independently of CIGIE's leadership. Accordingly, I respectfully suggest that you direct this question to Mr. Winters.

    c. Do you agree with the following legal proposition: "[I]t is a misuse of authority for a federal employee to use his or her public office to interfere with a President nomination or the Senate confirmation process for personal gain or any other improper purpose. Additionally, federal employees should not use their government resources, including the email system or access to lawmakers or other government officials, for personal gain or for any other unauthorized purpose." Report at 24. If not, please explain why with citation to relevant authorities.

Response: Both propositions set forth above relate to provisions of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). Determining whether an individual's conduct violates one of these standards requires an understanding of the standard itself, including the Office of Government Ethic's guidance on that standard, and is heavily dependent on the facts of each case. As a result, the Office of Government Ethics uses detailed examples to illustrate behavior that is and is not consistent with the standards. That office also publishes interpretative legal advisories to assist with determinations.

The first proposition relates to the standard which provides that a federal "employee shall not use his public office for his own private gain . . . or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity ...." 5 CFR §2635.702. Determining whether that standard has been adhered to or breached requires an understanding of the specific conduct involved. The proposition states, and asks for agreement with, a legal conclusion about the impact of a federal employee's actions but does not detail the specific actions that formed the basis for that conclusion. Without greater clarity about the actions involved, it is difficult to validate the conclusion that a violation occurred.

The second proposition essentially restates a standard which provides that a federal employee "shall not use [Government property], or allow its use, for other than authorized purposes," *Id.* 2635.704, although it broadens that standard by adding the reference to personal gain. While the second proposition does not reach a conclusion about an employee's conduct, determining whether the relevant standard has been violated would require information about an employee's actions and cannot be done in the abstract.

d. On page 27 of the report, WilmerHale reported its finding that two DHS OIG employees "contacted Allison Lerner, Vice Chair Vice Chairperson of CIGIE, to discuss Dr. Cuffari's nomination. Ms. Costello, in her capacity as Acting IG, wrote to Ms. Lerner that she had 'a sensitive matter related to the DHS IG nominee' to discuss. They agreed to speak on the phone and, following that conversation, Ms. Costello sent Ms. Lerner the link to a report regarding California Coast University. During her interview, [redacted] acknowledged that she and Ms. Costello spoke to Ms. Lerner about Dr. Cuffari's nomination, and state that they were doing so because it was in the best interest of the agency. According to [redacted], Ms. Lerner agreed that Ms. Ouzts and Ms. Costello had an obligation to protect the organization and figure out whether others knew that Dr. Cuffari's degree was issued by 'a diploma mill.' Ms. Lerner declined our request for an interview." Report at 27. Is this portion of the report accurate? If not, please explain your version of the events with particularity, including by reference to relevant documents.

Response: Without identifying anyone with whom I met, in my capacity as CIGIE Vice Chairperson I was contacted by several people who were concerned that an individual nominated to fill a Presidentially appointed IG position had a degree from an institution a Government Accountability Office report had identified as unaccredited. To the best of my recollection, these individuals contacted me because they believed that CIGIE was responsible for vetting people nominated for IG positions and they wanted to ensure that the issue they had identified was appropriately considered. I explained CIGIE's actual role in the filling of vacant PAS IG positions: CIGIE's IG Candidate Recommendations Panel, which I chaired, identified individuals who appeared to have the talent and experience to be a successful IG to the White House. After assessing the individuals recommended by CIGIE, the White House determined which individuals it wanted to nominate, at which point the in-depth vetting process, conducted by the White House and not CIGIE, began. I told the individuals that the concern they had identified could be

relevant to the White House and agreed that they should share the information so the White House could determine what impact, if any, it would have on the nomination.

With respect to Wilmer Hale's interview requests, as the information below sets forth, I did not decline those requests.

In July and August 2020, attorneys from WilmerHale indicated that they wanted to interview both the CIGIE Chairperson and me about three matters: our conversations with IG Cuffari about the issues he was encountering in his office, the IG community's perception of those issues, and CIGIE's Integrity Committee (IC) process generally and as it related to matters that were submitted by DHS OIG to the IC. I was concerned that conversations about the first two topics could include questions about matters that had been brought to us in confidence by individuals other than IG Cuffari. With respect to those two topics, in September 2020 CIGIE's General Counsel informed WilmerHale that while the Chairperson and I were concerned about protecting the confidentiality of individuals who contacted us to share concerns or seek counseling, we understood the importance of individual OIGs being able to investigate allegations affecting their office and would discuss being interviewed if WilmerHale concluded that it had a substantial need for information from either of us and it could not obtain substantially equivalent information by other means. WilmerHale subsequently informed CIGIE's General Counsel that that they believed the Chairperson and I were "uniquely in possession of substantially relevant information to our investigation," however their request did not provide information to substantiate that belief. CIGIE's counsel immediately followed up with WilmerHale and discussed the assertion. After that conversation, it remained unclear to CIGIE why information substantially equivalent to the information being sought could not be obtained by other means and the confidentiality concerns remained. Ultimately this issue was left unresolved: CIGIE did not decline the interview and there were no further substantive communications between CIGIE and WilmerHale on the request to interview me or the Chairperson about these matters.

I have been informed that at one point in its report WilmerHale indicated that CIGIE's General Counsel had stated that I was "not in a position to" provide information requested by WilmerHale. That statement related to the third topic WilmerHale had sought to discuss with Chairperson Horowitz and me: CIGIE's Integrity Committee process generally and as it related to matters that were submitted by DHS OIG to the IC. Because the IC deliberates independently from the CIGIE Chairperson and Vice Chairperson, CIGIE's General Counsel indicated that Mr. Horowitz and I were "not in a position to" provide the information WilmerHale was seeking. Instead, he offered to connect the law firm with one of CIGIE's Senior Assistant General Counsels, who had in-depth experience with the IC, could readily provide a general overview of IC processes, and might be able to provide information on any matters that might have been submitted by DHS OIG to the IC, depending on the posture and the nature of the matter. It is my understanding that the connection was made and the CIGIE attorney in question subsequently engaged with WilmerHale and provided the assistance they requested.

e. Has CIGIE opened any investigation into the allegations contained on page 27 of the WilmerHale report? If so, please list all investigations by subject name and case number, as well as their dispositions. Please also produce copies of any investigations.

Response: CIGIE's Integrity Committee functions independently of CIGIE's leadership. Accordingly, I respectfully suggest that you direct this question to Mr. Winters.

f. Are there any other findings in the report that you believe are inaccurate? Please identify with particularity and provide your version of the events, including by reference to relevant documents.

Response: As noted in the hearing, to the best of my recollection I have only reviewed a redacted copy of the WilmerHale report. As I have not been able to assess the complete document, I am unable to answer a question about the accuracy of its findings.

g. Do you believe that it is appropriate for individuals to use government resources and their official capacity to lobby against the President's nomination of an individual to a Senate-confirmed position, while that nomination is pending before the Senate.

Response: The President's interest in the qualifications and integrity of the individuals he nominates to serve as his appointees does not end when a nomination is made but continues throughout the confirmation process. If information exists that could raise concerns about a pending nomination (for example, if it appears that a nominee harassed a co-worker, defrauded an employer, or falsified a portion of their resume), it is appropriate to provide the White House with that information so it can assess it and decide what impact, if any, that information should have on the nomination. Under such circumstances it would not be inappropriate for a federal employee to provide that information during working hours and/or using government-owned equipment.

h. What do you think are the appropriate repercussions for career officials using official time and resources to interfere with the Senate's advice-and-consent function?

Response: Under the circumstances described in my response to1(g), it would not be inappropriate to provide that information during working hours and/or using government-owned equipment, so there would be no repercussions for doing so.

2. During your testimony before the Committee on October 21, 2021, you testified that you "engaged with people on both sides of that situation who had concerns and wanted to protect the privacy of both of the entities that were involved … so that people would feel comfortable coming to us for counseling in situations like that."
   a. Please identify all legal authorities that grant you the ability to "protect the privacy of both the entities that were involved."

Response: In my capacity first as CIGIE's Vice Chairperson and now as its Chairperson, I have been frequently called upon to provide advice and counsel to CIGIE members and/or their senior leadership and to listen and respond to their concerns about activities in their organizations. These conversations enable me to help IGs and their senior staffs solve problems before they spin out of control, distracting staff from their important work and potentially causing significant reputational harm to the office. They can also surface issues that should be referred to the IC, so it can determine if the matter fits within its jurisdiction, or to other entities such as the Office of Special Counsel. In order to promote frank discussion and meaningful feedback and ensure that individuals sharing concerns are not subject to harassment or retaliation, it is important that these conversations occur confidentially, especially if the individuals with whom I'm speaking could be considered whistleblowers. If CIGIE members and their senior leadership are unable to rely on an expectation of privacy when seeking the assistance of the CIGIE Chairperson and Vice Chairperson, I am concerned that those conversations would be profoundly chilled, which would deter individuals from sharing concerns or seeking guidance and undermine our ability to resolve problems at the earliest possible moment. This approach is also consistent with and analogous to the IG Act's requirement to protect the identities of agency employees who raise concerns to the IG. Section 7(b) of the IG Act.

b. Please identify all instances and advice since July 1, 2018, when you communicated with Jennifer Costello, Karen Ouzts, and Diana Shaw regarding the nomination or future nomination of any Inspector General.

Response: Without acknowledging the identify of any individual with whom I might have communicated, please see my response to Question 2.a, above, regarding the need to keep the identities of individuals who raise concerns to CIGIE's leadership private.

c. Did you ever encourage anyone to disseminate the allegation that Joe Cuffari graduated from a "diploma mill"?

Response: Please see my answer to question 1(d).

d. Did you ever discuss the WilmerHale report with Kevin Winters, Deborah Jeffries, or Michael Horowitz? If so, when did these conversations take place and please describe your discussions. Please also indicate whether you coordinated your response this these questions for the record with any of these individuals.

Response: I was aware of the issuance of the WilmerHale report and read a heavily redacted copy of it that was available online. I recall that I discussed the report with Mr. Horowitz and may have also done so with Mr. Winters and/or Ms. Jeffrey, but I do not recall the details of those conversations.

Because the questions for the record Mr. Horowitz, Mr. Winters and I received touch various CIGIE functions and responsibilities—and as is standard practice when CIGIE leaders testify together—there was appropriate coordination to ensure that all parties

knew who would have the primary responsibility for responding to overlapping or duplicative requests.

3. Please identify each allegation of wrongdoing that CIGIE or its associated personnel received from January 1, 2019-present, regarding Andrew A. De Mello, Kevin Winters, John Kelly, Jennifer Costello, Karen Ouzts, Diana Shaw, and/or Allison Lerner; any CIGIE tracking or matter number(s) associated with each; the date that each allegation of wrongdoing was first received (and please produce a copy of each allegation that was received) by CIGIE or its associated personnel; each date that each respective allegation was reviewed (and by whom), all dates each was referred from the Allegation Review Group to the Integrity Committee, all dates that each respective allegation was referred to the IC Chairperson for investigation, and all dates that each respective allegation was declined for investigation or otherwise closed or disregarded.

   Response: Decisions about whether to investigate allegations against an Inspector General or his/her direct reports are made by CIGIE's Integrity Committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

4. Please identify whether each allegation identified in response to question #3, above, was fully investigated or for which there is an ongoing investigation. For completed investigations, please produce a copy of each written report. For each allegation that was not fully investigated or is being actively investigated, please identify all reasons why each was not investigated. Please also provide all reasons and explanations why CIGIE IC decided to investigate allegations it, as identified in response to #3 above, but not other allegations identified in the response above.

   Response: Decisions about whether to investigate allegations against an Inspector General or his/her direct reports are made by CIGIE's Integrity Committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

5. CIGIE IC's annual report for 2020 identifies that on June 19, 2020, allegation 20-059 was "opened/referred to IC." As of the time the allegation was opened/referred to the IC, please identify the allegation of misconduct and describe it with detail and particularity (that is, before it was consolidated with allegations associated with 20-042). Please identify and describe with detail and particularity (1) all reasons why this allegation was not immediately investigated and was instead held in abeyance until at least April 14, 2021; (2) all reasons this matter was consolidated with 20-042, which by March 17, 2021, was already in post investigation review; (3) all reasons why this allegation was not merged in 2020 with 20-042 as envisioned by IC Rule 9(c); (4) how many times in the last 5 years another allegation of misconduct was held open for more than 240 days and thereafter consolidated with another allegation that was already in post investigation

review and the matter numbers associated with each; (5) all supplemental material that CIGIE IC acquired or otherwise obtained regarding 20-059 during the period August 18, 2020-April 14, 2021; (6) all evaluations (including the dates thereof) regarding the next steps for the investigation of 20-059 during the period August 18, 2020-April 14, 2021; (7) all the reasons why 20-059 (which by May 14, 2021 had been consolidated with 20-042) was assigned to different investigators than those that investigated many allegations that comprised 20-042 and all meetings (and attendees) where this decision—to assign it to different investigators than those associated with 20-042—was discussed/made; and (8) whether any of CIGIE's associated personnel recommended or suggested that an investigation of Andrew A. De Mello end, during the period September 1, 2020-present.

Response: Decisions about whether to investigate allegations against an Inspector General or his/her direct reports are made by CIGIE's Integrity Committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

6. Did CIGIE ever receive allegations or information that Karen Ouzts unlawfully concealed deadly weapons in her official workplace on federal property?
    a. If so, when were you first made aware of these allegations?
    b. Did CIGIE IC investigate this allegation?

Response: Decisions about whether to investigate allegations against an Inspector General or his/her direct reports are made by CIGIE's Integrity Committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

7. Under both the proposed legislation pending before HSGAC and existing law, does the subject of a CIGIE IC investigation have the right to appeal any adverse finding or conclusion?
    a. If not, why?
    b. How is this consistent with due process?
    c. Do ordinary civil service employees have the right of appeal over investigations into their conduct?
    d. Do you commit to revising CIGIE's rules to ensure that subjects of investigations have the ability to appeal adverse findings and conclusions?

Response: Questions related to IC policies, procedures and practices are best answered by that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

8. Under both the proposed legislation pending before HSGAC and existing law, does the subject of a CIGIE IC investigation have the right to obtain his own work product from the agency for use in the investigation?
    a. If not, why?

b. How is this consistent with due process?
c. Do you commit to revising CIGIE's rules to ensure that subjects of investigations have timely and complete access to their work product so that they can adequately defend themselves against any allegations during such an investigation?

Response: Questions related to IC policies, procedures and practices are best answered by that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

9. Under both the proposed legislation pending before HSGAC and existing law, does the subject of a CIGIE IC investigation have the right to obtain or compel records and testimony from others to support their defense?
    a. If not, why?
    b. How is this consistent with due process?
    c. Do you commit to revising CIGIE's rules to ensure that subjects of investigations have the ability to obtain and compel records and testimony from others to support their defense?

Response: Questions related to IC policies, procedures and practices are best answered by that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

10. CIGIE IC recently issued a rule, termed "Addendum A, Integrity Committee Access." The rule reads that "… if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person for failure to cooperate in the IC investigation…". What subsection of the Inspector General's Act gave CIGIE the authority to enact this rule? Please note that for purpose of this question, section 11(d)(7)(B)(i) of the Inspectors General Act of 1978 is merely an enabling provision and not an independent license granting CIGIE unlimited power and dispensation from complying with the Administrative Procedure Act's notice and comment requirements. Please therefore provide a citation another relevant authority granting CIGIE authority to promulgate this rule.
    a. If the subject of a CIGIE IC investigation declines to appear at an interview, or declines to answer written questions, does this rule allow CIGIE IC to make a finding of wrongdoing against the subject for failing to cooperate?
    b. If the subject of a CIGIE IC investigation asserts privilege, such as the attorney-client privilege, over requested materials, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
    c. If the subject of a CIGIE IC investigation asserts that requested information is classified, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
    d. If the subject of a CIGIE IC investigation asserts that the information requested is grand jury material, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

e. If the subject of a CIGIE IC investigation asserts that the information is covered by executive privilege, which is founded in the constitution, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
f. If the subject of a CIGIE IC investigation asserts that the information does not belong to the agency's Office of Inspector General but is subject to a memorandum of understanding or other limitations from another agency, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
g. If the subject of a CIGIE IC investigation asserts that he is not authorized to provide the information because it belongs to another entity, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
h. If the subject of a CIGIE IC investigation requests to have his personal counsel present for any interview, would CIGIE object? If so, under what authority?
i. If the subject of a CIGIE IC investigation requests to have his personal counsel present for any interview, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
j. If the subject of a CIGIE IC investigation requests to have agency counsel present for any interview, would CIGIE object? If so, under what authority?
k. If the subject of a CIGIE IC investigation requests to have agency counsel present for any interview, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
l. Do you commit to ensuring that no individual subject to an investigation by CIGIE will be disciplined or suffer any adverse consequence for making good-faith assertions of privilege or for requesting the presence of counsel during the course of an investigation?

Response to 10(a-l): Questions related to IC policies, procedures and practices are best answered by that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

m. When this rule was being proposed, were you personally aware of anyone who raised any of these concerns? If so, what was done to ensure that these objections were adequately considered?

Response: When the addendum was being considered, I was aware that some of the issues detailed in 10(a-l) had been raised in an IC investigation, as the IC had turned to CIGIE Chairperson Horowitz for support when it was unable to resolve those matters. To address any questions or concerns CIGIE members might have about the addendum, the rationale for the addendum was discussed at more than one CIGIE member meeting and the IG community's Council of Counsels (the membership of which consists of Counsels to Inspectors General and other attorneys from OIGs) facilitated several related conversations focused on these issues. The proposed text of various iterations of the addendum was shared with all IGs, discussed at CIGIE member meetings, and adjusted based on their feedback. Several IGs also reached out to me individually to discuss their

thoughts on the need for the addendum and the proposed text. Finally, CIGIE's General Counsel discussed the addendum with the Office of Management and Budget's Office of Information and Regulatory Affairs on more than one occasion. Ultimately, the addendum was overwhelmingly approved by the CIGIE membership. The IC may have more detailed information about this process, so I respectfully refer you to Mr. Winters.

n. According to the WilmerHale report, the investigators found that "Ms. Lerner would likely have information about these discussions, and in particular, whether she recommended Ms. Ouzts contact the DHS White House liaison." Appendix B at 5. But it notes that you declined to sit for an interview. *Id.* Why did you decline to be interviewed?

Response: I did not decline to be interviewed. With respect to WilmerHale's request for an interview, please see my response to question 1(d).

o. Do you think it is appropriate for members of CIGIE, including yourself, to decline to be interviewed as part an investigation, while at the same time holding others to the standard that "if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person for failure to cooperate in the IC investigation"?

Response: As noted in my response to question 1(d), I did not decline to be interviewed by WilmerHale.

11. Congress deliberately limited the scope of CIGIE's jurisdiction to allegations of misconduct referred by Inspectors General as part of an effort to keep CIGIE's investigation over a small number of people at a very high level. See 5 U.S.C. App. § 11(d)(4) ("Referral of allegations.—(A) Requirement.—An Inspector General shall refer to the Integrity Committee any allegation of wrongdoing against a staff member of the office of that Inspector General…".). But there is no provision in the statute for any mechanism by which CIGIE IC may accept referrals from third parties or investigate allegations sua sponte.
    a. What is the statutory authority for CIGIE IC rule 5(b) that says the opposite: "if the IC receives an allegation from a source other than the affected IG that a Covered Person has engaged in wrongdoing, the IC will exercise its authority over review of such allegation to the same extent *as if it had been referred to the IC by the affected IG*" (emphasis supplied)?
    b. In particular, what subsection of the Inspector General Act of 1978, as amended, gives CIGIE the authority to enact this rule?
    c. Do you commit to ensuring that this rule is repealed and commit to ensuring that CIGIE's rule comply with its statutory mandates?
    d. Do you commit to ensuring that CIGIE IC will not conduct any investigations that are not referred by the IG of an agency, as required by statute?

e. Has CIGIE IC conducted any investigations under this rule? If so, please provide a complete list with case numbers.

Response to 11(a-e): Questions related to IC policies, procedures and practices are best answered by the leadership of that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

12. Congress enacted a statute that limits the scope of individuals CIGIE may investigate. By statute, the "Integrity Committee … shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and *staff members* of the various Offices of Inspector General […]." 5 U.S.C. App. § 11(d)(1) (emphasis supplied). For purposes of this provision, "the term '*staff member*' means any *employee* of an Office of Inspector General who—(i) reports directly to an Inspector General; or (ii) is designated by an Inspector General […]." 5 U.S.C. App. § 11(d)(4)(B) (emphasis supplied).
    a. Does CIGIE IC investigate anyone that is not an Inspector General or an employee of an Inspector General's office?
    b. CIGIE promulgated a rule that states that the CIGIE IC "may consider [and investigate] wrongdoing alleged to have occurred while an individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation." On what authority did CIGIE IC create this rule?
    c. How is this rule consistent with the statutes that Congress enacted—which appear to expressly contradict CIGIE's rule?
    d. Do you commit to ensuring that CIGIE IC will not conduct any investigations of individuals who are not currently Inspectors General or currently staff members of various Offices of Inspector General?
    e. Do you agree that CIGIE IC lacks jurisdiction over any former Inspector General and any former staff member of an Office of Inspector General?
    f. What remedy does a subject of a CIGIE IC investigation have when the IC conducts an investigation over which it lacks jurisdiction?
    g. Do you commit to waiving sovereign immunity so that courts can hear such claims to ensure that CIGIE IC is conducting investigations in compliance with federal law?

Response to 12(a-g): Questions related to IC policies, procedures and practices are best answered by the leadership of that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

13. Section 404 of the current draft of the "IG Independence and Empowerment Act" pending before the committee requires more frequent reporting and more detailed information than what is found in the current annual report. If the proposed legislation is adopted, do the allegations disposed of by the allegation screening committee fall within

those requiring an explanation to Congress as to why each allegation was not investigated? Please explain.

Response: Questions related to IC policies, procedures and practices are best answered by the leadership of that committee, which functions independently of CIGIE leadership. Accordingly, I respectfully suggest that you direct these questions to Mr. Winters.

14. How many IGs on CIGIE's IC have served more than a 2-year term?

Response: While the terms of the IC Chairperson and Vice Chairperson are for two years, IC members serve 4-year terms. Since 2008, only three IG members have been appointed to serve a second four-year term; however, each of those members departed (or is scheduled to depart) before completion of their second term. (IG Dahl- six years; IG Jeffrey- six years (scheduled to depart in February 2022); IG McFarland- five years).

a. Do you believe there should be greater rotation of IGs on CIGIE's IC?

Response: The IG Act directs the CIGIE Chairperson to appoint four IGs "representing both establishments and designated federal entities ...." to serve on the IC. IG Act Section 11(d)(2)(A)(ii). Under Integrity Committee policies, these members "serve terms of 4 years each." Integrity Committee Policies and Procedures, para. 3. CIGIE's Charter reiterates those requirements and further provides IC member appointments will be staggered so that one member will be appointed each year. Identifying IGs to serve on the IC is quite challenging, as many IGs cannot be considered (for example, IGs from the Legislative Branch and IGs being investigated by the IC). In addition, many IC matters take years to complete, so there is a tangible benefit in having members serve long enough to see many investigations completed, rather than having to bring in a new IG at the end of a matter who has no knowledge of the case's history. For all these reasons, it would be difficult to rotate members more often than every four years.

b. Do you believe there is a disproportionate number of agency-appointed IGs on the committee?

Response: The IG Act directs the CIGIE Chairperson to appoint four IGs "representing both establishments and designated federal entities ...." to serve on the IC. IG Act Section 11(d)(2)(A)(ii). Currently, two of the IC's four IG members are establishment (or Presidentially appointed/Senate-confirmed (PAS)) IGs and two are Designated Federal Entity (DFE) IGs. CIGIE's membership is split approximately equally between PAS and DFE IGs. It is important for the IC's membership to reflect that division as IC members have to assess allegations relating to offices led by both PAS IG and DFE IGs. Having members who understand the challenges faced by both types of organizations enhances the quality of the IC's decision-making. Accordingly, I do not believe that there is a disproportionate number of DFE IGs on the IC.

c. Do you commit to ensuring that there is greater rotation of IGs serving on CIGIE's IC? If so, what specific steps do you plan to take?

Response: While, for the reasons set forth in my response to question 14(a), it will likely be difficult to rotate members more often than every four years, I will look for opportunities to do so.

d. Do you commit to ensuring that there is a greater presence of Senate-confirmed IGs on CIGIE's IC?

Response: For the reasons set forth in my response to question 14(b), I believe the ratio of PAS to DFE IGs on the IC is appropriate, given the makeup of CIGIE's membership.

15. Have you or anyone at CIGIE ever advised a government employee to use agency resources to undermine the nomination of an individual to a Senate-confirmed position?
    a. Have you or anyone at CIGIE ever tried to undermine the nomination of an individual to a Senate-confirmed position, while that nomination was pending before the Senate?

Response: I have not tried to undermine the nomination of any individual to a Senate-confirmed position, and, to the best of my knowledge, nobody at CIGIE has done so either.

b. Do you believe that such conduct is ever appropriate?

Response: Please see my response to question 1(g).

c. What do you think is the appropriate discipline for a federal employee who advises an individual to use government resources to undermine the nomination of an individual to Senate-confirmed position?

Response: If the conduct is as described in my response to question 1(g), it would not be inappropriate to use government time or resources to provide that information in question to the White House and discipline would not be warranted.

16. Are you aware of any individuals in the inspector general community who have filed or called in complaints through their own hotlines?
    a. If so, how were these matters handled?
    b. Do you believe that such a practice is legally permissible?
    c. Do you believe that such a practice is ethical?

Responses to 16(a-c): Respectfully, I do not understand the premise of these questions and am not sure how to answer them. If they relate to how allegations reach the IC, these questions are best answered by the leadership of that committee, which operates independently from CIGIE leadership, and I respectfully suggest that you direct them to Mr. Winters.

17. If an employee serves in an Office of Inspector General on detail but later leaves that office, do you believe that CIGIE maintains jurisdiction to investigate that individual?
    a. Is it your interpretation of Title IV of the proposed legislation pending before this committee that CIGIE or other inspector generals could retain subject matter jurisdiction over individuals who have left office?
    b. What safeguards are in place to prevent partisan investigations into political appointees in inspector general offices who leave when their term expires?

    Response: Questions related to IC policies, procedures and practices are best answered by the leadership of that committee, which operates independently of CIGIE leadership. I respectfully suggest that you direct these questions to Mr. Winters.

18. Are you a principal officer within the meaning of U.S. Const. art. II, § 2, cl. 2? Please explain by including appropriate citations to legal authorities.

    Response: I am unaware of anything that concludes how the NSF IG or CIGIE Chairperson positions are classified under the Constitution's Appointments Clause.

    Regarding the appointment structure, under the IG Act, NSF is a Designated Federal Entity, and the IG is appointed by the National Science Board. The IG Act Section 8G(a)(4)(A), (c). The CIGIE Chairperson is elected by the Council from among IGs who are largely either serving in Establishments (those who are Presidentially appointed, Senate-confirmed) or Designated Federal Entities (those who, like myself, are appointed by agency heads). *Id.* § 11(b)(2).

19. Please produce all documents reflecting communications received, sent, or created by CIGIE concerning Andrew A. De Mello from October 5, 2019 to the present. Please segregate records based on whether they were created before or after April 6, 2020.

    Response: This request could encompass documents which could not be provided in an open hearing record. I would be happy to meet with you and your staff to identify the best way to respond to your request. To the extent your request seeks records related to matters of interest to the Integrity Committee, I respectfully refer you to that Committee.

20. CIGIE reviews potential Presidentially appointed and Senate-confirmed IG nominees before the nomination is made and makes a recommendation regarding their suitability. It usually relies upon a panel of existing IGs to reach that determination.
    a. How many IG PAS nominations made by President Obama were of individuals that CIGIE recommended? How many IG PAS nominations made by President Obama were of individuals that CIGIE did not recommend?

    Response: CIGIE's recommendations to the White House about individuals being considered for Inspector General positions are part of the White House's deliberative process. Accordingly, requests for information about such recommendations should be directed to the White House.

b. How many IG PAS nominations made by President Trump were of individuals that CIGIE recommended? How many IG PAS nominations made by President Trump were of individuals that CIGIE did not recommend?

Response: CIGIE's recommendations to the White House about individuals being considered for Inspector General positions are part of the White House's deliberative process. Accordingly, requests for information about such recommendations should be directed to the White House.

c. Please identify the name of each individual that President Trump identified as an individual he was considering as a potential IG which CIGIE reviewed but did not recommend, all reasons why CIGIE did not recommend each respective individual, and identify the role, if any, that you played in CIGIE's recommendation (or the formation thereof).

Response: CIGIE's recommendations to the White House about individuals being considered for Inspector General positions are part of the White House's deliberative process. Accordingly, requests for information about such recommendations should be directed to the White House.

d. The Section 3(a) of the IG Act of 1978 identifies the qualifications for appointment as an IG: "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." Please explain with detail and particularity the actions CIGIE undertakes to determine whether an individual the President considers nominating (and informs CIGIE as such) is recommended or not, and explain all processes and standards CIGIE utilizes to make a recommendation. Were there any exceptions?

Response: The Inspector General Reform Act of 2008 merged the pre-existing Councils of Presidentially- and agency head- appointed Inspectors General to create CIGIE. The functions of this new Council included "submit[ting] recommendations of individuals to the appropriate appointing authority for any appointment to an office of Inspector General described under subsection (b)(1)(A) or (B)." The IG Act Section 11(c)(1)(F)

In January 2009, CIGIE's Chairperson created the Inspector General Candidate Recommendations Panel. That Panel, which currently is led by CIGIE's Vice Chairperson and also includes two Presidentially-appointed and two agency head-appointed IGs, has worked with Presidential administrations and agency heads since its inception to fulfill its responsibility to identify candidates "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." The IG Act Section 3(a). It has met on a number of occasions with senior officials in the Obama, Trump, and Biden administrations to discuss the importance of filling IG vacancies in a timely fashion and the Council's role in that process.

Individuals interested in an IG position can express their interest directly to the Panel; the White House also sends resumes of individuals it is considering for such positions. With respect to the filling of PAS IG vacancies, prior to 2017, the Panel's process generally involved reviewing a candidate's resume, and any additional information submitted by the candidate, and then providing feedback to the White House Counsel's Office. In the spring of 2017, the White House Counsel's Office asked the Panel to enhance the steps it took to review potential candidates for PAS IG positions by interviewing such candidates. As a result, since 2017, the Panel has interviewed individuals interested in being considered for Presidentially appointed IG positions before making any recommendation to the White House Counsel's Office. Discussions about candidates with the White House Counsel's Office have been robust and extensive.

Panel interviews require a quorum of the Panel (four members) and have been conducted by phone or Teams, rather than in person, given the challenge of coordinating the schedules of five Inspectors General and one candidate. The interviews usually last about an hour and consist of questions designed to probe the candidate's understanding of the role of an Inspector General and challenges faced by IGs; leadership experience and philosophy; and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or other oversight work. Following the interview, the Panel decides whether to recommend (or not recommend) the candidate for consideration for an Inspector General position. If the Panel recommends that a candidate be considered, it also shares its thoughts on the candidate's suitability for any vacancies the candidate has expressed an interest in. The Panel's Chairperson provides the Panel's feedback to the White House Counsel's Office. Through this process, CIGIE has provided dozens of recommendations concerning Inspector General candidates during the Trump and Biden administrations.

21. Since your testimony, have you had any communication with Jennifer Costello, Karen Ouzts, or Diana Shaw about the WilmerHale report or your testimony? When did these communications take place, and what was the substance of these communications?

Response: Since my testimony I have had no conversations with Ms. Ouzts or Ms. Costello about either the WilmerHale report or my testimony. With respect to Ms. Shaw, in an email after the hearing that was focused on an entirely separate CIGIE matter, Ms. Shaw indicated that I did a "great job at the hearing." My response to that email focused on the other matter and did not address the comment about the hearing. Since the hearing, I have not discussed the WilmerHale report with Ms. Shaw.

22. By statute, does the National Science Foundation (NSF) have the authority to use federal taxpayer dollars to fund research into:
    a. racial equity?
    b. social justice?
    c. critical race theory?
    d. reproductive justice?

Response to 22(a-d): The National Science Foundation Act of 1950 authorizes the Foundation "to initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs at all levels." 42 U.S.C. § 1862(a)(1). The Foundation requires funding proposals to be evaluated by a merit review process focused ontwo criteria established by the National Science Board: intellectual merit (meaning the potential to advance knowledge) and broader impacts (encompassing the potential to benefit society and contribute to achieving specific, desired societal outcomes).

NSF's merit review process is outlined in its *Proposal and Award Manual* and comprises four steps: selection of proposal reviewers, peer review, program officer recommendation, and division director review. In 2017, Congress reaffirmed this process through the *American Innovation and Competitiveness Act,* now codified at 42 U.S.C. § 1862s: "It is the sense of Congress that…[NSF's] intellectual merit and broader impacts criteria are appropriate for evaluating grant proposals…[and] evaluating proposals on the basis of [NSF's] intellectual merit and broader impacts criteria should be usedto assure that [NSF's] activities are in the national interest."

OIG has not reviewed the extent to which NSF has funded research relating to the above categories, and if so, whether it followed the merit review process.

23. As the Inspector General for the NSF, you are tasked with auditing and investigation waste, fraud, and abuse, including the use of taxpayer funds without legal authority. What was the legal authority for the following grants?
    a. Research for Social Justice—Broadening Participation through Data Science. Award Number 1912408
    b. The Co-Production of Knowledge by Reproductive Justice Advocates and Molecular Biologists. Award Number 1632660.
    c. Science and Social Justice Think Thank. Award Number 1600120.
    d. Science Scholars for Social Justice. Award Number 1564608.
    e. Environmental Justice and the Ethics of Science and Technology. Award Number 1053139.
    f. Perceptions of Racial Inequality and the Social Construction of Environmental Justice. Award number 9806988.

Response to 23(a-f): See my response to Question 22 regarding NSF's authority to fund research and merit review. OIG has not evaluated whether NSF followed its merit review process for the above awards.

24. Has the NSF ever funded gain-of-function research?

Response: While OIG has not conducted oversight work in this area, the Foundation addressed gain-of-function research in its *Frequently Asked Questions (FAQs) about the Coronavirus Disease 2019 (COVID-19) for National Science Foundation NSF)Proposers and Awardees* (Revised March 4, 2020). According to that document:

Will NSF support research that involves gain-of-function in COVID-19?

No, NSF does not fund research that would be considered to lead to a gain of function of agents associated with the U.S. Government's policy on dual use research of concern. While COVID-19 is not one of the recognized agents of concern, for purposes of the DCL and RAPID research, NSF will not consider requests for gain-of-function research.

25. Are you aware of any employees at your agency who have applied for a medical or religious exemption to President Biden's vaccine mandate and were denied this exemption?
    a. If so, how were these claims treated?
    b. Has any employee at NSF or CIGIE been fired or suffered an adverse employment action because he or she objected to President Biden's vaccine mandate?

Response to 25(a-b): At NSF, requests for exceptions to the vaccine mandate are assessed by staff within the Foundation's Office of Equity and Civil Rights. If they decide that an assessment is warranted, staff from that office work with the employee and his/her management to determine if a reasonable accommodation is available. Aside from exception requests pertaining to OIG employees, OIG is not involved in decisions on requests for exceptions to the vaccine requirement at NSF and we have not conducted oversight in this area. As of December 10, 2021, no OIG or CIGIE employee has been fired or suffered an adverse employment action as a result of this mandate.

26. Has any workplace training at the NSF, including your office, discussed critical race theory, white guilt, or anti-racism?

Response: In the past two years, my staff have received training on the following topics relating to diversity, equity, and inclusiveness (DEI):

- Gateway to Race/Ethnic Relations, World Café Dialogue
- Unconscious Bias
- Civil Treatment of Others

In addition, OIG's managers and supervisors, like others in NSF, receive an annual EEO briefing (online), and OIG has occasionally received EEO-related presentations at all hands meetings through the years. To the best of my recollection, none of these courses or presentations focused on critical race theory, white guilt, or anti-racism. With respect to the content of DEI-related training provided by NSF to non-OIG staff, my office has not assessed this issue.

Post-Hearing Questions for the Record
Submitted to Kevin Winters
From Ranking Member Rob Portman

"Safeguarding IG Independence and Integrity"
October 21, 2021

According to a letter from the Integrity Committee (IC) dated May 14, 2021, the IC is investigating allegations that the DHS Inspector General improperly contracted with WilmerHale to conduct the investigation discussed above, and that the Inspector General improperly referred allegations regarding covered individuals to the IC.

The Committee has received reports that the WilmerHale investigation was in fact a consequence of the IC's actions—specifically the IC's declination to investigate complaints regarding covered individuals. Please provide any information you feel will help the Committee understand the IC's decision to initiate this investigation itself notwithstanding this apparent conflict. In addition, please answer the following questions:

Response: The Integrity Committee (IC) is strongly committed to appropriate transparency regarding its work and recognizes the important role that Congress plays in robust oversight. However, as I testified during the hearing, I cannot discuss ongoing matters, which remains consistent with investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities. That said, the IC looks forward to the conclusion of this matter when it would be able to provide you with more information via a bipartisan briefing.

In general, when the IC votes to close a matter without referral for investigation, it does not necessarily mean the complaint is without merit. The outcome merely means the complaint did not meet the IC's particular threshold standard for investigation and/or the matter was more appropriately resolved by other means, such as referral to another agency with authority (e.g., the Department of Justice (DOJ), the Office of Special Counsel (OSC), etc.) or to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Chairperson for appropriate action. For example, the IC may close allegations that are vague or conclusory if it does not have sufficient information upon which to act; such a determination is without prejudice. Upon submission of additional information by the same or a different complainant concerning the same underlying allegation of wrongdoing, the IC could conclude that the allegations meet the threshold standard and warrant investigation, notwithstanding the earlier determination. In sum, closure at the pre-investigative stage does not necessarily reflect that the IC determined there is no merit to the underlying allegations and a later decision to reopen the matter does not conflict with its earlier determinations.

1. Under what circumstances must Integrity Committee employees or members recuse themselves from an investigation?

   Response question 1: In all matters and at all stages of the IC process, IC members follow the IC's recusal policy, set forth in section 3(K) of the IC's Policies and

Procedures (ICP&P),[1] to prevent actual conflicts of interest, or the appearance thereof, and to maintain confidence in the IC's impartiality. Pursuant to this policy provision, IC members, as well as members of the Allegation Review Group (ARG) and the IC Working Group, must recuse from:

i. Matters in which that member or another person in that member's office or agency has personally and substantially participated (for purposes of this provision, the FBI is deemed to be in the same office or agency as DOJ OIG);

ii. Matters as to which the member believes that his or her impartiality would be questioned by a reasonable person with knowledge of the relevant facts. Members who have determined that their own recusal is not necessary under this subparagraph may nevertheless disclose a potential basis for recusal for final determination by the IC;

iii. Any matter as to which participation would violate or create a conflict of interest under a law, regulation, or mandatory standard applicable to all Federal employees or officials in the Executive Branch of the United States;

iv. All matters before the IC while the member knows that he or she is under criminal investigation or IC investigation;

v. Any matter as to which the IC determines that the circumstances present would lead a reasonable person with knowledge of the relevant facts to question the member's impartiality in the matter. An IC member whose recusal is at issue will not vote on such determination; and

vi. Any matter that requires a security clearance, if the member does not hold the requisite clearance.

If recused, a member of the IC may not vote or otherwise participate in consideration of the matter from which he or she is recused.

2. Are there circumstances in which the Integrity Committee must be recused entirely from an investigation?

Response to question 2: IC members conscientiously follow the IC's recusal policy, which creates a personal duty to recuse, under the circumstance described in my response to question 1. Should a determination be made that more than two of the IC's IG members require recusal, the ICP&P require the IC Chairperson to notify the CIGIE Chairperson. Subsequently, the CIGIE Chairperson will appoint IGs to serve as temporary members of the IC, so that a quorum of four IC members may be established and the IC can continue to deliberate or take action concerning an allegation. Notwithstanding the ability of all IC members to recuse themselves personally from a matter, the CIGIE Chairperson retains the ability to add new members—who do not have

[1] *See* (CIGIE, *Integrity Committee Policies and Procedures 2018*, April 13, 2018).

conflicts—to accomplish the IC's oversight mission. Accordingly, the IC would never be institutionally recused from its oversight responsibilities.

Post-Hearing Questions for the Record
Submitted to Kevin H. Winters
From Senator Josh Hawley

"Safeguarding IG Independence and Integrity"
October 21, 2021

1. On December 14, 2020, WilmerHale published a report of an independent investigation into allegations of misconduct by three employees at the Department of Homeland Security (DHS) Office of Inspector General (OIG). This reportedly cost over $1.3 million to produce and consisted of a 108-page report that was the result of 70 interviews and the review of 42,000 documents.
    a. Were you or anyone else at CIGIE aware of any allegations addressed in the report that were referred to CIGIE prior to DHS retaining WilmerHale to conduct this investigation?
    b. Why did CIGIE decline to investigate these allegations, many of which were ultimately substantiated by the WilmerHale report? Please provide specific case numbers and address the merits of these referrals, with particularity.
    c. Do you agree with the following legal proposition: "[I]t is a misuse of authority for a federal employee to use his or her public office to interfere with a President nomination or the Senate confirmation process for personal gain or any other improper purpose. [sic] Additionally, federal employees should not sue [sic] their government resources, including the email system or access to lawmakers or other government officials, for personal gain or for any other unauthorized purpose." Report at 24. If not, please explain why with citation to relevant authorities.
    d. On page 27 of the report, WilmerHale reported its finding that two DHS OIG employees "contacted Allison Lerner, Vice Chair Vice Chairperson of CIGIE, to discuss Dr. Cuffari's nomination. Ms. Costello, in her capacity as Acting IG, wrote to Ms. Lerner that she had 'a sensitive matter related to the DHS IG nominee' to discuss. They agreed to speak on the phone and, following that conversation, Ms. Costello sent Ms. Lerner the link to a report regarding California Coast University. During her interview, [redacted] acknowledged that she and Ms. Costello spoke to Ms. Lerner about Dr. Cuffari's nomination, and state that they were doing so because it was in the best interest of the agency. According to [redacted], Ms. Lerner agreed that Ms. Ouzts and Ms. Costello had an obligation to protect the organization and figure out whether others knew that Dr. Cuffari's degree was issued by 'a diploma mill.' Ms. Lerner declined our request for an interview." Report at 27. Do you have any reason to believe that this portion of the report is inaccurate? If not, please explain your version of the events with particularity, including by reference to relevant documents.

e. Has CIGIE opened any investigation into the allegations contained on page 27 of the WilmerHale report? If so, please list all investigations by subject name and case number, as well as their dispositions. Please also produce copies of any investigations.
f. Are there any other findings in the report that you believe are inaccurate? Please identify with particularity and provide your version of the events, including by reference to relevant documents.
g. Do you believe that it is appropriate for individuals to use government resources and their official capacity to lobby against the President's nomination of an individual to a Senate-confirmed position, while that nomination is pending before the Senate?
h. What do you think are the appropriate repercussions for career officials using official time and resources to interfere with the Senate's advice-and-consent function?

Response for questions 1(a), (d), and (f): The Integrity Committee (IC) is strongly committed to appropriate transparency regarding its work and recognizes the important role that Congress plays in robust oversight. However, as I testified during the hearing, I cannot discuss ongoing matters, which remains consistent with investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities. That said, the IC looks forward to the conclusion of this matter when it would be able to provide you with more information via a bipartisan briefing.

Response for question 1(b): In general, when the IC votes to close a matter without referral for investigation, it does not necessarily mean the complaint is without merit. The outcome merely means the complaint did not meet the IC's particular threshold standard[1] for investigation and/or the matter was more appropriately resolved by other means, such as referral to another agency with authority (e.g., the Department of Justice (DOJ), the Office of Special Counsel (OSC), etc.) or to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Chairperson for appropriate action. For example, the IC may close allegations that are vague or conclusory if it does not have sufficient information upon which to act;[2] such a determination is without prejudice. Upon submission of additional information by the same or a different complainant, the IC could conclude that the allegations meet the threshold standard and warrant

[1] Pursuant to its policies and procedures, the IC may only act on complaints that contain allegations against Covered Persons involving abuse of authority in the exercise of official duties or while acting under color of office, substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation, or conduct that undermines the independence or integrity reasonably expected of a Covered Person (the threshold standard). A "Covered Person" includes IGs, designated OIG staff members, and the Special Counsel and Deputy Special Counsel of OSC.
[2] Conversely, an effective complaint includes a clear, direct, and well-organized statement of factual allegations. To assist complainants, the IC provided information on how to draft an effective complaint on its website. *See* (https://www.ignet.gov/content/guidance-and-faqs).

investigation. In summary, closure at the pre-investigative stage does not necessarily reflect that the IC determined there is no merit to the underlying allegations.

Response for question 1(c): I agree that Federal Government employees should not use their public office to improperly interfere with a Presidential nomination or the Senate confirmation process. I also agree that Federal employees should not use Government resources for personal gain or for any other unauthorized purposes.

Response for question 1(e): Due to privacy considerations—including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities—the IC is unable to identify allegations against specific individuals in a public hearing record.

Response for question 1(g): I do not believe is it appropriate for individuals to use Government resources or their official positions to improperly lobby against the Presidential nomination of an individual to a Senate-confirmed position while that nomination is pending before the Senate.

Response for question 1(h): The IC does not impose disciplinary action against "Covered Persons." A "Covered Person" is an individual for which the IC has investigative purview, and includes IGs, designated OIG staff members, and the Special Counsel and Deputy Special Counsel of OSC. For IC investigations of Covered Persons, the IC makes findings as to wrongdoing and makes appropriate recommendations on a case-by-case basis and sends the investigative report to the Covered Person's "appointing official," discussed below, for appropriate action. In making its findings and recommendations, the IC carefully considers several factors, including, but not limited to, the degree and scope of the misconduct, the culpability and cooperation of the subject(s), and any aggravating and mitigating factors.

Under the IG Act, the appointing official may decide whether to take disciplinary action against a Covered Person. When making this determination, the appointing official is free to accept, refute, or disregard the IC's recommendations. The appointing official for IC matters is either (i) the President or head of a designated Federal entity for IGs or (ii) the IG for subordinate OIG officials.

2. Please identify each allegation of wrongdoing that CIGIE or its associated personnel received from January 1, 2019-present, regarding Andrew A. De Mello, Kevin Winters, John Kelly, Jennifer Costello, Karen Ouzts, Diana Shaw, and/or Allison Lerner; any CIGIE tracking or matter number(s) associated with each; the date that each allegation of wrongdoing was first received (and please produce a copy of each allegation that was received) by CIGIE or its associated personnel; each date that each respective allegation was reviewed (and by whom), all dates each was referred from the Allegation Review Group to the Integrity Committee, all dates that each respective allegation was referred to

the IC Chairperson for investigation, and all dates that each respective allegation was declined for investigation or otherwise closed/disregarded.

Response for question 2: Due to privacy considerations—including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities—the IC is unable to identify allegations against specific individuals in a public hearing record. However, as noted in our response to question 1(a), above, the IC is committed to appropriate transparency regarding its work and remains available to hold a bipartisan briefing with you and/or your staff to discuss closed matters.

3. Please identify whether each allegation identified in response to question 2, above, was fully investigated (with a report of investigation written—and please produce a copy of each) or for which there is an ongoing investigation. For each allegation that was not fully investigated or is being actively investigated, please identify all reasons each was not investigated. Please also provide all reasons and explanations why CIGIE IC decided to investigate allegations it so identified in response to question 2, above, but not other allegations identified in response above.

Response for question 3: Due to privacy considerations—including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities—the IC is unable to identify allegations against specific individuals in a public hearing record. Moreover, insofar as such matters remain open before the IC, we are unable to discuss such matters as reflected in my response to question 1(a), above.

The following background regarding IC operations, however, may be helpful to provide some context. The IC operates pursuant to policies and procedures (ICP&P) [3] required by the Inspector General (IG) Act. Upon receipt, complaints are reviewed by the Allegation Review Group (ARG), which consists of representatives from the IC, DOJ, and OSC. This diverse panel ensures the equities of each agency are considered and determines where the complaint is most appropriately handled. [4]

IC members meet approximately every three weeks to promptly and independently review each allegation referred to the IC. Composed of six members [5] who act by majority vote, the IC takes seriously its responsibility to hold the IG community to high standards and carefully considers each allegation it receives for review. In all matters and at all stages of the IC process, IC members follow the recusal policy set forth in the ICP&P,

[3] *See* (CIGIE, Integrity Committee Policies and Procedures 2018, April 13, 2018).
[4] Any allegations that DOJ or OSC takes charge of may be closed by vote of the IC pending completion of DOJ's or OSC's processes, unless the IC decides that concurrent, coordinated action is warranted.
[5] The IC is composed of four IGs and executives from the Federal Bureau of Investigation and the Office of Government Ethics. One of the appointed IGs also serves as the IC Chairperson. The IC is supported by two CIGIE staff members from the CIGIE Office of General Counsel and a legal advisor from DOJ's Public Integrity Section, who also attend IC meetings.

to prevent actual conflicts of interest, or the appearance thereof, and maintain confidence in the IC's impartiality.

Members typically review voluminous materials in advance of each meeting, so they are prepared to engage in an informed discussion of each allegation and to make fair, consistent, timely, and impartial dispositions. At each meeting, IC members thoroughly discuss pending complaints to determine whether allegations, if true, would constitute wrongdoing by a Covered Person that involves abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of a Covered Person (i.e., the threshold standard).

Where appropriate to inform their decisions, the IC may request additional information from a complainant, provided the complaint was not made anonymously, and may also request a written response from the subject. This response is the subject's opportunity to fully refute the allegations and provide supporting documentation. Upon review of a subject's written response, the IC may determine the response sufficiently refutes the allegation(s), and that further inquiry or investigation is not warranted. In those instances, the IC votes to close the matter. On relatively rare occasions, allegations meet the threshold standard and the IC votes to refer the matter to the IC Chairperson for investigation.

As mentioned in my response to question 1(b) above, when the IC votes to close a matter without referral for investigation, it does not necessarily mean the complaint is without merit. The outcome merely means the complaint did not meet the IC's particular threshold standard for investigation and/or the matter was more appropriately resolved by other means, such as referral to another agency with authority (e.g., DOJ, OSC, etc.) or to the CIGIE Chairperson for appropriate action. For example, the IC may close allegations that are vague or conclusory if it does not have sufficient information upon which to act; such a determination is without prejudice.

Thereafter, upon submission of additional information by the same or a different complainant concerning the same underlying allegation of wrongdoing, the IC could conclude that the allegations meet the threshold standard and warrant investigation, notwithstanding the earlier determination. In summary, closure at the pre-investigative stage does not necessarily reflect that the IC determined there is no merit to the underlying allegations and a later decision to reopen the matter does not conflict with its earlier determinations.

4. CIGIE IC's annual report for 2020 identifies that on June 19, 2020, allegation 20-059 was "opened/referred to IC." As of the time the allegation was opened/referred to IC, please identify the allegation of misconduct and describe it with detail and particularity (that is, before it was consolidated with allegations associated with 20-042). Please identify and describe with detail and particularity (1) all reasons why this allegation was not

immediately investigated and was instead held in abeyance until at least April 14, 2021; (2) all reasons this matter was consolidated with 20-042, which by March 17, 2021, was already in post investigation review; (3) all reasons why this allegation was not merged in 2020 with 20-042 as envisioned by IC Rule 9(c); (4) how many times in the last 5 years another allegation of misconduct was held open for more than 240 days and thereafter consolidated with another allegation that was already in post investigation review and the matter numbers associated with each; (5) all supplemental material that CIGIE IC acquired or otherwise obtained regarding 20-059 during the period August 18, 2020-April 14, 2021; (6) all evaluations (including the dates thereof) regarding the next steps for the investigation of 20-059 during the period August 18, 2020-April 14, 2021; (7) all the reasons why 20-059 (which by May 14, 2021 had been consolidated with 20-042) was assigned to different investigators than those that investigated many allegations that comprised 20-042 and all meetings (and attendees) where this decision—to assign it to different investigators than those associated with 20-042—was discussed/made; and (8) whether any of CIGIE's associated personnel recommended or suggested that an investigation of Andrew A. De Mello end, during the period September 1, 2020-present.

Response for question 4: The IC remains committed to expeditiously and thoroughly receiving, reviewing, and investigating allegations within its purview. This commitment, however, is balanced against the time and resources required to ensure that all allegations are rigorously reviewed and vetted. In many IC cases, the allegations are complex, voluminous, evolving, and involve multiple subjects, requiring more time to conduct a comprehensive review. Further, upon receipt of additional information, the IC may determine that some allegations are so intertwined that it is more efficient for one robust investigative team of experienced investigators, forensic analysts, and legal support to review them as a whole, which could result in the merger or consolidation of previously separate matters. This may also occur if the IC receives an additional allegation during the course of an investigation that requires an expansion of scope.

As I testified during the hearing and as reflected in my response to question 1(a) above, I cannot discuss ongoing matters, which remains consistent with investigative integrity principles and the best practices of both the investigative and oversight communities.

5. Did CIGIE ever receive allegations or information that Karen Ouzts unlawfully concealed deadly weapons in her official workplace on federal property?
    a. If so, when were you first made aware of these allegations?
    b. Did CIGIE IC investigate this allegation?

Response for question 5(a) and (b): Due to privacy considerations—including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities—the IC is unable to confirm or deny if the IC was made aware of allegations against specific individuals in a public hearing record.

6. What are the greatest areas of waste, fraud, and abuse that limit AMTRAK's mission?

Response for question 6: The Amtrak OIG regularly reviews and reports our view of the top management and performance challenges facing Amtrak (the company). In October 2020, we published our most recent iteration of this report.[6] That report focused on high-risk or high-impact activities and performance issues that affect programs, operations, and the achievement of strategic goals. In deciding whether to identify an issue as a top management and performance challenge, we considered its significance to the company's mission and strategic goals; its susceptibility to fraud, waste, and abuse; whether the underlying causes are systemic in nature; and the company's progress in addressing the challenge.

7. Given your experience at NASA, what, in your view, were the most significant problems associated with the development and launch of the James Webb Space Telescope?

Response for question 7: I departed the NASA OIG over six years ago, and since that time I have been focused on the oversight of Amtrak. I respectfully suggest that any questions regarding the oversight of NASA programs and operations be answered by that organization. That said, the NASA OIG has specifically focused on this topic, including their most recent 2021 report on NASA's top management and performance challenges.[7] Of note, pages 11-13 of the NASA report mentions that challenges to complete major programs, such as the James Webb Space Telescope and others, on budget and on schedule, is generally attributable to an organizational culture of optimism, underestimating technical complexity, and funding instability.

8. Do you actively audit and investigate claims that agency employees experience adverse action based on their political preference?
    a. Are you aware of any employees who experienced such negative treatment, and if so, what remedial action was taken?

Response for question 8(a): Amtrak maintains a Code of Ethics and Standards for Behavior and Anti-Discrimination and Anti-Harassment policy which affirm Amtrak's commitment to a workplace free of discrimination, harassment, sexual misconduct, and retaliation. Amtrak strictly prohibits discrimination and harassment.

The Amtrak OIG Office of Investigations pursues allegations of fraud, waste, abuse, and misconduct that could affect Amtrak's programs, operations, assets, and other resources. This includes allegations of violations of Amtrak policy, including the two mentioned above. Investigative findings are referred to DOJ for criminal prosecution or civil litigation, or to Amtrak management for administrative action. This could include

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[6] *See* (Amtrak OIG, *Amtrak: Top Management and Performance Challenges for Fiscal Year 2021*, (OIG-SP-2021-002), October 23, 2020).
[7] *See* (NASA OIG, *2021 Report on NASA's Top Management and Performance Challenges*, November 15, 2021).

allegations that an employee(s) has experienced adverse action based on their political preference.

We are not aware of any Amtrak employee that has experienced adverse actions based on their political preference.

9. Are you aware of any employees at your agency who have applied for a medical or religious exemption to President Biden's vaccine mandate and were denied this exemption?
    a. If so, how were these claims treated?
    b. Has any employee at AMTRAK been fired because he or she objected to President Biden's vaccine mandate?

Response for question 9(a) and (b): The Amtrak OIG is not aware of any Amtrak employee requests for medical or religious accommodations to vaccine requirements that have been denied or that any employee has been fired as a result of objection to vaccine requirements. Further, Amtrak set a vaccine requirement that aligns with the mandate for Federal contractors. As a result, the vaccine requirement for Amtrak has not yet come into effect.

10. Has any workplace training at AMTRAK, including in your office, discussed critical race theory, white guilt, or anti-racism?

Response for question 10: The Amtrak OIG has not conducted this training within our office nor are we aware of this training conducted at Amtrak.

11. Under both the proposed legislation pending before HSGAC and existing law, does the subject of a CIGIE IC investigation have the right to appeal any adverse finding or conclusion?
    a. If not, why?
    b. How is this consistent with due process?
    c. Do ordinary civil service employees have the right of appeal over investigations into their conduct?
    d. Do you commit to revising CIGIE's rules to ensure that subjects of investigations have the ability to appeal adverse findings and conclusions?

Response for question 11 (a-d): CIGIE IC investigative procedures and rights generally mirror OIG administrative investigations for agency personnel. As with the OIG in OIG investigations, the IC does not have the authority to implement any discipline or other corrective measures. Rather, when the IC completes its process and issues a report of investigation, together with findings and recommendations, no action has yet been taken to which an appeal would be necessary or appropriate. There is no appeal, *per se*, of an OIG's or an IC investigative report. There are, however, fairness considerations built into the investigative process. For example, the IC provides subjects of IC investigations with an opportunity to access and review reports of investigation, including any applicable exhibits, prior to rendering its final findings and recommendations for appropriate action

by the appointing official. In addition, the subject is free to raise, in writing and attached to the IC's report of investigation (or by any other means), any contentions he or she wishes with the appointing official, including but not limited to challenging the results of the IC investigation.

Under the IG Act, the decision to take action on IC findings and recommendation is left to the appointing official, as discussed in my response to question 1(h). The appointing official is free to accept, refute, or disregard the recommendations of the IC. The appointing official for IC matters is either (i) the President or head of a designated Federal entity for IGs or (ii) the IG for subordinate OIG officials. Of note, the subject of an IC investigation may review the investigative report of investigation before the IC submits its report to the appointing authority.

After the appointing official takes or declines to take action, the employee would have any rights otherwise available to that employee to address an adverse employment action (e.g., Merit Systems Protection Board, Equal Employment Opportunity Commission, OSC, agency grievance system, etc., if appropriate and applicable). Some employees' rights will be more limited than others by the nature of their employment status; however, their status is unrelated to the IC process. The IC process neither removes nor adds rights that are otherwise available to employees when they wish to contest adverse employment actions.

12. Under both the proposed legislation pending before HSGAC and existing law, does the subject of a CIGIE IC investigation have the right to obtain his own work product from the agency for use in the investigation?
    a. If not, why?
    b. How is this consistent with due process?
    c. Do you commit to revising CIGIE's rules to ensure that subjects of investigations have timely and complete access to their work product so that they can adequately defend themselves against any allegations during such an investigation?

Response for question 12 (a-c): Neither existing law nor the proposed legislation pending before HSGAC addresses the question of a subject's right to obtain his own work product from the agency for use in an investigation; however, this mirrors the IG Act as it applies to the investigation of other Federal employees. Under existing law, a record created by the subject related to Government business, including the subject's work product, is a Federal record that remains the property of his or her employing agency, however, the subject can also request access to the records from the agency through the appropriate process, such as a Freedom of Information Act request or Privacy Act request.

Moreover, the IC is unaware of any Federal law enforcement investigative process in which the subjects of investigations are afforded the unilateral right to access agency records. The IC does not recommend any change to existing law that affords IGs or other senior OIG officials with rights not available to other Federal employees.

Practically, however, if the subject of an IC investigation believes there is exonerating or other relevant evidence in the custody of his employing OIG, the IC recommends that he or she make that information known to the IC investigators. If the information appears relevant, the IC investigators will attempt to obtain the evidence from the subject's OIG and evaluate the same for inclusion in the report of investigation. If relied upon and included in the report of investigation, the subject will then have an opportunity to review the information. As stated in question 11's response, the IC provides subjects of IC investigations with an opportunity to access and review reports of investigation, including any applicable exhibits, prior to rendering its final findings and recommendations and subjects are provided with the opportunity pursuant to section 10(A)(ii) of the ICP&P to submit comments to the IC after their review of the report of investigation.

13. Under both the proposed legislation pending before HSGAC and existing law, does the subject of a CIGIE IC investigation have the right to obtain or compel records and testimony from others to support their defense?
    a. If not, why?
    b. How is this consistent with due process?
    c. Do you commit to revising CIGIE's rules to ensure that subjects of investigations have the ability to obtain and compel records and testimony from others to support their defense?

Response for question 13 (a-c): Neither existing law nor the proposed legislation pending before HSGAC address the question of subject's right to obtain or compel records and testimony from others in support of their defense; however, this mirrors the IG Act as it applies to the investigation of other Federal employees. Moreover, the IC is unaware of any Federal law enforcement investigative process in which the subjects of investigations are granted the right to obtain or compel records and testimony from others. Again, the IC does not recommend any change to existing law that affords IGs or other senior OIG officials with rights not available to other Federal employees.

14. CIGIE IC recently issued a rule, termed "Addendum A, Integrity Committee Access." The rule reads that "… if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person for failure to cooperate in the IC investigation…". What subsection of the Inspector General's Act gave CIGIE the authority to enact this rule? Please note that for purpose of this question, section 11(d)(7)(B)(i) of the Inspectors General Act of 1978 is merely an enabling provision and not an independent license granting CIGIE unlimited power and dispensation from complying with the Administrative Procedure Act's notice and comment requirements. Please therefore provide a citation [sic] another relevant authority granting CIGIE to promulgate this rule.
    a. If the subject of a CIGIE IC investigation declines to appear at an interview, or declines to answer written questions, does this rule allow CIGIE IC to make a finding of wrongdoing against the subject for failing to cooperate?

b. If the subject of a CIGIE IC investigation asserts privilege, such as the attorney-client privilege, over requested materials, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
c. If the subject of a CIGIE IC investigation asserts that the requested information is classified, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
d. If the subject of a CIGIE IC investigation asserts that the information requested is grand jury material, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
e. If the subject of a CIGIE IC investigation asserts that the information is covered by executive privilege, which is founded in the constitution, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
f. If the subject of a CIGIE IC investigation asserts that the information does not belong to the agency's Office of Inspector General but is subject to a memorandum of understanding or other limitations from another agency, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
g. If the subject of a CIGIE IC investigation asserts that he is not authorized to provide the information because it belongs to another entity, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
h. If the subject of a CIGIE IC investigation requests to have his personal counsel present for any interview, would CIGIE object? If so, under what authority?
i. If the subject of a CIGIE IC investigation requests to have his personal counsel present for any interview, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
j. If the subject of a CIGIE IC investigation requests to have agency counsel present for any interview, would CIGIE object? If so, under what authority?
k. If the subject of a CIGIE IC investigation requests to have agency counsel present for any interview, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?
l. Do you commit to ensuring that no individual subject to an investigation by CIGIE will be disciplined or suffer any adverse consequence for making good-faith assertions of privilege or for requesting the presence of counsel during the course of an investigation?
m. When this rule was being proposed, were you personally aware of anyone who raised any of these concerns? If so, what was done to ensure that these objections were adequately considered?
n. According to the WilmerHale report, the investigators found that "Ms. Lerner would likely have information about these discussions, and in particular, whether she recommended Ms. Ouzts contact the DHS White House liaison." Appendix B at 5. But the report notes that she declined to sit for an interview. *Id.* The report

also stated that that "Mr. Horowitz would likely be familiar with CIGIE's interactions with DHS OIG during the relevant time-period as well as his interactions with IG Cuffari and Ms. Costello." *Id.* But he also declined to sit for an interview. *Id.* Do you think it is appropriate for members of CIGIE to decline to be interviewed as part an investigation, while at the same time holding others to the standard that "if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person for failure to cooperate in the IC investigation"?

Response for question 14 (a-m): Before addressing your questions regarding the Administrative Procedure Act and other concerns regarding the promulgation of the ICP&P, my response will first address several of your questions regarding IC subjects' ability to assert certain requests, objections, or concerns during the course of an IC investigation. Specifically, I am going to first address your questions raised in subsections (b) – (l).

Most importantly, the subject of an IC investigation may at all times have personal counsel present and may assert personal privileges, such as the attorney client privilege arising out of communications with personal counsel. The subject of an IC investigation will not be penalized for having personal counsel present or for asserting good faith personal privileges. With that said, the subjects of IC investigations should not be asserting privileges on behalf of their respective agencies or otherwise be making decisions on behalf of their agencies related to the matter in which they are the subject of an investigation. At a minimum, such involvement lacks the appearance of impartiality and, under certain circumstances, may constitute a conflict of interest. The subject of an IC investigation is understandably interested in refuting the allegations, whereas the IC and the employing OIG are interested in following the facts where they may lead to determine the veracity of the allegations. Allowing a senior level OIG official (or any senior leader in the Federal Government) to mobilize their office to defend against allegations of personal misconduct, not only permits them to improperly marshal Government resources for their personal defense, but it also lacks fundamental fairness. For example, subordinate OIG employees, especially junior level employees, do not have the same authority and would not be in a position to mobilize OIG resources to refute the allegations.

Instead, assertions of OIG privileges, classification of records, lack of authority, or other OIG access limitations, should be made by a disinterested senior OIG official, not the subject of an IC investigation. For the reasons discussed above, the subject should recuse himself or herself from all such decisions. If fully recused, the subject will not be held responsible for assertions made by the OIG that the IC determines are inappropriate or otherwise not made in good faith.

For much the same reasons, it is not appropriate for OIG counsel to represent the interests of the subject of an IC investigation. The IC's interest—and the employing OIG's—is in

following the facts leading to the truth. The interest of the subject of the investigation, however, may not always align with the IC's and the employing OIG's interest. Given that the OIG's attorneys represent the Government/OIG, and not the IG personally, there would appear to be a presumptive conflict in representing both interests, even if temporarily aligned. Moreover, IGs do not typically permit agency counsel to be present when interviewing agency employees. As stated earlier, the position of CIGIE and its IC is that senior level OIG officials should not have rights or privileges unavailable to non-senior OIG or agency employees.

Regarding your question raised in subsection (a), whether a subject of an IC investigation would be subject to a finding of wrongdoing for failing to cooperate, is an extremely fact specific question. In general, the IC believes that senior OIG personnel, should cooperate with the IC's investigators, just as senior agency personnel should cooperate with its OIG investigations. The circumstances surrounding the refusal to cooperate would be carefully reviewed by the IC before the issuance of a finding and recommendation.

Regarding the promulgation of the ICP&P, Congress has set forth a statutorily mandated process for promulgation of the ICP&P in section 11(d)(7)(B) of the IG Act. Beginning no later than April 17, 2009, the IC promulgated policies and procedures (not rules) pursuant to section 11(d) of the IG Act. Moreover, the ICP&P have been updated on at least four occasions in the same manner. This process involves the IC working in consultation with the CIGIE Chairperson and providing notice to Congressional oversight committees. It does not involve public notice-and-comment, review by other agencies, or approval from other stakeholders. This is in contrast to section 11(d)(12)(C) of the IG Act which provides the IC with the authority to "prescribe any rules and regulations necessary to carry out [the processing of allegations against the Special Counsel or the Deputy Special Counsel], subject to such consultation or other requirements as may otherwise apply."

In 2020, CIGIE reviewed the ICP&P, last updated in 2018, to determine the need for further revisions and updates. CIGIE determined that the most immediate need was to add a provision to the ICP&P memorializing the IC's longstanding expectations regarding the cooperation of IGs or other persons with full and final authority to provide access to OIG records and witnesses in IC investigations. Notably, the issue of "all-means-all" access was a topic on which the IG community recently demonstrated solidarity in the lead up to the passage of the landmark Inspector General Empowerment Act of 2016 (IGEA). The IGEA, in part, made clear that, with very limited exceptions, IGs are "to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act." Section 6(a)(1)(A) of the IG Act. This provision was necessary because of refusals by several agencies since 2010 to provide their IGs with independent access to information that was available to the agency and relevant to ongoing oversight work by the IG. As CIGIE has maintained that senior level OIG

personnel should be treated no differently under the law, and in order to "ensure fairness and consistency," the IC determined the expectation should be documented in the ICP&P.

CIGIE leadership, including myself, determined that, due to the importance of this proposed amendment to the ICP&P, feedback from the CIGIE membership was the prudent course of action, despite such feedback not being required under the IG Act. Accordingly, CIGIE had a series of engagements with its membership, as well as with the Council of Counsels to the Inspectors General (CCIG), to address their suggestions, questions, and concerns, some of which were consistent with questions 14 (a) – (k). As a result, several substantive changes were made to the proposed cooperation amendment before ultimately presenting it to the CIGIE membership for an advisory vote on December 15, 2020. The proposed cooperation amendment to the ICP&P was overwhelmingly approved by the CIGIE membership.

In part because questions were raised about the ICP&P promulgation process, CIGIE consulted with the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). An agreement was reached whereby CIGIE would present all proposed ICP&P modifications to OIRA contemporaneously with the transmittal of the same to Congress and delay implementation for 10 days to provide for an opportunity for questions and concerns to be raised. Addendum A to the ICP&P was transmitted to Congress and OIRA on March 17, 2021, and implementation was delayed for 10 days. CIGIE received no questions or concerns from Congress or OIRA.

Response for question 14(n): As I testified during the hearing and in my response to question 1(a), I cannot discuss ongoing matters due to privacy considerations, including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities.

15. Congress deliberately limited the scope of CIGIE's jurisdiction to allegations of misconduct referred by Inspectors General as part of an effort to keep CIGIE's investigation over a small number of people at a very high level. See 5 U.S.C. App. § 11(d)(4) ("Referral of allegations.—(A) Requirement.—An Inspector General shall refer to the Integrity Committee any allegation of wrongdoing against a staff member of the office of that Inspector General…".). But there is no provision in the statute for any mechanism by which CIGIE IC may accept referrals from third parties or investigate allegations sua sponte.
    a. What is the statutory authority for CIGIE IC rule 5(b) that says the opposite: "if the IC receives an allegation from a source other than the affected IG that a Covered Person has engaged in wrongdoing, the IC will exercise its authority over review of such allegation to the same extent *as if it had been referred to the IC by the affected IG*" (emphasis supplied)?
    b. In particular, what subsection of the Inspector General Act of 1978, as amended, gives CIGIE the authority to enact this rule?
    c. Do you commit to ensuring that this rule is repealed and commit to ensuring that CIGIE's rules comply with its statutory mandates?

d. Do you commit to ensuring that CIGIE IC will not conduct any investigations that are not referred by the IG of an agency, as required by statute?
e. Has CIGIE IC conducted any investigations under this rule? If so, please provide a complete list with case numbers.

Response for question 15 (a-e): The mission of the of the IC is to "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and [specified] staff members of the various Offices of Inspector General." Section 11(d)(1) of the IG Act. The review and referral requirements applicable to the IC are reflected in section 11(d)(5) of the IG Act. The IC Chairperson's authority to investigate allegations are reflected in section 11(d)(6) of the IG Act. These provisions reflect no limitation on the source of the allegations. Indeed, allegations are regularly received from Members of Congress, whistleblowers, OIG employees, OIG Offices of General Counsel, agency employees, and members of the public.

The requirements reflected in section 11(d)(4) of the IG Act are requirements placed on IGs, not on the manner in which the IC must receive allegations. Specifically, section 11(d)(4) addresses when an IG must refer an allegation against a staff member of that IG to the IC. It does not address the totality of allegations that the IC may receive. For example, and most notably, it does not address referral obligations for allegations made against IGs, notwithstanding the IC's clear statutory mandate to receive and review allegations against IGs.

In short, section 5(B) of the ICP&P does not provide authority to the IC – it merely reflects the IC's mandates and authorities in sections 11(d)(1), 11(d)(5), and 11(d)(6) of the IG Act to receive, review, and refer for investigation allegations of wrongdoing made against IGs and specified staff members, without limitation on the source of such allegations. Secondarily, section 5(B) makes clear that the IC may refer an allegation to an IG so that the IG may determine whether the allegation can be handled internally or by another agency of the executive branch with appropriate jurisdiction.

Regarding your request for a list of "investigations under this rule," the IC welcomes an opportunity to discuss this request in more detail, as it encompasses the vast majority of incoming IC complaints and investigations since its inception.

16. Congress enacted a statute that limits the scope of individuals CIGIE may investigate. By statute, the "Integrity Committee … shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and *staff members* of the various Offices of Inspector General […]." 5 U.S.C. App. § 11(d)(1) (emphasis supplied). For purposes of this provision, "the term '*staff member*' means any *employee* of an Office of Inspector General who—(i) reports directly to an Inspector General; or (ii) is designated by an Inspector General […]." 5 U.S.C. App. § 11(d)(4)(B) (emphasis supplied).
    a. Does CIGIE IC investigate anyone that is not an Inspector General or an employee of an Inspector General's office?

b. CIGIE promulgated a rule that states that the CIGIE IC "may consider [and investigate] wrongdoing alleged to have occurred while an individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation." On what authority did CIGIE IC create this rule?
c. How is this rule consistent with the statutes that Congress enacted—which appear to expressly contradict CIGIE's rule?
d. Do you commit to ensuring that CIGIE IC will not conduct any investigations of individuals who are not currently Inspectors General or currently staff members of various Offices of Inspector General?
e. Do you agree that CIGIE IC lacks jurisdiction over any former Inspector General and any former staff member of an Office of Inspector General?
f. What remedy does a subject of a CIGIE IC investigation have when the IC conducts an investigation over which it lacks jurisdiction?
g. Do you commit to waiving sovereign immunity so that courts can hear such claims to ensure that CIGIE IC is conducting investigations in compliance with federal law?

Response for question 16 (a-g): Your questions raise two broad legal issues. The first is whether the IC has the authority to investigate individuals other than IGs or OIG employees, which it does according to the IG Act. The second is whether the IC has the authority to investigate former IGs or OIG employees. Again, the IC's position is that it does pursuant to the IG Act.

The IC has the authority to investigate individuals not currently serving as "covered persons" within Offices of Inspectors General. In addition to IGs and specified OIG employees, the IC has authority to investigate the Special Counsel and Deputy Special Counsel of the OSC. Section 11(d)(12) of the IG Act. Also, while the scenario would be highly unusual, it is possible someone other than an OIG employee would be serving in an acting or interim capacity in a position subject to IC oversight (i.e., a direct report position to the IG or a position designated by the IG). Such individuals would also be subject to IC oversight.

Regarding the IC's authority to investigate former IGs and OIG employees, CIGIE construes the IC's mandate[8] to include allegations addressing actions taken while persons are in covered positions, even if such persons have since left their covered positions.

The DOJ Office of Legal Counsel (OLC) previously determined that the IC had "continuing authority with respect to allegations the Committee received while the subject of allegations was serving as Inspector General, even if the subject leaves office after receipt of those allegations." *Jurisdiction of Integrity Committee When Inspector General Leaves Office After Referral of Allegations*, 30 Op. O.L.C. 122 (2006). The opinion did "not address whether the Integrity Committee would have authority to act

[8] Section 11(d) of the IG Act.

when an IG leaves office before the Committee receives any allegations about that person's conduct in office." *Id.* at 125, n. 5. While OLC noted that references in the IC's authority to IGs "might be read to include only current Inspectors General," OLC also clarified that the term, "when not used in conjunction with language suggesting the term applies only to incumbents, easily could be read to include a person who was being investigated for actions taken while serving as Inspector General, even if he had since left that post." *Id.* at 130.

Although OLC's opinion dealt with a previous iteration of the IC (i.e., not its current statutory form), CIGIE's position is the analysis remains fundamentally sound and applicable. In order for the IC to adequately perform its mission to "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and [specified] staff members of the various Offices of Inspector General," its authority vests as long as the allegation addresses actions taken by an individual while that individual was in a covered position. Otherwise, individuals would be able to escape public interest accountability by merely departing, or being removed from, a covered position before their wrongdoing is discovered or a whistleblower brings their concerns to the IC. As this outcome would be at odds with the IC's oversight roles and responsibilities, CIGIE's view is this limitation would have been stated explicitly by Congress if it had been intended (e.g., clearly limiting the IC's authority to current incumbents).

Regarding your request that CIGIE waive sovereign immunity, CIGIE does not have that discretion, noting that DOJ handles such issues.

17. Section 404 of the current draft of the "IG Independence and Empowerment Act" pending before the committee requires more frequent reporting and more detailed information than what is found in the current annual report. If the proposed legislation is adopted, do the allegations disposed of by the allegation screening committee fall within those requiring an explanation to Congress as to why each allegation was not investigated? Please explain.

Response to question 17: By the "allegation screening committee," I understand you are referring to the ARG created by section 11(d)(5)(A) of the IG Act and addressed in section 6(B) of the ICP&P. The ARG does not dispose of allegations nor does it control which allegations are investigated by the IC, so ARG decision-making would not be reported in the enhanced reporting requirements as a reason why allegations were not investigated. After the ARG's review, regardless of any action taken by DOJ or OSC, *all* allegations against persons subject to IC oversight are placed on the agenda for review by the IC. See section 6(F) of the ICP&P. The IC then deliberates on each allegation of wrongdoing to determine whether it will direct the IC Chairperson to initiate an investigation. See section 11(d)(5)(B)(i) of the IG Act. If so required, the IC Chairperson is to conduct a thorough and timely investigation of each allegation. Section 11(d)(6)(A) of the IG Act. Moreover, while DOJ and OSC are given the opportunity to take action on allegations received by the IC, such action does not foreclose the ability of the IC to

investigate. The IG Act permits the Chairperson of the IC to "conduct any related investigation . . . concurrently with the Department of Justice or the Office of Special Counsel, as applicable." Section 11(d)(7)(D) of the IG Act.

18. Are you a principal officer within the meaning of U.S. Const. art. II, § 2, cl. 2? Please explain by including appropriate citations to legal authorities.

Response to question 18: No, I am not appointed by the President, with the advice and consent of the Senate. Rather, I am appointed by the Amtrak Board of Directors, in accordance with 5 U.S.C. App. 3 § 8G(c).

19. How many IGs on CIGIE's IC have served more than a 2-year term?
    a. Do you believe there should be greater rotation of IGs on CIGIE's IC?
    b. Do you believe there is a disproportionate number of agency-appointed IGs on the committee?
    c. Do you commit to ensuring that there is greater rotation of IGs serving on CIGIE's IC? If so, what steps in particular do you plan to take?
    d. Do you commit to ensuring that there is a greater presence of Senate-confirmed IGs on CIGIE's IC?

Response to question 19 (a-d): Membership and terms of service on CIGIE's IC is a product of the IG Act and the CIGIE Charter. Pursuant to CIGIE's Charter, each IG appointed to the IC serves a four-year term, not a two-year term, and appointments are staggered so that one IC member will be appointed every year. The IC Chairperson, who is elected from one of the four IG members, serves a two-year term. By statute, the four IGs appointed to the IC by the CIGIE Chairperson must represent both establishments and designated Federal entities (as that term is defined in section 8G(a) of the IG Act). Section 11(d)(2)(A) of the IG Act. Currently, CIGIE's practice is to have two establishment members and two DFE members, which I believe is reflective of the IG community's makeup and interests.

In December 2020, recognizing that the staggered term end dates for IC members had not always been observed, the CIGIE Chairperson set specific end dates for the current appointed IC members to ensure that no current member serves an initial term of more than four years, with one member completing a second term. If a departing member of the IC has time remaining on their term, the CIGIE Chairperson will appoint a new member to complete the departing member's term. Upon the expiration of an IG member's term, the CIGIE Chairperson may reappoint that member or appoint a new member for a new four-year term. Since 2008, only three IG members have been appointed to serve a second four-year term; however, each of those members departed (or is scheduled to depart) before completion of their second term. (IG Dahl- six years; IG Jeffrey- six years (scheduled to depart in February 2022); IG McFarland- five years).

Please refer also to responses provided by IG Allison Lerner.

20. Have you or anyone at CIGIE ever advised a government employee to use agency resources to undermine the nomination of an individual to a Senate-confirmed position?
    a. Have you or anyone at CIGIE ever tried to undermine the nomination of an individual to a Senate-confirmed position, while that nomination was pending before the Senate?
    b. Do you believe that such conduct is ever appropriate?
    c. What do you think is the appropriate discipline for a federal employee who advises an individual to use government resources to undermine the nomination of an individual to Senate-confirmed position?

Response to question 20 (a-c): While I cannot speak for other CIGIE members or staff, I have never tried to or advised a Government employee to use agency resources to undermine the nomination of an individual to a Senate-confirmed position. That said, I believe that only lawful processes and resources should be used during the confirmation review process, and those who wrongfully attempt or undermine a nomination should be held accountable.

21. What safeguards are in place to ensure that the CIGIE IC can consider allegations against members of CIGIE?
    a. May a Member of CIGIE sit as a judge in his own case?
    b. May a Member of CIGIE sit as a judge in a case against a more senior Member of CIGIE?
    c. May a Member of CIGIE sit as a judge in a case against a Member who appointed him or her to CIGIE in the first place?
    d. Does CIGIE ensure that a separate, unrelated, and independent entity handles allegations against Members of CIGIE?

Response to question 21 (a-d): The IG Act makes no distinction as to the IC's mission when examining covered persons performing CIGIE functions. Standard IC recusal rules apply, as set forth in section 3(K) of the ICP&P. If recused, a member of the IC may not vote or otherwise participate in consideration of the matter which is the subject of the recusal. A member would clearly not be able to participate in assessing matters pertaining to that member personally. See section 3(K)(i) of the ICP&P ("Matters in which that member . . . has personally and substantially participated.").

I can also confirm that the IC is capable of receiving, reviewing, and investigating complaints made against CIGIE leadership. Again, the same rules of recusal apply for all IC matters, including the requirement that members of the IC be recused from matters which they believe their "impartiality would be questioned by a reasonable person with knowledge of the relevant facts," section 3(K)(ii) of the ICP&P, or matters "which the IC determines that the circumstances present would lead a reasonable person with knowledge of the relevant facts to question the member's impartiality in the matter," section 3(K)(v) of the ICP&P. It is also worth noting that "CIGIE leadership" has nothing to do with the individual employment status of IC members such as performance appraisals, salaries, bonuses, etc.

Finally, CIGIE IC members do not sit as a "judge" in any respect. According to the IG Act, the ultimate disposition of IC investigative findings rests with the respective appointing authority, as discussed in questions 1(h) and 11.

22. Are you aware of any individuals in the inspector general community who have filed or called in complaints through their own hotlines?
    a. If so, how were these matters handled?
    b. Do you believe that such a practice is legally permissible?
    c. Do you believe that such a practice is ethical?

Response to question 22 (a-c): I am not aware of an Amtrak OIG employee submitting a complaint to the Amtrak OIG hotline, or of another OIG employee submitting a complaint to their respective hotline. Under section 7(a) of the IG Act of 1978, as amended, the "Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety." This provision is also extended to employees of Designated Federal Entities, such as Amtrak.

Further, under section 8M(b)(2)(A) of the IG Act of 1978, as amended, each OIG is required to "establish and maintain a direct link on the homepage of the website of the Office of the Inspector General for individuals to report fraud, waste, and abuse. Individuals reporting fraud, waste, or abuse using the direct link established under this paragraph shall not be required to provide personally identifying information relating to that individual." The statutory language permits "individuals" to report through their online hotline.

Based on these two provisions, Amtrak OIG employees would be permitted to submit a complaint through their hotline, however, Amtrak OIG employees could also report concerns about Amtrak programs and operations directly to OIG leadership.

23. Has CIGIE ever received any allegation of misconduct that Deborah Jeffries withheld, failed to release, delayed, or otherwise altered any report? If so, please provide a copy of all such allegations and any report that CIGIE IC produced on the matter. If CIGIE IC did not open an investigation into this allegation of misconduct, please identify the reasons why CIGIE declined to do so.

Response to question 23: Due to privacy considerations—including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities—the IC is unable to identify allegations against specific individuals in a public hearing record. Any allegation against a Covered Person is thoroughly reviewed in accordance with ICP&P to determine whether the allegation met the IC's threshold standard for investigation.

24. If an employee serves in an Office of Inspector General on detail but later leaves that office, do you believe that CIGIE maintains jurisdiction to investigate that individual?
    a. Is it your interpretation of Title IV of the proposed legislation pending before this committee that CIGIE or other inspector generals could retain subject matter jurisdiction over individuals who have left office?
    b. What safeguards are in place to prevent partisan investigations into political appointees in inspector general offices who leave when their term expires?

    Response to question 24 (a) and (b): Regarding your question pertaining to the IC's authority over detailees or others who leave a covered position, I refer you back to my response to question 16. Regarding your question pertaining to safeguards, I refer you back to my response to question 21.

25. Please produce all documents reflecting communications received, sent, or created by CIGIE concerning Andrew A. De Mello from October 5, 2019 to the present. Please segregate records based on whether they were created before or after April 6, 2020.

    Response to question 25: Due to privacy considerations—including those in investigative integrity principles, the Privacy Act, and the best practices of both the investigative and oversight communities—the IC respectfully declines to confirm or deny if the IC was made aware of allegations concerning specific individuals in a public hearing record.

26. CIGIE reviews potential presidentially appointed and Senate confirmed IG nominees before the nomination is made and makes a recommendation regarding their suitability. It usually relies upon a panel of existing IGs to reach that determination.
    a. How many IG PAS nominations made by President Obama were of individuals that CIGIE recommended? How many IG PAS nominations made by President Obama were of individuals that CIGIE did not recommend?
    b. How many IG PAS nominations made by President Trump were of individuals that CIGIE recommended? How many IG PAS nominations made by President Trump were of individuals that CIGIE did not recommend?
    c. Please identify the name of each individual that President Trump identified as an individual he was considering as a potential IG which CIGIE reviewed but did not recommend, all reasons why CIGIE did not recommend each respective individual, and identify the role, if any, that you or Allison Lerner played in CIGIE's recommendation (or the formation thereof).
    d. The Section 3(a) of the IG Act of 1978 identifies the qualifications for appointment as an IG: "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." Please explain with detail and particularity the actions CIGIE undertakes to determine whether an individual the President considers nominating (and informs

CIGIE as such) is recommended or not, and explain all processes and standards CIGIE utilizes to make a recommendation. Were there any exceptions?

Response to question 26 (a-d): The IC does not make recommendations for individuals for IG positions.

Please refer also to responses provided by IG Allison Lerner.



Integrity Committee
Policies and Procedures
2018

Administrative Correction 1: April 13, 2018

January 2018

Policies and Procedures of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency

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January 2018

POLICIES AND PROCEDURES OF THE INTEGRITY COMMITTEE OF THE COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

1. Statement of Purpose

Members of the Inspector General community are charged with protecting the integrity, efficiency, and economy of the Federal government and its programs, activities, and operations. To maintain public trust, all Inspector General community members must adhere to high standards of official conduct and are accountable in the event that they fall short of those standards. The statutory mandate of the Integrity Committee ("IC") of the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") is to receive, review, and refer for investigation allegations of wrongdoing made against Inspectors General or Acting Inspectors General who are members of CIGIE ("IGs"), designated members of the senior staffs of those IGs, and the Special Counsel and Deputy Special Counsel of the Office of Special Counsel ("OSC"), and to ensure the fair, consistent, timely, and impartial disposition of allegations that fall within the IC's statutory mandate.

These policies and procedures ("Policies"), required by section 11(d)(7)(B) of the Inspector General Act of 1978, as amended, 5 U.S.C. app. ("IG Act"), were adopted by the IC in conjunction with the CIGIE Chairperson, and in consultation with the Public Integrity Section ("PIN") of the Department of Justice ("DOJ") and the OSC.

2. Persons within the IC's Authority

The IC considers allegations of wrongdoing against any of the following individuals ("Covered Persons"):

A. An IG;

B. A staff member of an Office of Inspector General ("OIG") whose position is designated under section 4 of these Policies ("Designated Staff Member");

C. The Special Counsel and the Deputy Special Counsel of OSC, but not their staff members. For purposes of these Policies, requirements pertaining to an IG also apply to the Special Counsel and Deputy Special Counsel, except that the Special Counsel is not required to designate staff members under section 4 of these Policies; and

D. Anyone serving in an Acting or Interim capacity in a position set forth in A through C of this subsection.

At its discretion and consistent with the public interest (including the availability of an effective remedy), the IC may consider wrongdoing alleged to have occurred while an individual served as

a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation.

3. IC Governance

A. Membership. By statute, the IC consists of the following six members: the official of the Federal Bureau of Investigation ("FBI") serving on CIGIE; the Director of the Office of Government Ethics ("OGE") or the Director's designee; and four IGs appointed by the CIGIE Chairperson to serve terms of 4 years each.

B. IC Chairperson. The IC shall elect one of the four IG members as IC Chairperson, who will serve a 2-year term of office.

C. IC Vice Chairperson. Upon election, the IC Chairperson will appoint one of the IG members to serve as IC Vice Chairperson to act in the absence of the IC Chairperson and to perform such other duties as may be assigned by the IC or the IC Chairperson. The term of office of the IC Vice Chairperson shall expire at the end of the term of office of the appointing IC Chairperson.

D. Legal Advisor. The Chief of PIN or the Chief's designee will serve as a Legal Advisor to the IC.

E. Designees. The Director of OGE and the Chief of PIN may designate members of their respective staffs to substitute for them on the IC, either long-term or episodically.

F. Allegation Review Group. Designees of the Attorney General, the Special Counsel, and the IC Chairperson ("Allegation Review Group") will review incoming allegations and promptly refer to PIN, OSC, or the IC any allegations within their respective purviews, pursuant to section 6(B) of these Policies.

G. Working Group. An IC Working Group ("Working Group") will assist the IC in the execution of its responsibilities. Its members shall include the IC Program Managing Director (responsible for administering the day-to-day operations of the IC) and may include a legal advisor and other staff from CIGIE, staff from the offices of IC members, staff from other OIGs, or contractors.

H. Meetings. The IC will convene regularly and no less than monthly (including in person, as necessary) to conduct business, unless pending business is insufficient to warrant a meeting or quorum is lacking. A written agenda and materials relating to any matter before the IC for determination will be made available to IC members for independent review in advance. The IC will maintain minutes of determinations made regarding each agenda item. The minutes shall be made, kept, and distributed as necessary to maintain the confidentiality and integrity of criminal or OSC investigations referenced in section 6 of these Policies and to effect recusals under section 3(K) of these Policies.

I. Quorum. A quorum is required for the IC to deliberate on an allegation or take any action concerning an allegation. A quorum consists of four members of the IC. The IC Chairperson will immediately notify the CIGIE Chairperson if (1) the IC Chairperson determines that consideration of a pending matter is urgent, cannot reasonably be delayed, and a quorum cannot be established within 5 business days or (2) more than two of the IG members are recused from a matter. Upon notification, the CIGIE Chairperson will appoint as temporary members of the IC the number of IGs necessary to establish a quorum.

J. Voting. Determinations by the IC require the vote of a majority of participating members. At the discretion of the IC Chairperson, matters may be decided on ballot in a form determined by the IC Chairperson rather than at a meeting.

K. Recusal of IC members and others. A recused IC member will not vote or otherwise participate in the consideration of a matter from which the member is recused. All recusals will be noted in the minutes of the meeting at which the recusal is determined.

A member of the IC, the Allegation Review Group, or the Working Group is recused from participation in:

i. Matters in which that member or another person in that member's office or agency has personally and substantially participated. For purposes of this provision, the FBI is deemed to be in the same office or agency as DOJ OIG;

ii. Matters as to which the member believes that his or her impartiality would be questioned by a reasonable person with knowledge of the relevant facts. Members who have determined that their own recusal is not necessary under this subparagraph may nevertheless disclose a potential basis for recusal for final determination by the IC;

iii. Any matter as to which participation would violate or create a conflict of interest under a law, regulation, or mandatory standard applicable to all Federal employees or officials in the Executive Branch of the United States;

iv. All matters before the IC while the member knows that he or she is under criminal investigation or IC investigation;

v. Any matter as to which the IC determines that the circumstances present would lead a reasonable person with knowledge of the relevant facts to question the member's impartiality in the matter. An IC member whose recusal is at issue will not vote on such determination; and

vi. Any matter that requires a security clearance, if the member does not hold the requisite clearance.

L. Mandatory disclosure of investigations. An IC member, Allegation Review Group member, or Working Group member who knows that he or she is the subject of a criminal or Federal government investigation shall promptly disclose that information to the IC.

4. Designation of Staff Members by an Inspector General

Annually by May 15, each IG must submit to CIGIE's Executive Director and to the IC Chairperson a designation of the positions that report directly to the IG. In addition, each IG must designate any positions with significant responsibilities such that, in the judgment of the IG and depending on the size and organization of the particular OIG, there is a heightened risk that an internal investigation of them would lack objectivity in fact or appearance.

5. Referral of Allegations of Wrongdoing to the IC

A. Reporting by an IG.

i. Allegation concerning the IG. An IG will promptly refer to the IC in writing any allegation of wrongdoing concerning that IG.

ii. Allegations concerning Designated Staff Members. An IG will promptly refer to the IC in writing any allegation of wrongdoing concerning a Designated Staff Member if –

a. Review of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and
b. The IG determines that an internal investigation of the matter might not be objective in fact or appearance.

B. Allegations received from other sources. If the IC receives an allegation from a source other than the affected IG that a Covered Person has engaged in wrongdoing, the IC will exercise its authority over review of such allegation to the same extent as if it had been referred to the IC by the affected IG. In its sole discretion, the IC may refer allegations related to a Designated Staff Member to the affected IG for a determination by the IG pursuant to section 5(A)(ii) of these Policies.

6. Receipt, Initial Review, and Referral of Allegations for Consideration at IC Meeting

A. Receipt of Allegations. The IC will track each incoming communication that makes or relates to allegations of wrongdoing concerning any Covered Person, official, or staff member of an OIG and immediately provide that communication to the Allegation Review Group.

B. Review and Referral by the Allegation Review Group. Within 7 business days after the IC's receipt of a communication as specified in section 6(A) of these Policies, the members of the Allegation Review Group will determine whether the allegation will be referred to PIN, OSC, or the IC. The Attorney General's designee will identify any

allegations of a criminal offense for referral to PIN, and the Special Counsel's designee will identify any remaining allegations within OSC's jurisdiction for referral to OSC. Any matter referred to PIN or OSC is closed by the IC, subject to reopening if referred back to the IC or if otherwise deemed appropriate by the IC. Any matter not referred to PIN or OSC within 7 business days after the IC's receipt of a communication will be referred to the IC with a statement as to whether the allegations concern a Covered Person.

C. Coordination with PIN and OSC on concurrent matters. For matters referred to PIN or OSC, the IC may concurrently consider and investigate related allegations and will consult and coordinate with PIN or OSC, as the case may be, in doing so.

D. Action by PIN on referred allegations. As to any matter referred to PIN,

i. PIN will notify the IC, for appropriate action under these Policies or otherwise,

a. If PIN concludes that the allegation warrants criminal investigation; or

b. If PIN or another prosecutive authority (1) declines or defers further action; (2) brings an unsealed criminal charge; or (3) concludes a criminal investigation without charges being filed.

ii. PIN will submit to the IC a summary report of the results of any investigation that relates to a matter within the authority of the IC, consistent with other law (including Federal Rule of Criminal Procedure 6(e)). The content of such a report will be at the discretion of PIN and no particular information must be provided by PIN on behalf of DOJ or other prosecutive authority.

iii. If at any time during the course of the IC's review of a matter (including during an IC investigation) substantial information is uncovered that indicates a criminal offense (i.e., information that the FBI or an IG would ordinarily refer to a prosecuting authority), the IC will promptly consult with PIN and, if requested by PIN, follow the procedures outlined in this section. If the IC Chairperson determines that such consultation is urgent, the IC Chairperson may personally conduct that consultation.

E. Action by OSC on referred allegations. As to any matter referred to OSC,

i. OSC will notify the IC

a. If OSC concludes that the allegation warrants investigation by OSC; or

b. If OSC declines or defers further action or concludes an investigation without initiating further action, OSC will refer to the IC any allegations of wrongdoing against a Covered Person.

ii. OSC will submit to the IC a summary report of the results of any investigation that relates to a matter within the authority of the IC, consistent with other law. The content of such a report will be at the discretion of OSC and no particular information must be provided.

F. Placement on the IC agenda. Matters referred to the IC by the Allegation Review Group will appear on the agenda for consideration at the next IC meeting. Along with the agenda, the IC will distribute to the members (i) unclassified materials received by the IC supporting the allegations; (ii) allegations referred to PIN or OSC, together with a copy of the associated materials received by the IC; (iii) recommendations provided by the Allegation Review Group addressing whether allegations referred to the IC relate to a Covered Person; and (iv) notifications and summary reports received from any allegations referred back to the IC by PIN and OSC pursuant to paragraphs (D) and (E) of this section.

7. IC Review Process and Actions

A. Threshold standard. The IC takes action on allegations of wrongdoing against a Covered Person that involve abuse of authority in the exercise of official duties or while acting under color of office, substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation, or conduct that undermines the independence or integrity reasonably expected of a Covered Person.

B. IC review of referred allegations. Upon referral to the IC from the Allegation Review Group, a referral back to the IC from PIN or OSC, or a matter having otherwise been reopened, the IC shall take one of the following actions:

i. Request further information. The IC may determine that the allegations and associated materials provide insufficient information or lack sufficient supporting documentation to permit the necessary determinations and, without initiating a preliminary investigation, direct that additional information be sought. This may include requesting additional information from the complainant or referral source, reviewing open source information, or other limited inquiry. Time expended in obtaining this additional information shall be excluded from the time provided for review by the IC.

ii. Request response. The IC may request in writing that the Covered Person who is the subject of the matter (the "Respondent") submit a written response to some or all of the allegations within 20 days (the "Response Period"). In accordance with section 14 of these Policies, due care will be taken to protect the identity of a complainant or informant, if a written response is requested. Upon request by Respondent, the IC Chairperson may grant an extension of the Response Period for up to 20 days, subject to paragraph (D) of this section. Absent extraordinary circumstances, no further extensions will be granted.

Where a written response has been sought, the IC will consider the allegations and any associated materials received by the IC, together with any written response, at the meeting that follows expiration of the Response Period and determine whether to refer the matter for investigation.

iii. Take action in accordance with paragraph (C) of this section.

C. IC Actions. Within 30 days of a referral to the IC from the Allegation Review Group, a referral back to the IC from PIN or OSC, or a matter having otherwise been reopened, subject to extension as specified in paragraph (D) of this section, the IC will take one of the following actions:

i. Determine threshold standards not met. Determine that the allegations do not meet the threshold standard, and close the matter;

ii. Determine allegations refuted. Determine that the written response sufficiently answers or refutes the allegation(s) and that further inquiry or investigation is not warranted, and close the matter;

iii. Make findings on the existing record. Determine that the record is sufficient and make findings, conclusions, or recommendations as to some or all of the allegations without investigation;

iv. Refer for investigation. Refer to the IC Chairperson for investigation allegations that meet the threshold standard (Note: the IC may refer a matter for investigation without requesting a response from the subject if the allegations clearly warrant an investigation and a response would not serve a useful purpose or would result in unnecessary delay);

v. Refer to another agency. At any time, refer all or part of allegations (including allegations outside the IC's authority) to an affected IG, an agency within the Executive Branch with jurisdiction, or another appropriate authority, and close the matter. The IC may notify the complainant or referring source that it has referred the allegation(s), and will take due care to protect the integrity of investigations by other agencies and to protect the identity of a complainant or informant pursuant to section 14 of these Policies. The IC may elect to exercise authority over certain allegations, even if it has referred other allegations in the same matter to another agency. With respect to matters referred to PIN or OSC, the IC will consult with PIN or OSC prior to exercising its jurisdiction; or

vi. Refer to the CIGIE Chairperson. Refer allegations that do not meet the threshold standard to the CIGIE Chairperson for any appropriate action.

D. Extension and Congressional notification. The IC may extend the initial 30-day period for its review and determination of allegations by another 30 days (e.g., due to an extension granted to the Respondent for a response) and must provide written notice to

the Congressional committees designated in section 11(d)(8)(A)(iii) of the IG Act (the "Congressional committees of jurisdiction") of the case-specific reason(s) that additional time is needed. The notice must provide sufficient facts to explain why the IC requires additional time for its review and determination but must not reveal the substance of the underlying allegations.

8. IC Investigations

A. Timing of investigation by the IC: The IC Chairperson shall complete an investigation within 150 days after receiving a referral for investigation by the IC. If the investigation cannot be completed within the 150-day period, the IC Chairperson will promptly notify the Congressional committees of jurisdiction regarding the general reasons for the delay. The notification shall be updated every 30 days until the investigation is complete.

B. Engaging an Assisting IG to conduct an investigation.

i. CIGIE will maintain a list of OIGs capable of undertaking investigations for the IC, and these responsibilities will be rotated and allocated among CIGIE members so as not to create an undue burden on any particular OIG. To the extent possible, investigations will be conducted by an OIG of a similar size, except that this shall not apply to OIGs with fewer than 50 employees.

ii. When so authorized by the IC Chairperson, CIGIE will engage an OIG from the list maintained by CIGIE to investigate the allegations referred by the IC ("Assisting IG"). The IC will provide to the Assisting IG a written description of the allegations to be investigated. The IC and the Assisting IG will agree in writing on the scope of the investigation ("Scope Letter"), a copy of which will be retained by the IC.

iii. With the assistance of the IC, CIGIE and the Assisting IG shall enter into a memorandum of understanding ("MOU") regarding the provisions of the investigative services. The MOU shall incorporate by reference the Scope Letter; however, the Scope Letter will be retained with the IC recordkeeping copy of the MOU pursuant to section 13 of these Policies and will not be retained with other CIGIE records, such as with finance records or other administrative copies of the MOU.

iv. The MOU will include provisions specifying:

a. that conduct of the investigation is subject to the control and direction of the IC Chairperson;

b. that the investigation is to be completed within 150 days of the date on which the IC referred the matter for investigation;

c. that the Assisting IG will provide to the IC periodic status reports concerning the progress of the investigation;

d. the requirements for retention and dissemination of working papers and similar records compiled or prepared in the conduct of the investigation ("IC Investigative Working Papers");

e. procedures for responding to requests for disclosure of IC Investigative Working Papers;

f. that the Assisting IG must immediately notify the IC if the investigation discovers evidence of a crime and that further action will be coordinated with PIN;

g. the terms on which CIGIE will reimburse costs incurred by the Assisting IG in connection with the investigation;

h. that the Assisting IG will notify the IC Chairperson promptly upon determining that a Respondent has interfered with or otherwise prejudiced the investigation; and

i. if the IC's investigation relates to a matter under investigation by PIN or OSC, that the Assisting IG will coordinate and deconflict with PIN or OSC.

C. Investigation conducted by CIGIE Investigator.

i. In lieu of engaging an Assisting IG to conduct an investigation, the IC Chairperson may elect to conduct the investigation using CIGIE staff, personnel detailed to CIGIE by an OIG, or contractors engaged by CIGIE (collectively a "CIGIE Investigator"), subject to the control and direction of the IC Chairperson.

ii. In that event, the IC will prepare a Scope Letter and, to the extent other than CIGIE staff are used, CIGIE will enter into an agreement with terms substantially equivalent to an MOU with an Assisting IG.

iii. A CIGIE Investigator has substantially the same duties and responsibilities as an Assisting IG for purposes of sections 8 and 9 of these Policies.

9. Conducting Investigations

A. Notice to Respondent and opportunity to speak with the investigators during the investigation. The IC Chairperson will coordinate with the Assisting IG when to provide written notification to the Respondent of the following:

i. The allegations to be investigated;

ii. That additional allegations may be investigated as they become known; and

iii. That the Respondent will be given the opportunity to speak with investigators and provide materials prior to the conclusion of the investigation and to submit a written response to the IC concerning the report of investigation.

B. Standards for investigations. The investigation will be conducted in accordance with the most current *Quality Standards for Investigations* issued by CIGIE and utilize the investigative procedures of the Assisting IG unless otherwise directed by the IC Chairperson.

C. Reviewing the status of an investigation. The IC will monitor the progress of all pending investigations. If additional allegations are received in a matter or if additional allegations surface during the course of the investigation, the IC Chairperson, in consultation with the IC, may direct the Assisting IG to expand the scope of the investigation to include such new matters, as appropriate.

D. Notice of interference with investigation. If the IC determines that a Respondent has interfered with or otherwise prejudiced an investigation, the IC may notify the Respondent's appointing authority, the CIGIE Executive Chairperson, and the CIGIE Chairperson, and may offer recommendations for corrective and disciplinary action.

E. Conclusion of the investigation. At the conclusion of the investigation, the Assisting IG will provide to the IC Chairperson a written investigative report (including any exhibits) setting forth the relevant facts and conclusions regarding the allegations. Subject to the directions of the IC Chairperson, the format of the report will be determined by the Assisting IG. Unless otherwise determined by the IC, once the Assisting IG submits its report of investigation, the investigation is considered complete.

10. Post-Investigation Review of Reports of Investigation by the Respondent and the IC

A. Review and comment by the Respondent.

i. Materials for the Respondent's review. A copy of the report of investigation (including any exhibits), or portions of it pertaining to a particular Respondent, will be made available to that Respondent for review. Respondent will also be able to review a transcript of any recorded interview of that Respondent and/or a summary memorandum of any unrecorded interview of that Respondent. The IC Chairperson, after consultation with the Assisting IG as appropriate, may make appropriate redactions pursuant to applicable law or regulation (e.g., the Privacy Act) and in accordance with section 13(B) of these Policies or to protect the identity of a complainant, referring source, or witness in accordance with section 14 of these Policies.

ii. Submission of comments by the Respondent. The Respondent will have 10 business days, beginning when the report of investigation was provided or made available for review, to submit a response to the IC. The IC may grant additional time to submit a response or to submit a more complete response. Absent extraordinary circumstances, no further extensions will be granted.

B. Review by the IC. The IC will review and assess the report of investigation, along with any exhibits and any response thereto, and discuss the proposed findings and conclusions. The Assisting IG may be asked to present the report at a meeting of the IC and answer questions about the investigation and the report.

C. IC determination.

i. Ultimate issues for the IC. The IC will determine whether (1) facts within the report of investigation are proven by a preponderance of the evidence and (2) those facts provide a reasonable basis to conclude that the Respondent engaged in particular wrongdoing. The IC may request the Assisting IG to perform additional investigative work and supplement the report of investigation if necessary to make its determination.

ii. Recommendations generally. The IC may make recommendations, including recommendations for disciplinary action.

iii. Recommendations involving an Acting IG. Whenever the IC makes findings of wrongdoing on the part of an Acting Inspector General, the IC's conclusions and recommendations may include a recommendation that the CIGIE Chairperson work with the appointing authority to ensure that the affected OIG has interim leadership legally empowered to act on the conclusions and recommendations, including, if necessary, designation of an interim IG.

iv. Determination memorialized. The IC's findings, conclusions, and recommendations will be set forth in writing. Dissenting findings, conclusions, and recommendations may be filed by any IC member.

11. Communication of IC Findings, Conclusions, and Recommendations

Within 30 days after completion of the investigation (to the maximum extent practicable), the IC will forward the report of investigation (and any exhibits) and the ICs findings, conclusions, and recommendations, as specified in section 10(C) of these Policies (collectively "IC Report"), in the following manner:

A. To the CIGIE Executive Chairperson, the CIGIE Chairperson, and the appointing authority (the President [for an IG or Designated Staff Member within an establishment] or the head of the designated federal entity [for an IG or Designated Staff Member within

a designated federal entity] for appropriate action). The Executive Chairperson of CIGIE will inform the IC of the final disposition of the matter, including any action taken by the appointing authority.

B. To the Respondent, with a copy to the affected IG if the Respondent is a Designated Staff Member.

C. To the Congressional committees of jurisdiction.

D. The IC, after consultation with the Assisting IG as appropriate, may make appropriate redactions pursuant to applicable law or regulation (e.g., the Privacy Act) and in accordance with section 13(B) of these Policies or to protect the identity of a complainant, referring source, or witness requesting confidentiality in accordance with section 14 of these Policies.

12. Notice of Closure

A. Closure. An IC matter not otherwise closed pursuant to these Policies is deemed closed upon the forwarding of the IC Report as specified in section 11 of these Policies. The IC, however, will be notified upon receipt of final disposition of the matter from the Executive Chairperson of CIGIE.

B. Notification of closure. Unless the matter was communicated anonymously, the IC Chairperson will notify the complainant when a matter is closed. The IC Chairperson will also notify any Respondent from whom the IC had requested a response or whose conduct was the subject of an investigation. All such notices will be subject to applicable laws and regulations regarding disclosure.

13. IC Records

A. Maintenance and Disposal of IC Records

i. Content of Records. All documents received or transmitted by the IC in fulfilling its responsibilities under the IG Act (including, but not limited to, written allegations against Covered Persons; IC correspondence; IC Investigation Working Papers; reports of investigation; reports of final actions taken with regard to proven allegations; and memoranda providing the final dispositions of allegations determined to be frivolous or outside the authority of the IC, or otherwise closed without further investigation) will be maintained as IC records and will be kept separately from other CIGIE records. The CIGIE Chairperson is the statutory custodian of all IC records pursuant to section 11(d)(13) of the IG Act.

ii. Criminal Investigative Files Not Included as IC Records. The IC records will not include any criminal investigative files or work product except for (1) the receipt of allegations of criminal conduct; (2) referral of a matter to the IC arising from a

criminal investigation; (3) referral of a matter back to the IC following consideration by PIN or another prosecutive authority; or (4) a summary report provided by PIN pursuant to section 6(C) of these Policies.

iii. Maintenance of records. The IC will maintain its records as required by law with appropriate security and access restrictions.

iv. Disposal of records. IC records will be disposed of in accordance with applicable record disposition programs.

B. Disclosure of IC Records

i. Privacy Act protection and restrictions on disclosure. IC records will be maintained in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a ("Privacy Act"). The records may be disclosed only in response to the written request of, or with the prior consent of, the individual to whom the record pertains under the conditions specifically set forth in the Privacy Act at 5 U.S.C. § 552a(b), applicable regulations, or as otherwise permitted or required by law.

ii. Access by individuals to their own records. An individual may request access to records pertaining to himself or herself by means of the procedures prescribed by the Privacy Act and its implementing regulations.

iii. Congressional disclosures and reports.

a. The IC Chairperson will provide IC Reports to Congressional committees of jurisdiction as specified in section 11(C) of these Policies.

b. Once an IC Report has been submitted to the Congressional committees of jurisdiction, subject to any other provision of law that would otherwise prohibit disclosure of such information, the IC Chairperson:

1. shall provide the IC Report to any Member of Congress upon request;

2. shall provide more detailed information about specific allegations included in an IC Report at the request of any Member of Congress;

3. may provide the IC Report to any Member of Congress in the absence of a request.

c. The IC shall prepare an annual report regarding the IC's activities for transmission to the Congress by the CIGIE Chairperson by December 31 of each year. The annual report shall include the information specified in section 11(d)(9) of the IG Act. Upon the request of any Member of Congress, subject to any other provision of law that would otherwise prohibit disclosure, the IC Chairperson

shall provide more detailed information about specific allegations referenced in the annual report.

d. CIGIE will refer to the IC Chairperson any Congressional requests for information pursuant to sections 11(d)(8), (9) or (10) of the IG Act or otherwise relating to the activities of the IC.

e. The IC Chairperson will promptly notify the IC members and the CIGIE Chairperson of any Congressional requests for information and will prepare a response, with copies to the IC members and the CIGIE Chairperson.

f. All Congressional requests for information submitted to the IC falling within the scope of and/or pursuant to section 552a(b)(9) of the Privacy Act will be referred to the IC Chairperson, with notice to the IC members and the CIGIE Chairperson. The IC Chairperson will be responsible for responding to such requests. The IC Chairperson will provide a copy of such response to the IC members. The IC Chairperson will also provide a copy of such response to the CIGIE Chairperson if the CIGIE Chairperson has need for the response in the performance of his or her CIGIE duties.

g. Congressional requests that do not fall within the provisions of the IG Act or the scope of section 552a(b)(9) of the Privacy Act will be handled in accordance with section 13(B)(iv).

h. The IC will not provide information while an allegation or investigation is pending, except as required by sections 11(d)(8), (9), and (10) of the IG Act or otherwise required by law.

iv. Disclosures pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

a. The following requests for IC records will be handled pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and applicable regulations implementing FOIA:

(1) requests for access by individuals to their own records (in addition to the procedures described at section 13(B)(ii));
(2) Congressional requests that do not fall within the provisions of the IG Act or the scope of section 552a(b)(9) of the Privacy Act, as described in section 13(B)(iii);
(3) media requests for records; and
(4) other third party requests for records.

b. When CIGIE receives a request for IC records that falls within the four categories listed above, the Working Group will collect all responsive IC records, wherever they may be found. The Working Group will coordinate the response to any such

request with CIGIE's General Counsel or his or her designee prior to the finalization of the response.

C. Other external inquiries relating to the Integrity Committee. Upon receipt of any other external inquiries relating to the IC, all IC members will be notified, and the response to the request will be coordinated by the IC Chairperson.

14. Confidentiality

The IC attempts to protect the confidentiality of a person who makes an allegation of or provides information regarding wrongdoing concerning a Covered Person. The IC will not disclose the identity of such a person without his or her consent, unless the IC Chairperson determines such disclosure is unavoidable during the course of the IC processes or is required by law.

15. Amendments to the IC Policies and Procedures

The CIGIE Chairperson, the CIGIE Vice Chairperson, and any IC member may propose revisions or amendments to these Policies. The IC will consider the proposed revision or amendment following consultation with the CIGIE Chairperson. A majority of the IC members must approve any revision or amendment. Thereafter, the revision or amendment will be submitted to the CIGIE Chairperson who will provide a copy to the Congressional committees of jurisdiction.

16. No Right or Benefit

These Policies are not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, its agencies, its officers, or any person.

January 2018

Appendix A: Definitions

"Abuse of authority" means arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons. There is no de minimis standard for abuse of authority.

"Days" means calendar days, unless otherwise stated.

"Gross mismanagement" means action or inaction that creates a substantial risk of significant adverse impact on the OIG's ability to accomplish its mission. It does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing. There must be an element of willful misconduct or gross and wanton negligence.

"Gross waste of funds" means an expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government; it is more than a debatable expenditure.

January 2018

Appendix B: Section 11(d) of the Inspector General Act, as amended

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF OFFICE OF CHIEF INSPECTOR

Pub. L. 105–206, title I, §1103(c)(2), July 22, 1998, 112 Stat. 708, provided that: "Effective upon the transfer of functions under the amendment made by paragraph (1) [amending this section], the Office of Chief Inspector of the Internal Revenue Service is terminated."

RETENTION OF CERTAIN INTERNAL AUDIT PERSONNEL

Pub. L. 105–206, title I, §1103(c)(3), July 22, 1998, 112 Stat. 708, provided that: "In making the transfer under the amendment made by paragraph (1) [amending this section], the Commissioner of Internal Revenue shall designate and retain an appropriate number (not in excess of 300) of internal audit full-time equivalent employee positions necessary for management relating to the Internal Revenue Service."

ADDITIONAL PERSONNEL TRANSFERS

Pub. L. 105–206, title I, §1103(c)(4), July 22, 1998, 112 Stat. 708, provided that: "Effective 180 days after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury shall transfer 21 full-time equivalent positions from the Office of the Inspector General of the Department of the Treasury to the Office of the Treasury Inspector General for Tax Administration."

CONTINUATION OF SERVICE OF CERTAIN INSPECTORS GENERAL

Pub. L. 100–504, title I, §102(e)(4), Oct. 18, 1988, 102 Stat. 2517, provided that: "Any individual who, on the date of enactment of this Act [Oct. 18, 1988], is serving as the Inspector General of the Department of Energy, the Department of Health and Human Services, or the Railroad Retirement Board, shall continue to serve in such position until such individual dies, resigns, or is removed from office in accordance with section 3(b) of the Inspector General Act of 1978 [section 3(b) of Pub. L. 95–452, set out in this Appendix]."

TRANSFER OF AUDIT PERSONNEL TO INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Pub. L. 97–252, title XI, §1117(e), Sept. 8, 1982, 96 Stat. 753, provided that: "In addition to the positions transferred to the Office of the Inspector General of the Department of Defense, pursuant to the amendments made by subsection (a) of this section [amending sections 2(1), 9(a)(1), and 11(1) of this Act], the Secretary of Defense shall transfer to the Office of Inspector General of the Department of Defense not less than one hundred additional audit positions. The Inspector General of the Department of Defense shall fill such positions with persons trained to perform contract audits."

§10. Omitted

CODIFICATION

Section, Pub. L. 95–452, §10, Oct. 12, 1978, 92 Stat. 1108, amended sections 5315 and 5316 of Title 5, Government Organization and Employees, and section 3522 of Title 42, The Public Health and Welfare, which amendments have been executed to text.

§11. Establishment of the Council of the Inspectors General on Integrity and Efficiency

(a) ESTABLISHMENT AND MISSION.—

(1) ESTABLISHMENT.—There is established as an independent entity within the executive branch the Council of the Inspectors General on Integrity and Efficiency (in this section referred to as the "Council").

(2) MISSION.—The mission of the Council shall be to—

(A) address integrity, economy, and effectiveness issues that transcend individual Government agencies; and

(B) increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of the following members:

(A) All Inspectors General whose offices are established under—

(i) section 2; or

(ii) section 8G.

(B) The Inspectors General of the Intelligence Community and the Central Intelligence Agency.

(C) The Controller of the Office of Federal Financial Management.

(D) A senior level official of the Federal Bureau of Investigation designated by the Director of the Federal Bureau of Investigation.

(E) The Director of the Office of Government Ethics.

(F) The Special Counsel of the Office of Special Counsel.

(G) The Deputy Director of the Office of Personnel Management.

(H) The Deputy Director for Management of the Office of Management and Budget.

(I) The Inspectors General of the Library of Congress, Capitol Police, Government Publishing Office, Government Accountability Office, and the Architect of the Capitol.

(2) CHAIRPERSON AND EXECUTIVE CHAIRPERSON.—

(A) EXECUTIVE CHAIRPERSON.—The Deputy Director for Management of the Office of Management and Budget shall be the Executive Chairperson of the Council.

(B) CHAIRPERSON.—The Council shall elect 1 of the Inspectors General referred to in paragraph (1)(A) or (B) to act as Chairperson of the Council. The term of office of the Chairperson shall be 2 years.

(3) FUNCTIONS OF CHAIRPERSON AND EXECUTIVE CHAIRPERSON.—

(A) EXECUTIVE CHAIRPERSON.—The Executive Chairperson shall—

(i) preside over meetings of the Council;

(ii) provide to the heads of agencies and entities represented on the Council summary reports of the activities of the Council; and

(iii) provide to the Council such information relating to the agencies and entities represented on the Council as assists the Council in performing its functions.

(B) CHAIRPERSON.—The Chairperson shall—

(i) convene meetings of the Council—

(I) at least 6 times each year;

(II) monthly to the extent possible; and

(III) more frequently at the discretion of the Chairperson;

(ii) carry out 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 paragraph (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 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, made available from the revolving fund established under subsection (c)(3)(B), or as otherwise provided by law, 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 an annual report on behalf of the Council on the activities of the Council to—

(I) the President;

(II) the appropriate committees of jurisdiction of the Senate and the House of Representatives;

(III) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(IV) the Committee on Oversight and Government Reform of the House of Representatives.

(c) FUNCTIONS AND DUTIES OF COUNCIL.—

(1) IN GENERAL.—The Council shall—

(A) continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, and abuse;

(B) develop plans for coordinated, Governmentwide activities that address these problems and promote economy and efficiency in Federal programs and operations, including interagency and interentity audit, investigation, inspection, and evaluation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual agency or entity;

(C) develop policies that will aid in the maintenance of a corps of well-trained and highly skilled Office of Inspector General personnel;

(D) maintain an Internet website and other electronic systems for the benefit of all Inspectors General, as the Council determines are necessary or desirable;

(E) maintain 1 or more academies as the Council considers desirable for the professional training of auditors, investigators, inspectors, evaluators, and other personnel of the various offices of Inspector General;

(F) submit recommendations of individuals to the appropriate appointing authority for any appointment to an office of Inspector General described under subsection (b)(1)(A) or (B);

(G) make such reports to Congress as the Chairperson determines are necessary or appropriate;

(H) except for matters coordinated among Inspectors General under section 3033 of title 50, United States Code,[1] receive, review, and mediate any disputes submitted in writing to the Council by an Office of Inspector General regarding an audit, investigation, inspection, evaluation, or project that involves the jurisdiction of more than one Office of Inspector General; and

(I) perform other duties within the authority and jurisdiction of the Council, as appropriate.

(2) ADHERENCE AND PARTICIPATION BY MEMBERS.—To the extent permitted under law, and to the extent not inconsistent with standards

[1] See References in Text note below.

established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions, each member of the Council, as appropriate, shall—

(A) adhere to professional standards developed by the Council; and

(B) participate in the plans, programs, and projects of the Council, except that in the case of a member described under subsection (b)(1)(I), the member shall participate only to the extent requested by the member and approved by the Executive Chairperson and Chairperson.

(3) ADDITIONAL ADMINISTRATIVE AUTHORITIES.—

(A) INTERAGENCY FUNDING.—Notwithstanding section 1532 of title 31, United States Code, or any other provision of law prohibiting the interagency funding of activities described under subclause (I), (II), or (III) of clause (i), in the performance of the responsibilities, authorities, and duties of the Council—

(i) the Executive Chairperson may authorize the use of interagency funding for—

(I) Governmentwide training of employees of the Offices of the Inspectors General;

(II) the functions of the Integrity Committee of the Council; and

(III) any other authorized purpose determined by the Council; and

(ii) upon the authorization of the Executive Chairperson, any Federal agency or designated Federal entity (as defined in section 8G(a)) which has a member on the Council shall fund or participate in the funding of such activities.

(B) REVOLVING FUND.—

(i) IN GENERAL.—The Council may—

(I) establish in the Treasury of the United States a revolving fund to be called the Inspectors General Council Fund; or

(II) enter into an arrangement with a department or agency to use an existing revolving fund.

(ii) AMOUNTS IN REVOLVING FUND.—

(I) IN GENERAL.—Amounts transferred to the Council under this subsection shall be deposited in the revolving fund described under clause (i)(I) or (II).

(II) TRAINING.—Any remaining unexpended balances appropriated for or otherwise available to the Inspectors General Criminal Investigator Academy and the Inspectors General Auditor Training Institute shall be transferred to the revolving fund described under clause (i)(I) or (II).

(iii) USE OF REVOLVING FUND.—

(I) IN GENERAL.—Except as provided under subclause (II), amounts in the revolving fund described under clause (i)(I) or (II) may be used to carry out the functions and duties of the Council under this subsection.

(II) TRAINING.—Amounts transferred into the revolving fund described under clause (i)(I) or (II) may be used for the purpose of maintaining any training academy as determined by the Council.

(iv) AVAILABILITY OF FUNDS.—Amounts in the revolving fund described under clause (i)(I) or (II) shall remain available to the Council without fiscal year limitation.

(C) SUPERSEDING PROVISIONS.—No provision of law enacted after the date of enactment of this subsection shall be construed to limit or supersede any authority under subparagraph (A) or (B), unless such provision makes specific reference to the authority in that paragraph.[2]

(4) EXISTING AUTHORITIES AND RESPONSIBILITIES.—The establishment and operation of the Council shall not affect—

(A) the role of the Department of Justice in law enforcement and litigation;

(B) the authority or responsibilities of any Government agency or entity; and

(C) the authority or responsibilities of individual members of the Council.

(d) INTEGRITY COMMITTEE.—

(1) ESTABLISHMENT.—The Council shall have an Integrity Committee, which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members of the various Offices of Inspector General described under paragraph (4)(C).

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Integrity Committee shall consist of the following members:

(i) The official of the Federal Bureau of Investigation serving on the Council.

(ii) Four Inspectors General described in subparagraph (A) or (B) of subsection (b)(1) appointed by the Chairperson of the Council, representing both establishments and designated Federal entities (as that term is defined in section 8G(a)).

(iii) The Director of the Office of Government Ethics or the designee of the Director.

(B) CHAIRPERSON.—

(i) IN GENERAL.—The Integrity Committee shall elect one of the Inspectors General referred to in subparagraph (A)(ii) to act as Chairperson of the Integrity Committee.

(ii) TERM.—The term of office of the Chairperson of the Integrity Committee shall be 2 years.

(3) LEGAL ADVISOR.—The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his designee, shall serve as a legal advisor to the Integrity Committee.

(4) REFERRAL OF ALLEGATIONS.—

(A) REQUIREMENT.—An Inspector General shall refer to the Integrity Committee any allegation of wrongdoing against a staff member of the office of that Inspector General, if—

[2] So in original. Probably should be "subparagraph."

(i) review of the substance of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and

(ii) the Inspector General determines that—

(I) an objective internal investigation of the allegation is not feasible; or

(II) an internal investigation of the allegation may appear not to be objective.

(B) DEFINITION.—In this paragraph the term ''staff member'' means any employee of an Office of Inspector General who—

(i) reports directly to an Inspector General; or

(ii) is designated by an Inspector General under subparagraph (C).

(C) DESIGNATION OF STAFF MEMBERS.—Each Inspector General shall annually submit to the Chairperson of the Integrity Committee a designation of positions whose holders are staff members for purposes of subparagraph (B).

(5) REVIEW OF ALLEGATIONS.—

(A) IN GENERAL.—Not later than 7 days after the date on which the Integrity Committee receives an allegation of wrongdoing against an Inspector General or against a staff member of an Office of Inspector General described under paragraph (4)(C), the allegation of wrongdoing shall be reviewed and referred to the Department of Justice or the Office of Special Counsel for investigation, or to the Integrity Committee for review, as appropriate, by—

(i) a representative of the Department of Justice, as designated by the Attorney General;

(ii) a representative of the Office of Special Counsel, as designated by the Special Counsel; and

(iii) a representative of the Integrity Committee, as designated by the Chairperson of the Integrity Committee.

(B) REFERRAL TO THE CHAIRPERSON.—

(i) IN GENERAL.—Except as provided in clause (ii), not later than 30 days after the date on which an allegation of wrongdoing is referred to the Integrity Committee under subparagraph (A), the Integrity Committee shall determine whether to refer the allegation of wrongdoing to the Chairperson of the Integrity Committee to initiate an investigation.

(ii) EXTENSION.—The 30-day period described in clause (i) may be extended for an additional period of 30 days if the Integrity Committee provides written notice to the congressional committees described in paragraph (8)(A)(iii) that includes a detailed, case-specific description of why the additional time is needed to evaluate the allegation of wrongdoing.

(6) AUTHORITY TO INVESTIGATE ALLEGATIONS.—

(A) REQUIREMENT.—The Chairperson of the Integrity Committee shall cause a thorough and timely investigation of each allegation referred under paragraph (5)(B) to be conducted in accordance with this paragraph.

(B) RESOURCES.—At the request of the Chairperson of the Integrity Committee, the head of each agency or entity represented on the Council—

(i) shall provide assistance necessary to the Integrity Committee; and

(ii) may detail employees from that agency or entity to the Integrity Committee, subject to the control and direction of the Chairperson, to conduct an investigation under this subsection.

(7) PROCEDURES FOR INVESTIGATIONS.—

(A) STANDARDS APPLICABLE.—Investigations initiated under this subsection shall be conducted in accordance with the most current Quality Standards for Investigations issued by the Council or by its predecessors (the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency).

(B) ADDITIONAL POLICIES AND PROCEDURES.—

(i) ESTABLISHMENT.—The Integrity Committee, in conjunction with the Chairperson of the Council, shall establish additional policies and procedures necessary to ensure fairness and consistency in—

(I) determining whether to initiate an investigation;

(II) conducting investigations;

(III) reporting the results of an investigation;

(IV) providing the person who is the subject of an investigation with an opportunity to respond to any Integrity Committee report;

(V) except as provided in clause (ii), ensuring, to the extent possible, that investigations are conducted by Offices of Inspector General of similar size;

(VI) creating a process for rotation of Inspectors General assigned to investigate allegations through the Integrity Committee; and

(VII) creating procedures to avoid conflicts of interest for Integrity Committee investigations.

(ii) EXCEPTION.—The requirement under clause (i)(V) shall not apply to any Office of Inspector General with less than 50 employees who are authorized to conduct audits or investigations.

(iii) SUBMISSION TO CONGRESS.—The Council shall submit a copy of the policies and procedures established under clause (i) to the congressional committees of jurisdiction.

(C) COMPLETION OF INVESTIGATION.—If an allegation of wrongdoing is referred to the Chairperson of the Integrity Committee under paragraph (5)(B), the Chairperson of the Integrity Committee—

(i) shall complete the investigation not later than 150 days after the date on which the Integrity Committee made the referral; and

(ii) if the investigation cannot be completed within the 150-day period described in clause (i), shall—

(I) promptly notify the congressional committees described in paragraph (8)(A)(iii); and

(II) brief the congressional committees described in paragraph (8)(A)(iii) every 30 days regarding the status of the investigation and the general reasons for delay until the investigation is complete.

(D) CONCURRENT INVESTIGATION.—If an allegation of wrongdoing against an Inspector General or a staff member of an Office of Inspector General described under paragraph (4)(C) is referred to the Department of Justice or the Office of Special Counsel under paragraph (5)(A), the Chairperson of the Integrity Committee may conduct any related investigation referred to the Chairperson under paragraph (5)(B) concurrently with the Department of Justice or the Office of Special Counsel, as applicable.

(E) REPORTS.—

(i) INTEGRITY COMMITTEE INVESTIGATIONS.—For each investigation of an allegation of wrongdoing referred to the Chairperson of the Integrity Committee under paragraph (5)(B), the Chairperson of the Integrity Committee shall submit to members of the Integrity Committee and to the Chairperson of the Council a report containing the results of the investigation.

(ii) OTHER INVESTIGATIONS.—For each allegation of wrongdoing referred to the Department of Justice or the Office of Special Counsel under paragraph (5)(A), the Attorney General or the Special Counsel, as applicable, shall submit to the Integrity Committee a report containing the results of the investigation.

(iii) AVAILABILITY TO CONGRESS.—

(I) IN GENERAL.—The congressional committees described in paragraph (8)(A)(iii) shall have access to any report authored by the Integrity Committee.

(II) MEMBERS OF CONGRESS.—Subject to any other provision of law that would otherwise prohibit disclosure of such information, the Integrity Committee may provide any report authored by the Integrity Committee to any Member of Congress.

(8) ASSESSMENT AND FINAL DISPOSITION.—

(A) IN GENERAL.—With respect to any report received under paragraph (7)(E), the Integrity Committee shall—

(i) assess the report;

(ii) forward the report, with the recommendations of the Integrity Committee, including those on disciplinary action, within 30 days (to the maximum extent practicable) after the completion of the investigation, to the Executive Chairperson of the Council and to the President (in the case of a report relating to an Inspector General of an establishment or any employee of that Inspector General) or the head of a designated Federal entity (in the case of a report relating to an Inspector General of such an entity or any employee of that Inspector General) for resolution; and[3]

(iii) submit the report, with the recommendations of the Integrity Committee, to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and other congressional committees of jurisdiction; and

(iv) following the submission of the report under clause (iii) and upon request by any Member of Congress, submit the report, with the recommendations of the Integrity Committee, to that Member.

(B) DISPOSITION.—The Executive Chairperson of the Council shall report to the Integrity Committee the final disposition of the matter, including what action was taken by the President or agency head.

(9) ANNUAL REPORT.—The Council shall submit to Congress and the President by December 31 of each year a report on the activities of the Integrity Committee during the preceding fiscal year, which shall include the following:

(A) The number of allegations received.

(B) The number of allegations referred to the Department of Justice or the Office of Special Counsel, including the number of allegations referred for criminal investigation.

(C) The number of allegations referred to the Chairperson of the Integrity Committee for investigation.

(D) The number of allegations closed without referral.

(E) The date each allegation was received and the date each allegation was finally disposed of.

(F) In the case of allegations referred to the Chairperson of the Integrity Committee, a summary of the status of the investigation of the allegations and, in the case of investigations completed during the preceding fiscal year, a summary of the findings of the investigations.

(G) Other matters that the Council considers appropriate.

(10) REQUESTS FOR MORE INFORMATION.—With respect to paragraphs (8) and (9), the Council shall provide more detailed information about specific allegations upon request from any Member of Congress.

(11) NO RIGHT OR BENEFIT.—This subsection is not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, its agencies, its officers, or any person.

(12) ALLEGATIONS OF WRONGDOING AGAINST SPECIAL COUNSEL OR DEPUTY SPECIAL COUNSEL.—

(A) SPECIAL COUNSEL DEFINED.—In this paragraph, the term ''Special Counsel'' means the Special Counsel appointed under section 1211(b) of title 5, United States Code.

(B) AUTHORITY OF INTEGRITY COMMITTEE.—

(i) IN GENERAL.—An allegation of wrongdoing against the Special Counsel or the Deputy Special Counsel may be received, reviewed, and referred for investigation to the same extent and in the same manner as in the case of an allegation against an Inspector General or against a staff member of an Office of Inspector General described under paragraph (4)(C), subject to

[3] So in original. The word ''and'' probably should not appear.

the requirement that the representative designated by the Special Counsel under paragraph (5)(A)(ii) shall recuse himself or herself from the consideration of any allegation brought under this paragraph.

(ii) COORDINATION WITH EXISTING PROVISIONS OF LAW.—This paragraph shall not eliminate access to the Merit Systems Protection Board for review under section 7701 of title 5, United States Code. To the extent that an allegation brought under this paragraph involves section 2302(b)(8) of such title, a failure to obtain corrective action within 120 days after the date on which the allegation is received by the Integrity Committee shall, for purposes of section 1221 of such title, be considered to satisfy section 1214(a)(3)(B) of such title.

(C) REGULATIONS.—The Integrity Committee may prescribe any rules or regulations necessary to carry out this paragraph, subject to such consultation or other requirements as may otherwise apply.

(13) COMMITTEE RECORDS.—The Chairperson of the Council shall maintain the records of the Integrity Committee.

(Pub. L. 95–452, §11, as added Pub. L. 110–409, §7(a), Oct. 14, 2008, 122 Stat. 4305; amended Pub. L. 113–235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 114–113, div. M, title III, §304, Dec. 18, 2015, 129 Stat. 2913; Pub. L. 114–317, §§3, 7(b)(1)(B), (d)(2)(G), Dec. 16, 2016, 130 Stat. 1596, 1605, 1606.)

REFERENCES IN TEXT

Section 3033 of title 50, United States Code, referred to in subsec. (c)(1)(H), was so in the original but probably should have been a reference to section 103H of the National Security Act of 1947, act July 26, 1947, ch. 343, which is classified to section 3033 of Title 50, War and National Defense.

The date of enactment of this subsection, referred to in subsec. (c)(3)(C), is the date of enactment of Pub. L. 110–409, which was approved Oct. 14, 2008.

PRIOR PROVISIONS

A prior section 11 of the Inspector General Act of 1978 was renumbered section 12.

AMENDMENTS

2016—Subsec. (b)(3)(B)(viii). Pub. L. 114–317, §3(1), amended cl. (viii) generally. Prior to amendment, cl. (viii) read as follows: ''prepare and transmit a report annually on behalf of the Council to the President on the activities of the Council.''

Subsec. (c)(1)(H), (I). Pub. L. 114–317, §3(2), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (c)(3)(A)(ii). Pub. L. 114–317, §7(b)(1)(B), substituted ''Federal agency or designated Federal entity (as defined in section 8G(a))'' for ''department, agency, or entity of the executive branch''.

Subsec. (d)(2). Pub. L. 114–317, §3(3)(A)(i)–(iii), designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A), (B), and (D) as cls. (i), (ii), and (iii), respectively, of subpar. (A) and realigned margins, and struck out subpar. (C) which read as follows: ''The Special Counsel of the Office of Special Counsel.''

Subsec. (d)(2)(A)(i). Pub. L. 114–317, §3(3)(A)(iv), struck out '', who shall serve as Chairperson of the Integrity Committee, and maintain the records of the Committee'' before period at end.

Subsec. (d)(2)(A)(iii). Pub. L. 114–317, §3(3)(A)(v), inserted ''or the designee of the Director'' before period at end.

Subsec. (d)(2)(B). Pub. L. 114–317, §3(3)(A)(vi), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Subsec. (d)(5). Pub. L. 114–317, §3(3)(B), amended par. (5) generally. Prior to amendment, text read as follows: ''The Integrity Committee shall—

''(A) review all allegations of wrongdoing the Integrity Committee receives against an Inspector General, or against a staff member of an Office of Inspector General described under paragraph (4)(C);

''(B) refer any allegation of wrongdoing to the agency of the executive branch with appropriate jurisdiction over the matter; and

''(C) refer to the Chairperson of the Integrity Committee any allegation of wrongdoing determined by the Integrity Committee under subparagraph (A) to be potentially meritorious that cannot be referred to an agency under subparagraph (B).''

Subsec. (d)(6)(A). Pub. L. 114–317, §3(3)(C)(i), substituted ''paragraph (5)(B)'' for ''paragraph (5)(C)''.

Subsec. (d)(6)(B)(i). Pub. L. 114–317, §3(3)(C)(ii), substituted ''shall provide assistance'' for ''may provide resources''.

Subsec. (d)(7)(B)(i)(V) to (VII). Pub. L. 114–317, §3(3)(D)(i)(I), added subcls. (V) to (VII).

Subsec. (d)(7)(B)(ii), (iii). Pub. L. 114–317, §3(3)(D)(i)(II), (III), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(7)(C) to (E). Pub. L. 114–317, §3(3)(D)(ii), (iii), added subpars. (C) to (E) and struck out former subpar. (C) which related to Integrity Committee and agency reports on investigations of allegations of wrongdoing.

Subsec. (d)(8)(A). Pub. L. 114–317, §7(d)(2)(G), substituted ''paragraph (7)(E)'' for ''paragraph (7)(C)'' in introductory provisions.

Subsec. (d)(8)(A)(iii), (iv). Pub. L. 114–317, §3(3)(E), added cls. (iii) and (iv) and struck out former cl. (iii) which read as follows: ''submit to the Committee on Government Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and other congressional committees of jurisdiction an executive summary of such report and recommendations within 30 days after the submission of such report to the Executive Chairperson under clause (ii).''

Subsec. (d)(9)(B). Pub. L. 114–317, §3(3)(F), substituted ''the Department of Justice or the Office of Special Counsel'' for ''other agencies''.

Subsec. (d)(10). Pub. L. 114–317, §3(3)(G), substituted ''any Member of Congress.'' for ''any of the following:

''(A) The chairperson or ranking member of the Committee on Homeland Security and Governmental Affairs of the Senate.

''(B) The chairperson or ranking member of the Committee on Oversight and Government Reform of the House of Representatives.

''(C) The chairperson or ranking member of the congressional committees of jurisdiction.''

Subsec. (d)(12), (13). Pub. L. 114–317, §3(3)(H), added pars. (12) and (13).

2015—Subsec. (b)(1)(B). Pub. L. 114–113 substituted ''the Intelligence Community'' for ''the Office of the Director of National Intelligence''.

CHANGE OF NAME

''Government Publishing Office'' substituted for ''Government Printing Office'' in subsec. (b)(1)(I) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by section 7(b)(1)(B) of Pub. L. 114–317 effective on the date that is 180 days after Dec. 16, 2016, see section 7(b)(2) of Pub. L. 114–317, set out as a note under section 8M of Pub. L. 95–452 in this Appendix.

EFFECTIVE DATE; EXISTING EXECUTIVE ORDERS

Pub. L. 110–409, §7(c), Oct. 14, 2008, 122 Stat. 4313, as amended by Pub. L. 114–317, §7(d)(1), Dec. 16, 2016, 130 Stat. 1606, provided that:

"(1) COUNCIL.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Council of the Inspectors General on Integrity and Efficiency established under this section [enacting this section, renumbering former sections 11 and 12 of Pub. L. 95–452, set out in this Appendix, as 12 and 13, respectively, amending sections 2, 4, and 8G of Pub. L. 95–452, set out in this Appendix, and section 1105 of Title 31, Money and Finance, and enacting provisions set out as a note under section 1211 of Title 5, Government Organization and Employees] shall become effective and operational.

"(2) EXECUTIVE ORDERS.—Executive Order No. 12805, dated May 11, 1992 [formerly set out under section 501 of Title 31], and Executive Order No. 12993 [formerly set out under section 3 of Pub. L. 95–452 in this Appendix], dated March 21, 1996 (as in effect before the date of the enactment of this Act [Oct. 14, 2008]) shall have no force or effect on and after the earlier of—

"(A) the date on which the Council of the Inspectors General on Integrity and Efficiency becomes effective and operational as determined by the Executive Chairperson of the Council; or

"(B) the last day of the 180-day period beginning on the date of enactment of this Act."

ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM

Pub. L. 111–203, title IX, § 989E, July 21, 2010, 124 Stat. 1946, provided that:

"(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

"(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the 'Council of Inspectors General') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

"(A) The Board of Governors of the Federal Reserve System.

"(B) The Commodity Futures Trading Commission.

"(C) The Department of Housing and Urban Development.

"(D) The Department of the Treasury.

"(E) The Federal Deposit Insurance Corporation.

"(F) The Federal Housing Finance Agency.

"(G) The National Credit Union Administration.

"(H) The Securities and Exchange Commission.

"(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

"(2) DUTIES.—

"(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

"(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

"(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

"(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

"(3) WORKING GROUPS TO EVALUATE COUNCIL.—

"(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

"(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

"(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

"(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year."

SPECIAL INSPECTORS GENERAL FOR IRAQ AND AFGHANISTAN RECONSTRUCTION

Pub. L. 111–15, § 7, Apr. 24, 2009, 123 Stat. 1605, provided that: "The Special Inspector General for Iraq Reconstruction and the Special Inspector General for Afghanistan Reconstruction shall be a [sic] members of the Council of the Inspectors General on Integrity and Efficiency established under section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) until the date of termination of the Office of the Special Inspector General for Iraq Reconstruction and the Office of the Special Inspector General for Afghanistan Reconstruction, respectively."

§ 12. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, Homeland Security, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs; the Administrator of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; the chief executive officer of the Resolution Trust Corporation; the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; the Director of the Federal Housing Finance Agency; the Board of Directors of the Tennessee Valley Authority; the President of the Export-Import Bank; the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Director of the National Security Agency; or the Director of the National Reconnaissance Office; as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense,

Integrity Committee

Frequently Asked Questions &
Guidance for Communicating with the Integrity Committee (IC)

In light of the coronavirus (COVID-19) outbreak, it is strongly recommended that all complaints and communications to the Integrity Committee be submitted by email at Integrity-Complaint@cigie.gov. Please note that any complaints or communications sent to the Integrity Committee through U.S. mail or facsimile will be subjected to significant processing delays.

PLEASE DO NOT CONTACT ANY MEMBER OF THE IC DIRECTLY. The sections below explain how to submit a complaint, document, response, question, comment or other information to the IC.

As shown in the Generic Process Flowchart, the Inspector General Act of 1978, as amended, (IG Act) contemplates that it may take up to 217 days from receipt of an allegation through completion of an investigation and final notifications. The actual process and timeframe varies depending on the complexity and nature of the complaint and the procedural stage at which it is resolved. The IC is required to notify Congress if the statutory timeframes are exceeded.

Complainant (Person Making the Allegation)

Does my complaint fall within the IC's authority?
For the IC to act on a complaint, the allegations must both (1) concern a person subject to the IC's authority; and (2) describe misconduct as defined by the IC.

Who is subject to the IC's authority?
- Inspectors General (IGs);
- Designated staff members of an Office of Inspector General (OIG); and
- The Special Counsel and Deputy Special Counsel of the U.S. Office of Special Counsel

We refer to these individuals collectively as "Covered Persons."

Note 1: Individuals who are "acting" in the positions above are also subject to the IC's authority.

Note 2: The IC may act on a complaint of wrongdoing against an individual who is no longer a Covered Person if the alleged wrongdoing occurred while the individual was a Covered Person.

Does my complaint describe misconduct as defined by the IC?
The IC takes action on allegations of wrongdoing that involve:
- Abuse of authority in the exercise of official duties or while acting under color of office;
- Substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or
- Conduct that undermines the independence or integrity reasonably expected of a Covered Person.

If your allegation does not involve misconduct by a Covered Person, the IC cannot take action on it; please consider submitting your allegation to the appropriate agency of jurisdiction.

Will my identity be protected?
You have the option to submit allegations anonymously. However, the IC ***strongly encourages you to provide your identity and contact information.*** Doing so allows us to notify you of the status of your complaint and enables us to ask you for additional information that may be needed for your complaint to be thoroughly reviewed in a timely manner.

The IC takes appropriate measures to protect the confidentiality of a person who makes an allegation of, or provides information regarding, wrongdoing concerning a Covered Person. The IC will not disclose the identity of such a person without his or her consent, unless the IC Chairperson determines such disclosure is unavoidable during the IC process or is required by law.

What information should I include in my complaint?
An effective complaint includes a clear, direct, and well-organized statement of specific factual allegations. Vague or conclusory statements are generally not helpful to the IC nor sufficient to warrant an investigation.

To enable the members of the IC to thoroughly consider your complaint, we recommend that it include all the following elements.

1. An introduction that contains all the following information.
   - The full name and job title of the individual against whom you are making the complaint (*e.g.*, John Doe, Inspector General of X Department; Jane Smith, Acting Deputy IG of Y Agency).
   - The name of the Federal agency or department involved and the location where the wrongdoing occurred.
   - If applicable, your job title and role in the Federal agency or department.
   - The date(s) or the range of dates on which the wrongdoing occurred.

2. A brief summary of the wrongdoing alleged.

For example:
   - Acting Deputy Inspector General Jane Smith violated her independence when she removed from an audit report information that reflected poorly on the Agency Head. Jane Smith removed the information from the report because she had a pending application for appointment as the permanent IG and she believed removing the information would improve her chances of beings selected by the Agency Head. This occurred repeatedly between March 1 and April 30, 2017, although auditors objected to the edits. Jane Smith was appointed IG on June 15, 2017.
   - Between February 1 and July 31, 2018, John Doe, Inspector General of X Department, ordered more than $20,000 of supplies and equipment that he has taken home for use in his spouse's business.

3. A factual and chronological description of key events relevant to the wrongdoing that includes all the following information.
   - State the specific actions taken by the Covered Person that were misconduct and your basis for believing that they occurred.
   - If available, provide any document in your possession that directly supports your factual allegations. *See the section below for how to submit documents.*

- Provide the date(s) or the range of dates on which the wrongdoing occurred.
- If applicable, provide the names and positions of other persons who have direct knowledge of the alleged wrongdoing.

4. The names of all other Federal agencies to whom you reported the allegations and the current status of those complaints, if available (e.g., Office of Inspector General, Office of Special Counsel, Equal Employment Opportunity Commission, Office of Government Ethics, Merit Systems Protection Board, Department of Justice/Federal Bureau of Investigation).

How do I submit my complaint and supporting documents?
DO NOT CONTACT ANY MEMBER OF THE IC DIRECTLY.

Please send your complaint and supporting documents to Integrity-Complaint@cigie.gov. Supporting documents include records of any kind that directly support your complaint.

- If referencing a publicly available law, rule, policy or procedure, please provide the link to the public document, rather than submitting a copy.
- Please limit email attachments to 50 MB.
  Note: When using a document scanner, please use the option to scan as "text" versus "picture". The "text" option will improve the quality of the scan and significantly reduce the size of the attachment.
- While not preferred, the IC does accept complaints and supporting documents by mail, courier and fax. Please contact us by email to coordinate a fax transmission.

Mailing Address
Attn: Integrity Committee
CIGIE
1717 H St, NW
Suite 825
Washington, DC 20006

What correspondence and notifications should I expect from the IC?
The IC generally communicates by written correspondence, including email. As the complainant, you may receive some of the following communications from the IC.

- Confirmation that your complaint was received.
- A request for additional information needed by the IC to thoroughly review your complaint.
- Notification that your complaint was referred to another agency for appropriate action.
- Notification of the final disposition of your complaint.

If the IC determines to investigate one or more allegations in your complaint, you may be contacted directly by an IC investigator for an interview or to provide additional information.

Note: The IC does not provide a complainant any other information regarding the status of a pending complaint and does not publicly confirm or otherwise discuss any complaints received. If you have not received a notification of referral or final disposition, your complaint is likely still under review.

Will the IC investigate my complaint?
Please see "What information should I include in my complaint?" for guidance on submitting an effective complaint.

The IC takes seriously the responsibility of the IG community to hold one another accountable for upholding high standards and considers carefully each allegation that it receives. Where relevant facts are in dispute and raise substantial questions of wrongdoing that meet the IC's threshold standard, the IC undertakes an investigation, even when it is costly and burdensome to do so. *See "Threshold standard" in the* IC Policies and Procedures.

When a complaint is not investigated, the IC will still act, if appropriate, to ensure the complaint is addressed by referring it to another agency of jurisdiction or suggesting another avenue to resolve it.

Can the IC take disciplinary action against Covered Persons or provide a remedy to complainants who have been wronged?
The IC does not have the authority to take disciplinary action against an individual nor the authority to reinstate or otherwise provide redress to an adversely affected complainant.

Responsibility and authority to act upon an IC recommendation belong to the appointing authority (e.g., the President or head of agency) for the Covered Person. The appointing authority may decide whether to take disciplinary action against a Covered Person and may consider the IC's findings and conclusions in connection with deciding whether to take action in favor of a complainant.

The authority to assist a complainant belongs to their agency of employment or other agency of jurisdiction (e.g., Equal Employment Opportunity Commission, Office of Special Counsel, Merit System Protection Board, Occupational Safety and Health Administration). It is the responsibility of a complainant who has been wronged to seek a remedy from their agency or other agency of jurisdiction.

Covered Person (Subject of the Allegation)

What should I do when contacted by the IC for a response to allegations of wrongdoing?
If you are the Subject an allegation under review by the IC, then you may receive a written request, sent to your official email address, that you respond to specific allegations and answer the IC's questions. That response is due within 20 calendar-days, absent an extension granted by the IC for good cause shown.

This response is your opportunity to fully refute the allegations so that there is no need to investigate; you can attempt to show that no reasonable person, after reading the complaint and your response, would conclude that further factual development would demonstrate that you committed misconduct.

It is in your best interest to provide a complete and thorough written narrative response to each allegation with supporting documentation. A general denial, without more, is ordinarily not a sufficient response. Insufficient responses are likely to result in requests for additional information or referral of the case for investigation.

The following guidelines are provided to inform your response preparation.

In general, a sufficient response:

- thoroughly addresses and refutes each allegation in detail,
- explains your personal role, knowledge or participation in the underlying events,
- includes a timeline of actions taken and explains the basis for each action, including any supporting statutory, regulatory, or policy provisions,
- includes any direct documentary evidence available to you that supports your rebuttal, and
- expresses your commitment to not seek out the source of the allegations nor take any retaliatory action if the source is identified.

Submitting a thorough response does not guarantee that the IC will reach a favorable determination; there are cases in which questions of fact may remain unresolved and require investigation. However, an effective submission may eliminate some of the allegations and narrow the issues in a manner that will substantially reduce the burden of any ultimate investigation.

What happens after I submit my response?
You will be notified that your response was received. Upon thorough consideration of the complaint, the response, and other associated information, the IC will make a determination on the next appropriate step in the review process. Please see section 7 of the IC Policies and Procedures for additional information.

What should I avoid as the Subject of an allegation of wrongdoing made to the IC?
To avoid the perception of a conflict of interest or interference with the IC's review, the Subject of an allegation **should not:**

- attempt to identify or retaliate against complainants or other individuals that provide information to the IC, which includes contacting individuals to discuss the information they provided to the IC,
- take any action that may be perceived as tampering with evidence or influencing witnesses,
- attempt to deny or otherwise limit access to witnesses and documents identified by the IC as necessary to complete its review, or
- communicate directly with any member of the IC regarding the allegations.

Please be advised that seeking assistance from fact-witnesses in your response to the IC, or during an IC investigation, may raise questions about the intent or effect of such contacts, which may complicate any investigation and lead to expansion of allegations.

When possible, you should recuse from any OIG decision-making concerning IC requests for witness interviews and document production. If applicable, please provide documentation of recusals, as well as copies of any associated delegations of authority to the IC.

Can I communicate with the IC through my personal attorney?
Yes. If you retain the services of a personal attorney, please provide the contact information to the IC as soon as practical after receiving a request for response or notification of investigation. Please be advised that attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC matter.

Will I have the opportunity to review the IC's findings and conclusions prior to a final determination?
Yes. The IC provides an opportunity for Subjects to review and comment on the draft report of investigation, as well as the report exhibits. The draft report of investigation and exhibits will be redacted as appropriate to protect the privacy of third-party participants prior to review by the Subject. Please be advised that, absent approval by the IC Chairperson for good cause, review of the exhibits must take place at the CIGIE office in Washington, D.C., or the FBI Headquarters building for investigations involving classified information.

If you choose to submit comments for IC consideration, your comments will be provided to the IC investigators for incorporation, as appropriate, into the final report of investigation. The IC will consider your comments, along with the final report of investigation, prior to making its final determination.

Can the IC take disciplinary action against me for substantiated wrongdoing?
The IC does not have the authority to take disciplinary action against an individual. Responsibility and authority to act upon an IC recommendation belongs to the Covered Person's appointing authority (e.g., the President or head of agency). A failure to cooperate, lack of candor or interference with an investigation may result in additional findings of wrongdoing and may affect the IC's recommendations.

How do I submit documents and information to the IC?
You may submit documents, requests and comments as a reply to the email that transmitted the IC letter to you. If you prefer to correspond by mail, please notify the IC via email prior to mailing your package to the address below.

Mailing Address
Attn: Integrity Committee
CIGIE
1717 H St, NW
Suite 825
Washington, DC 20006

Assisting Office of Inspector General (Organization conducting an IC investigation)

Under what authority does the Assisting Office of Inspector General (OIG) act?
Pursuant to sections 11(b)(3)(B)(vi) and 11(d)(6)(B) of the Inspector General Act of 1978 (IG Act), as amended, when so authorized by the IC Chairperson, CIGIE will engage an Assisting OIG to investigate the allegations referred by the IC. In acting for the IC, the Assisting OIG may exercise the full statutory authority of an IG to investigate matters for the IC, including, but not limited to, compelling subject OIG document production, personnel interviews and, if necessary, issue subpoenas.

Who determines the scope of an IC investigation?
The IC Chairperson provides the Assisting OIG with the case documents and a written description regarding the nature of the allegations the IC referred for investigation. The letter is incorporated into a Memorandum of Understanding between CIGIE and the Assisting OIG.

What standards are used by an Assisting OIG to investigate?
The Assisting OIG conducts the IC's investigation in accordance with the most current Quality Standards for Investigations issued by CIGIE. Prior to submission to the IC, the Deputy Inspector General, or appropriate senior-level employee, as designated by the IG for the Assisting OIG, will personally review the final draft Report of Investigation (ROI) to ensure that it meets the required standards. The Assisting OIG may use its standard format for any documents produced in support of the investigation, including the ROI, unless otherwise directed by the IC Chairperson.

What happens if additional allegations of misconduct are received during an IC investigation?
The Assisting OIG will promptly notify the IC Chairperson. If the allegations involve potential criminal misconduct, the IC will consult with the Public Integrity Section of the U.S. Department of Justice. If the allegations are non-criminal, the IC Chairperson, in consultation with the Assisting OIG, may expand the scope of the investigation.

How long do IC investigations take?
The Assisting OIG is expected to complete the investigation no later than 150 days after the date on which the IC referred the case to the IC Chairperson for investigation. In the event the Assisting OIG determines that additional time is needed to complete the investigation, the Assisting OIG will notify the IC Chairperson so that the IC Chairperson can notify the Congressional committees of jurisdiction of the delay. The IC is required to notify Congress if the 150-day statutory timeframe is exceeded.

Are IC investigations subject to peer review?
In the case of a peer review of the Assisting OIG conducted by another OIG pursuant to section 11(f)(7) of the IG Act, the Assisting OIG and the OIG conducting the peer review will determine whether the IC's Report of Investigation (ROI) will be reviewed as part of the peer review. The Assisting OIG will notify the IC Chairperson if the IC's ROI is to be included in the peer review sample.

Are IC investigations included in the Assisting OIG's semiannual report to Congress (SAR)?
The IC will report any IC investigations in its annual report as required by the IG Act. If the assisting OIG reports on an IC investigation, then the narrative summary should state only that the OIG "conducted an investigation relating to another OIG in support of CIGIE's Integrity Committee." The Assisting OIG may not include any additional information regarding the investigation in the SAR without IC consent.

An investigation conducted on behalf of the IC should be included in the statistics reported by the Assisting OIG in its SAR.

Who funds an IC investigation?
In general, CIGIE reimburses the Assisting OIG for the actual costs associated with the investigative support services, including hourly labor costs and other associated costs.

Integrity Committee Reports and Recommendations

How does the IC document its findings, conclusions and recommendations?
Upon completion of an investigation, the Assisting OIG prepares a written investigation report of its findings, with supporting documentation (ROI), and submits it to the IC. Upon consideration of the ROI and any submissions by the Subject, the IC will determine whether the facts within the ROI are proven by a preponderance of the evidence or if additional investigative work is needed, and whether the proven facts provide a reasonable basis to conclude the Subject engaged in wrongdoing.

The IC's determination is set forth in writing. If the IC finds that misconduct occurred, it may provide an assessment of the relative seriousness of the misconduct and make recommendations regarding appropriate disciplinary action. Please see the IC Policies and Procedures section 10(C) and 11 for additional information.

Who gets a copy of the IC's report?
The IC transmits its report and recommendation, redacted as appropriate, to the President or head of agency, whichever is the appointing authority; copies go to the Congressional committees of jurisdiction, the CIGIE Executive Chairperson, the CIGIE Chairperson, the Subject of the investigation and to the affected IG, if the Subject is a subordinate of the IG.

What recommendations may the IC make?
IC recommendations are intended to inform the appointing authority's assessment of the gravity of any substantiated misconduct and determination of disciplinary action. Depending on whether the allegations were substantiated by the investigation and the significance of the substantiated allegations, the IC's recommendation may range from no disciplinary action to disciplinary action up to and including removal.

Who acts on IC recommendations?
The responsibility and authority to act on the IC's recommendations belongs to the appointing authority for the Covered Person (e.g., the President or head of agency). Once final action is taken by the appointing authority, the CIGIE Executive Chairperson notifies the IC.

Can the IC take disciplinary action against Covered Persons or provide a remedy to complainants who have been wronged?
The IC does not have the authority to take disciplinary action against an individual nor the authority to reinstate or otherwise provide redress to an adversely affected complainant.

Responsibility and authority to act upon an IC recommendation belongs to the appointing authority (e.g., the President or head of agency) for the Covered Person. The appointing authority may decide whether to take disciplinary action against a Covered Person and may consider the IC's findings and conclusions in connection with deciding whether to take action in favor of a complainant.

The authority to assist a complainant belongs to their agency of employment or other agency of jurisdiction (e.g., Equal Employment Opportunity Commission, Office of Special Counsel, Merit System

Protection Board, Occupational Safety and Health Administration). It is the responsibility of a complainant who has been wronged to seek a remedy from their agency or other agency of jurisdiction.



OFFICE of INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

AMTRAK:
Top Management and Performance Challenges for Fiscal Year 2021

OIG-SP-2021-002 | October 23, 2020

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OFFICE of INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

Memorandum

To: Bill Flynn
President and Chief Executive Officer

From: Kevin H. Winters
Inspector General

Date: October 23, 2020

Subject: *Amtrak: Top Management and Performance Challenges for Fiscal Year 2021* (OIG-SP-2021-002)

Enclosed are our views of the top management and performance challenges facing Amtrak (the company). As in prior years, this report focuses on high-risk or high-impact activities and performance issues that affect programs, operations, and the achievement of strategic goals. In deciding whether to identify an issue as a top management and performance challenge, we considered its significance to the company's mission and strategic goals; its susceptibility to fraud, waste, and abuse; whether the underlying causes are systemic in nature; and the company's progress in addressing the challenge.

This year, the challenge of responding to the COVID-19 pandemic supersedes and permeates the company's ability to address all other challenges. Without exception, the assumptions underlying the company's strategic plan for 2019 through 2023 have changed dramatically since March 2020, when the United States began to feel the impact of the pandemic. In a matter of weeks, the company pivoted from being on track to post the best financial performance in its 49-year history to a 97 percent drop in ridership.[1]

Strategic planning is challenging in the best of times, but adapting the company's strategic vision to this unforeseen global event is one of its greatest management challenges since its inception in 1971. By necessity, the company has made dramatic changes to certain services, train frequency, and its workforce as it navigates this uncertain operating environment. The company received an infusion of more than $1 billion in federal funds in fiscal year (FY) 2020 to maintain its operations and avoid

[1] *Statement of William Flynn, President and Chief Executive Officer, National Railroad Passenger Corporation, before the Senate Committee on Commerce, Science, and Transportation*, October 21, 2020.

layoffs and expects to need even more taxpayer help in FY 2021, despite planned service and workforce reductions.

Although the urgent pressures of this operating environment pose enormous challenges, they also present opportunities for the company to reimagine its future by taking a fresh, holistic view of its circumstances and the forces that affect it in both the short and long term. This includes opportunities to revisit its purpose and vision and improve upon longstanding challenges such as safety, financial management, governance, and efficient use of information technology.

In this unprecedented environment, the company's path forward will also require a continual reassessment of its fundamental business assumptions and, foremost, whether it will ever return to transporting more than 32 million passengers per year under its existing business model. Indeed, the pandemic has markedly changed how most entities conduct business, with virtual working environments improving daily. The success of these environments is already impacting the extent to which public- and private-sector organizations and businesses are returning to their pre-pandemic workplace settings. These changes will undoubtedly affect demand for the Acela, with its high-revenue business passengers, which accounted for just 29 percent of Northeast Corridor passengers but 48 percent of the Northeast Corridor passenger revenues.

The company will need to account for and adapt to these changes and develop a strategy to position itself to become a transportation mode of choice in what appears to be a rapidly evolving national economy. In revisiting its strategy, the company will need to remain cognizant that, although it is mandated to operate as a for-profit company that minimizes its reliance on federal subsidies, it often faces pressure from stakeholders to make decisions that may run counter to these requirements. Regardless of the strategy the company pursues, a key challenge will be the extent to which it can effectively partner with its stakeholders as it navigates through the pandemic and beyond.

Beyond adapting its strategy to the pandemic, the company continues to face other longstanding management challenges associated with operating a railroad. We identified the following major themes and issues that we encourage the Executive Leadership Team to consider:

- **Safety and Security:** Assessing New Risks and Addressing Longstanding Challenges

- **Financial Management and Stewardship:** Using Resources Wisely and Being Good Stewards of Federal Funds
- **Governance:** Institutionalizing More Effective Management, Accountability, and Data-driven Decision-making
- **Information Technology (IT):** Advancing the Company's Capabilities and Addressing Cybersecurity Risks

In commenting on a draft of this report, the company's President and Chief Executive Officer (CEO) generally agreed that the themes we highlighted constitute the key focus points for the company as it moves forward. The CEO expressed his belief that the company's Executive Leadership Team is well-positioned to address the strategic questions the pandemic poses and its broader societal impacts, including leveraging opportunities to redefine elements of the company's strategy within the context of its long-term plans. The CEO acknowledged that these uncertain times also provide an opportunity for Congress and the Administration to update or revise the goals, mission, policies, funding levels, and service mandates that govern the company's operations and investments. The company also provided technical comments, which we have incorporated as appropriate.

Safety and Security: Addressing New Risks and Long-Standing Challenges

As an essential provider of transportation, the company faces new and historic safety challenges as a result of the pandemic. At the same time, the inherent dangers of running a railroad remain. In several accident reports from 2015 through 2018, the National Transportation Safety Board cited the company's weak safety culture in detailing tragic and preventable fatalities and injuries. Since 2018, the company has shown improvement in a number of areas of safety. The company's executives, including the CEO, continue to reinforce the company's commitment to safety as the top priority and have taken affirmative steps, including hiring a new Chief Safety Officer and making this position report directly to the CEO and implementing its Safety Management System (SMS)[2] well in advance of the regulatory deadline. Nonetheless, accidents resulting in three employee fatalities in fiscal year 2020 indicate that the company has considerable work remaining.[3] Thus, the company's challenge will be to address emerging pandemic-related risks while continuing to make progress addressing longstanding safety issues.

KEY ISSUES

- *Reducing pandemic-related risks to employees and passengers*
- *Addressing Positive Train Control risks*
- *Vesting all employees in the success of a Safety Management System*
- *Ensuring that workforce policies adequately mitigate worker risks*
- *Protecting people, assets, and infrastructure*

- **Reducing pandemic-related risks to employees and passengers.** Underlying all the company's safety efforts is the profound and ubiquitous impact of the pandemic. As passenger traffic begins to return, the company is making dramatic changes to nearly every aspect of its operations—from customer interactions to car cleaning and food service. Ensuring protections against the spread of COVID-19 is paramount, unrelenting, costly, and complicated. In some cases, this entails changes to existing ways of doing business, including how passengers queue and board trains, as well as a greater emphasis on touchless ticket sales and fare

[2] An SMS includes policies, objectives, plans, procedures, organization, responsibilities, and other measures to manage safety elements in the workplace.
[3] Two were on-duty employees, and the third was an off-duty employee struck by a company train.

collection. The company is also limiting capacity on trains and requiring passengers to wear facial coverings. Until a vaccine or cure mitigates the threat of COVID-19, ensuring safety from the virus will continue to complicate all of the company's other safety initiatives and operations.

- **Addressing Positive Train Control risks.** The company identified Positive Train Control (PTC) as its key safety system for preventing train collisions and reports that it has completed system installation on tracks that it owns or controls prior to the federally mandated deadline of December 31, 2020. The company is working closely with the Federal Railroad Administration and its tenant and host railroads[4] to help ensure the company's systems will be able to effectively communicate—or be interoperable—with their systems and plans to complete the remaining activities necessary to be compliant by the deadline. Further, an ongoing challenge as the industry adjusts to full PTC implementation will be to ensure that systems remain interoperable and are reliable in delivering the safety benefits that PTC is intended to provide.

- **Vesting all employees in the success of a Safety Management System**. In the past, the company had limited success delivering sustained safety performance improvement and achieving its goal of being the country's safest railroad. To address this, in 2018, the company began implementing its SMS, in advance of the March 2021 regulatory requirement for such a program. The company has had difficulty sustaining earlier safety programs partly due to a weak safety culture, a lack of robust data, the absence of employee buy-in, and limited employee trust that the company would deal fairly with safety violations. To help correct these issues, in January 2020, the company established a new disciplinary policy based on its "Just Culture" principles to distinguish between willful and accidental safety violations. The company also took other positive steps, including developing new safety metrics and a continuous risk assessment process, although these are in their early stages. It is also planning to administer a safety survey to establish baseline data against which to measure SMS success. Nevertheless, to achieve its SMS goals, the company must overcome longstanding employee perceptions that management prioritizes keeping trains running on time over safety. Doing so will take a years-long commitment to

[4] Tenant railroads include commuter railroads that operate trains over Amtrak-owned track; host railroads include freight and other railroads that own tracks that Amtrak operates over as a tenant.

promoting and enforcing safety to ensure that all employees—from executives to frontline workers—are fully committed to the SMS ethos.

- **Ensuring that workforce policies adequately mitigate worker risks.** The company moved swiftly to respond to gaps we identified in its program to prevent and detect drug and alcohol violations,[5] including improving random drug testing, identifying a list of restricted medications, implementing a "zero tolerance" policy for violations, and improving supervisor training on how to detect and address potential risks. The company could do more to mitigate safety risks, however, by expanding reporting requirements for employees who are arrested or charged with all drug- or alcohol-related offenses. Although the company requires most employees to report all arrests for drug or alcohol offenses to the company immediately, conductors and engineers do not have to report all drug- or alcohol-related arrests. Specifically, the company requires conductors and engineers to report any conviction of—or completed state action to cancel, revoke, suspend, or deny a driver's license for—operating a vehicle while under the influence or impaired by alcohol or a controlled substance.[6] As we detail in our Semiannual Report to Congress for the six months ending March 31, 2020, however, the company does not require conductors and engineers to report other alcohol-related arrests, such as public intoxication, as it requires for other employees.[7] As a result, these employees may continue to perform jobs that directly affect passenger safety without the company's knowledge.

- **Protecting people, assets, and infrastructure.** Ensuring the physical security of the company's stations and trains is another challenge without a simple solution. The company has begun to remediate numerous physical security weaknesses we identified at stations in Philadelphia and Washington.[8] It also announced the suspension of its Amtrak Express package shipping service, effective

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[5] *Safety and Security: Opportunities to Improve the Effectiveness of Controls for Detecting Drug- and Alcohol-Related Issues of Employees in Safety-Sensitive Positions* (OIG-A-2019-005), March 13, 2019.
[6] This includes any type of temporary or permanent denial to hold a driver's license when an individual is found to have either refused an alcohol or drug test, or to be under the influence or impaired when operating a vehicle.
[7] *Semiannual Report to Congress #61 (*October 1, 2019, to March 31, 2020*)*; May 27, 2020.
[8] *Safety and Security: Physical Security Vulnerabilities at Washington Union Station and Ivy City Yard* (OIG-A-2019-009), July 22, 2019; and *Safety and Security: Longstanding Physical Security Vulnerabilities in Philadelphia Pose Risks* (OIG-A-2018-007), April 24, 2018.

October 1, 2020, in part after we identified security vulnerabilities.[9] The company still faces safety and security issues at its stations, however, and needs to determine from a strategic level how to best utilize its police force to protect the company against risks to its security, operations, finances, and brand, and how it can most effectively convey to passengers that train travel is, indeed, safe. [10]

[9] *Safety and Security: Addressing Security Weaknesses and Operational Impacts of Amtrak Express is Critical to the Program's Future* (OIG-A-2020-005), January 22, 2020.
[10] *Safety and Security: Management of the Police Department Has Recently Improved, but Foundational Decisions Are Needed on its Role and Priorities* (OIG-A-2020-012), July 1, 2020.

Financial Management: Using Resources Wisely and Being Good Stewards of Federal Funds

In February 2020, the company was on track to have its first break-even year in its history. The company's earnings were $18.5 million higher than projected, and ridership was up more than 4.4 percent on the company's most profitable Northeast Corridor services.

KEY ISSUES

- *Being good stewards of federal funds*
- *Preserving resources for long-term infrastructure and equipment needs*
- *Making labor a vested partner in the company's future financial success*
- *Capitalizing on cost-saving opportunities*

In spring 2020, however, when the pandemic took hold, the company's financial picture shifted dramatically. In a matter of weeks, ridership dropped by 97 percent, and with the loss of core passenger revenues, the company found itself without sufficient funds to cover basic expenses like salaries and wages, train operations, and fuel. The company took some self-help actions, such as temporarily cutting management pay and benefits, reducing train service, and delaying capital projects, but it also sought help from Congress in the form of $1.018 billion in emergency aid under the CARES Act.[11] With a grim revenue outlook for 2021, the company has made clear that, even with planned furloughs and continued service reductions, it will likely need federal funding in FY 2021 and possibly beyond that far exceeds its normal appropriations.

For many years, the company's Office of Finance has worked diligently to improve its financial statements and eliminate all material weaknesses and significant deficiencies—accomplishing this in 2019. Accordingly, despite the dramatic financial downturn as a result of the pandemic, the company is well positioned to effectively manage its accounting of financial resources, but it faces significant challenges in managing the resources themselves.

- **Being good stewards of federal funds**. As the company embarks on a new plan for the future, it is making difficult business decisions that will affect its employees and the communities it serves. These decisions, however, may not align with Congress's views of the company's priorities—particularly those regarding service

[11] Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, div. B, title XII, 134 Stat. 281 (2020).

cuts or station staffing. To address this challenge, company executives will need to be transparent about the scope and timing of their plans and how they will affect stakeholders. They will also need to provide compelling, evidence-based business cases supporting these decisions. Further, as with any taxpayer funding, the company will need to continue to account for funds responsibly and transparently, including clearly distinguishing between its own revenues and funds that Congress provides through annual grants and special appropriations. In an August 2020 report, we commended the company's efforts to be transparent in how it is spending CARES Act funds.[12] Although the CARES Act does not require detailed reporting, the company set out to demonstrate it is being a good steward of taxpayer dollars by separately tracking and reporting on spending in specific categories like cleaning supplies and employee leave for COVID-related illnesses.

- **Preserving resources for long-term infrastructure and equipment needs.** The company has $3.1 billion in available cash and has made the strategic decision to preserve this cash to fund major equipment and infrastructure investments rather than draw down the cash balance for operating expenses such as labor.[13] To preserve its cash in FY 2020, the company reduced service and delayed capital projects, but it also requested, and Congress provided, $1.018 billion in emergency funds in March 2020 through the CARES Act. These funds allowed the company to cover its operating expenses, and it is requesting an additional $4.9 billion for FY 2021 to support operations, support state partners, avoid employee furloughs, and maintain daily long distance service. The uncertainty about the timing, amount, and potential restrictions of any additional federal funding underscores the importance of the company carefully managing its own resources, including its cash reserves. As a result, the company may need to reevaluate the priority and timing of its capital plans to ensure that it is not committing to spending on projects that may outstrip its available cash.

- **Making labor a vested partner in the company's future financial success.** Company managers appreciated several of the company's unions stepping up to help address the financial crisis by agreeing to a six-month delay in implementing a contractual wage increase. The unions also worked with the company to reduce

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[12] *Governance: Observations of Amtrak's Use of CARES Act Funds* (OIG-MAR-2020-013), August 5, 2020.
[13] Approximately $713 million is restricted for particular uses by statute or contract, including $65 million for Americans with Disabilities Act compliance, $43 million for *Southwest Chief* improvements, and $150 million for safety technology improvements on certain state-supported routes.

service by agreeing to forego the usual system of "bids and bumps"[14] to more efficiently staff the reduced service. Actions like these demonstrate the role that labor can play in collaborating with the company and helping navigate the difficult financial path ahead. The company's challenge will be to foster this spirit of cooperation as it prepares for the next round of formal labor negotiations in 2021. During these talks, the company has opportunities to renew its request for changes to work rules and to request other changes in the collective bargaining agreements that may help reduce costs and vulnerability to fraud.[15] The company also has opportunities outside the formal negotiations process to partner with its labor unions to achieve financial goals. For example, our report on preventive maintenance backshops highlighted the company's success in finding flexibilities under its existing labor contracts to allow electricians, machinists, and pipefitters maintaining the new Siemens locomotives to perform all maintenance responsibilities, thus reducing company costs.[16] Labor wages and benefits continue to be the company's highest costs. Engaging the unions to work cooperatively to help mitigate these costs could prove beneficial for all parties as the company and its workers navigate the rapidly changing operating environment.

- **Capitalizing on cost-saving opportunities.** The pandemic forced some temporary operational changes that the company could potentially leverage for future financial benefits. For example, the company has been trying unsuccessfully for years to move to cashless transactions and to streamline labor-intensive food service options on its long distance trains and has successfully done both as part of its efforts to slow the spread of COVID-19.[17] The company may be able to leverage its experience with these actions to make future adjustments to improve efficiency. Further, from March 15 to July 6, 2020, the company closed its corporate offices and required all

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[14] Displaced agreement workers with seniority have the right to bid on positions that are not eliminated and "bump" less senior employees in those positions.

[15] For examples of our work highlighting provisions in collective bargaining agreements that make the company vulnerable to fraud, see *Governance: Stronger Controls Would Help Identify Fraudulent Medical Claims Sooner and Limit Losses* (OIG-A-2020-003), December 10, 2019; *Theft of Company Property* (OIG-I-2017-520), May 17, 2017; *Employee Resigns After Engaging in Outside Employment While on FMLA Leave* (OIG-WS-2020-322), April 14, 2020; *Employee Terminated for Inappropriate Use of Leave* (OIG-WS-2020-318), March 16, 2020; and *Reservation Sales Agent Terminated for Submitting Falsified Medical Leave Documentation* (OIG-WS-2020-310), December 23, 2019.

[16] *Train Operations: Rightsizing Workforce and Using It More Flexibly Could Reduce Costs at Preventative Maintenance Facilities* (OIG-A-2019-012), September 3, 2019.

[17] *Food and Beverage Service: Potential Opportunities to Reduce Losses* (OIG-A-2014-001), October 31, 2013.

its managers to work from home. Executives acknowledged that once the company resolved some initial technology and communications glitches, the new arrangements had little impact on most business functions. This experience could help the company reduce its real property costs, potentially downsizing or even eliminating some high-cost leases.[18] The company's challenge will be addressing stakeholder concerns with these actions through the use of data-driven analyses and solid business cases.

[18] *Real Property: Improving Management Processes Could Reduce Costs and Generate Additional Revenues* (OIG-A-2019-006), March 29, 2019.

Governance: Institutionalizing More Effective Management Practices and Data-based Decision-making

Transforming the company in response to the pandemic will challenge the Executive Leadership Team members to account for their own individual areas of responsibility as well as collaborate effectively on decisions that benefit the company as a whole. At the same time, leadership must commit to addressing several longstanding, costly management challenges, given both the company's economic distress and its dependence on significant federal funding.

KEY ISSUES

- *Institutionalizing effective program and project management*
- *Using data to drive decisions*
- *Partnering with key stakeholders*
- *Creating a unified leadership team*
- *Aligning the workforce to future needs*

- **Institutionalizing effective program and project management.** The company has yet to demonstrate that it can consistently manage its key programs and projects to successfully execute them on time and within budget. Since May 2014, we have identified multiple program and project management deficiencies that led to significant cost overruns and delays.[19] In 2016, the company established an Enterprise Program Management Office (EPMO) to bring more discipline to managing its capital investments. It has not consistently sustained this function, however, and has moved it among various parts of the organization reporting to different executives. As a result, the company is not consistently implementing the standards and practices the EPMO developed, which has considerable consequences for project costs and timelines. The company has taken steps to address problems in two major projects—replacing the aging Acela fleet and constructing new facilities in the Moynihan Train Hall—including assigning experienced project management teams who adhere to company standards.[20] The company has also recently automated its annual capital planning process and plans to establish a new capital

[19] For a list of reports we issued from May 2014 through July 2020 identifying program and project management weaknesses, see *Governance: Early Planning and Oversight Deficiencies Led to Initial Program Failures and Continued Risks to the Moynihan Train Hall Program* (OIG-A-2020-014), August 17, 2020, Appendix B.
[20] *Governance: Early Planning and Oversight Deficiencies Led to Initial Program Failures and Continued Risks to the Moynihan Train Hall Program* (OIG-A-2020-014), August 17, 2020.

projects group charged with ensuring consistent delivery of major infrastructure programs. Going forward, the company needs to institutionalize effective program management practices enterprise-wide as it embarks on plans to spend billions of federal dollars to upgrade its trains, stations, and infrastructure. Or, given that construction and major infrastructure projects are not its core competencies, the company could consider selectively outsourcing these functions, similar to what the Law department does for major litigation services. The company reports that it is already taking steps in this direction by outsourcing some aspects of its efforts to redevelop its major stations.[21]

- **Using data to drive decisions.** Company decision-makers often do not have the data they need or the ability to effectively analyze them in order to drive good decisions and ensure adequate transparency with stakeholder—including Congress, the Federal Railroad Administration, and the states. In some cases, we found that managers relied on spreadsheets that individual employees maintain manually, which are prone to errors and inaccuracies and are not easily accessible.[22] In addition, automated data are routinely housed on separate systems that do not communicate with one another,[23] and when these data are available, the company often does not have the analytic capability to proactively use them for business purposes such as detecting suspicious patterns of possible fraud or maintaining its equipment.[24] Managers in the IT department agreed that this is an area for improvement and point to recent efforts to build data warehouses and hubs as well as add projects for FY 2021 to expand the company's use of data analytics for business decision making. Although the pandemic will make resources to address

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[21] The company has plans to redevelop and improve its busiest stations through public-private partnerships. This initiative focuses on facilities at or near New York Penn Station, Philadelphia's 30th Street Station, Baltimore Penn Station, Washington Union Station and Chicago Union Station.

[22] For examples, see *Asset Management: Improved Inventory Practices Could Help the Company Better Manage its Maintenance-of-Way and Rolling Stock Equipment* (OIG-A-2019-010), July 25, 2019; *Safety and Security: Addressing Security Weaknesses and Operational Impacts of Amtrak Express is Critical to the Program's Future* (OIG-A-2020-005), January 22, 2020; and *Real Property: Improving Management Processes Could Reduce Costs and Generate Additional Revenues* (OIG-A-2019-006), March 29, 2019.

[23] See, for example, *Real Property: Improving Management Processes Could Reduce Costs and Generate Additional Revenues* (OIG-A-2019-006), March 29, 2019.

[24] For examples, see *Governance: Stronger Controls Would Help Identify Fraudulent Medical Claims Sooner and Limit Losses* (OIG-A-2020-003), December 10, 2019; *Asset Management: More Effective Management of Vehicle Fleet Would Improve Safety and Reduce Costs* (OIG-A-2020-007), March 17, 2020; and *Governance: Improved Procurement Practices Could Help Ensure Lowest Prices for Materials and Maximum Savings* (OIG-A-2020-008), April 15, 2020.

these issues scarce, upgrading business functions to meet 21st century data analytics capabilities could help the company adjust to a future with a smaller workforce.

- **Partnering with key stakeholders.** The company's operations and finances depend, in considerable part, on cooperation, coordination, and support from external stakeholders: the states, commuter rail agencies, freight rail companies, the Federal Railroad Administration, and Congress. The company has had a mixed record managing these key partnerships, which affects issues as varied as on-time performance, planning for track outages to complete state-of-good repair projects, and reimbursable projects for states.[25] These stakeholders now also face their own substantial challenges because of the pandemic, especially the dramatic economic decline that will constrain their budgets as well. Company managers told us that they have actively worked to improve relationships with organizations representing state supported services, and will need to leverage these relationships going forward to address common challenges.[26] The company will need to revisit and likely renegotiate priorities, levels of financial support, and degrees of participation in capital projects with state partners, which figure prominently in the company's future recovery and sustainability.

- **Creating a unified leadership team.** Since 2016, the company has had four CEOs, each bringing unique experience, perspectives, and visions to the company. The Executive Leadership Team has also expanded and contracted during this time before reaching 10 members as of September 2020. Further, most members of the team are relatively new to the company, typically with less than three years of tenure. The company undoubtedly has benefitted from this infusion of executive talent, bringing fresh approaches and solutions that were successful from other industry experience. But these changes also come with some challenges.

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[25] *Train Operations: Better Estimates Needed of the Financial Impacts of Poor On-Time Performance* (OIG-A-2020-001), October 14, 2019; *Governance: Better Management of Reimbursable Projects Could Help the Company Consider Benefits and Recover Costs* (OIG-A-2020-002), October 23, 2019; and *Governance: More Effective Planning and Coordination of Track Outages Would Help Achieve A State of Good Repair* (OIG-A-2020-016), September 14, 2020.

[26] Two organizations represent the states with which the company shares costs. The State-Amtrak Intercity Passenger Rail Committee, which represents 20 agencies in 17 states, oversees implementation of a standard cost-sharing methodology for the state supported intercity passenger rail services across the country. The Northeast Corridor Commission promotes collaboration among the states, commuter agencies, the company, and U.S. Department of Transportation to modernize and improve the Northeast Corridor rail system.

Chief among them is to ensure that the members of the Executive Leadership Team maintain accountability for their respective areas of individual responsibility, but also function effectively as a team—particularly when making extraordinarily difficult company-wide decisions regarding the commitment of scarce resources.

- **Aligning the workforce to future needs**. As the company reimagines its future, it will need to make sure it aligns its workforce accordingly. In May 2020, the company offered a voluntary separation program, which attracted more than 500 management and agreement employees. In fall 2020, the company plans to further reduce its workforce through an estimated 2,000 layoffs and furloughs. Although these actions may better calibrate the number of employees with the company's operating plans, the challenge will be to monitor the impacts of such cuts on other company goals—such as reducing overtime, fostering diversity, and maintaining a highly skilled and knowledgeable workforce. For example, the company is preparing to spend billions of dollars upgrading its trains, stations, and infrastructure and will need highly skilled managers to successfully execute these programs. The EPMO has identified 117 ongoing projects that will lose project managers, however, as a result of the voluntary separations.[27] Part of the company's challenge will be securing the labor flexibilities it needs to obtain or relocate staff with special skills to fill gaps left after its workforce reduction efforts.

[27] The company notes that the Executive Leadership Team is redeploying project managers as needed to close any gaps left by these departing managers and is working on a contract to rapidly acquire additional skilled project management employees to close any further workforce capacity gaps.

Information Technology: Advancing the Company's Capabilities and Addressing Cybersecurity Risks

KEY ISSUES

- *Setting clear and affordable technology priorities*
- *Planning for technologies of the future*
- *Mitigating cybersecurity threats*

Information Technology (IT) is at the heart of 21st century business decisions and operations, and the company is no exception. The company is faced with updating several fundamental business systems while it anticipates adopting new technologies. Senior management across all departments will need to agree on the highest-priority IT requirements and determine how to implement them in a resource-constrained environment. As the company reimagines its future and looks in FY 2021 to execute its largest IT capital plan in recent years, it has an opportunity to consider how it can use technology to transform its business. Concurrently, the company will continue to face the relentless challenge of ensuring that its systems and data are protected from ever-changing cybersecurity threats.

- **Setting clear and affordable technology priorities.** At any given time, the company has more than 80 IT-related projects underway, ranging from a technology solution to help assign seats on the new Acela 21 trainsets to a timekeeping system for company employees. Limits on human capital capacity, as well as funding constraints, have hampered progress, however, and the company has had to reduce the scope of some projects or defer delivery dates, adding to a growing backlog. The company has been working to transform its IT department to help it deliver improved infrastructure and clear the backlog of large-scale IT projects supporting company departments. To do this effectively, company executives will need to compromise and collectively make difficult tradeoffs across departments about which projects are most critical to the enterprise as a whole. This will be particularly challenging given that a large number of other capital projects will also be competing with these IT projects for dwindling resources. To help address this situation, starting in FY 2021, the company is taking steps to streamline its capital governance process for considering IT projects in the context of all other major projects. In this constrained environment, the IT and operating departments will need to closely collaborate on each department's essential technology requirements.

- **Planning for technologies of the future.** As the pandemic drives the company to reimagine its future, it has the opportunity to concurrently ensure that it is anticipating and taking advantage of the latest technologies for its business processes. It can look, for example, at how freight railroads collect and integrate operational data in real time from signals and sensors as the trains move along their routes to run their trains safely and more efficiently. The IT department has a dedicated group charged with monitoring emerging technologies and is working with the company's operating departments to identify such opportunities. To make the most of these innovations, however, the IT and operating departments will need to fully understand business processes and reform and update them as necessary before considering where to introduce new technology solutions.

- **Mitigating cybersecurity threats.** Like many other organizations, the company faces challenges securing its IT systems and data from cyberattacks that continue to evolve and change tactics. The company has been investing in its IT infrastructure so that most users can access the company's network using any device. Although this capability has business advantages, it also brings significant cybersecurity risks, including that mobile devices could be used to compromise company data.[28] Cyberattacks, such as the April 2020 hack of Amtrak Guest Rewards' accounts, can diminish customer confidence in the company, hurt its brand, and be costly to resolve. The company has worked to improve its ability to detect and respond to these types of incidents and needs to remain vigilant to the risk of attacks that could threaten operations and significantly compromise safety. For example, cyberattacks on train control systems—which are used to dispatch and monitor more than 2,000 trains daily—could endanger both the operations of the company's trains and the safety of its employees and passengers.

  Maintaining effective controls over company systems is key to preventing such attacks.[29] For example, in June 2020, we reported that poor controls allowed a terminated company contractor to copy sensitive and proprietary data to a personal storage device and remove it from company premises.[30] The company's ongoing

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[28] *Information Technology: Mobile Device Security Needs to Improve to Better Protect Company Data from Compromise* (OIG-A-2020-010), May 8, 2020.
[29] *Information Technology: Improving Cybersecurity and Resiliency of Train Control Systems Could Reduce Vulnerabilities* (OIG-A-2019-008), July 9, 2019.
[30] *Former Contractor Violated Policy by Wrongfully Uploading Sensitive Data and Proprietary Company Data* (OIG-WS-2020-328), June 2, 2020.

challenge will be to continually assess its vulnerabilities and the effectiveness of its safeguards against evolving internal and external threats.

APPENDIX A

Abbreviations

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CEO	Chief Executive Officer
EPMO	Enterprise Program Management Office
FY	Fiscal Year
IT	Information Technology
OIG	Amtrak Office of Inspector General
PTC	Positive Train Control
SMS	Safety Management System
the company	Amtrak

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November 15, 2021



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MESSAGE FROM THE INSPECTOR GENERAL

This report presents the Office of Inspector General's (OIG) independent assessment of the top management and performance challenges facing NASA.[1] For 2021, we identified eight challenges and linked each challenge to one or more of NASA's strategic goals and objectives (see Appendix A).[2]

- Challenge 1: Returning Humans to the Moon
- Challenge 2: Improving Management of Major Projects
- Challenge 3: Sustaining a Human Presence in Low Earth Orbit
- Challenge 4: Managing and Mitigating Cybersecurity Risk
- Challenge 5: Improving Oversight of Contracts, Grants, and Cooperative Agreements
- Challenge 6: Attracting and Retaining a Highly Skilled and Diverse Workforce
- Challenge 7: Managing NASA's Outdated Infrastructure and Facilities
- Challenge 8: Managing the Impacts of COVID-19 on NASA's Mission and Workforce

NASA stands at the forefront of aeronautics, science, and space exploration and is responsible for numerous scientific discoveries and technological innovations. The Agency's achievements in long-term human space flight missions such as Apollo, the Space Shuttle Program, and the International Space Station (ISS or Station) are unparalleled. Likewise, science and aeronautics research such as the continuing Voyager missions into interstellar space and the X-15 hypersonic aircraft demonstrate NASA's position as a global leader in space and aeronautics. To maintain its preeminence, NASA must remain agile in an environment of shifting Administration priorities, evolving international interests, and unanticipated global events such as the ongoing Coronavirus Disease 2019 (COVID-19) pandemic.

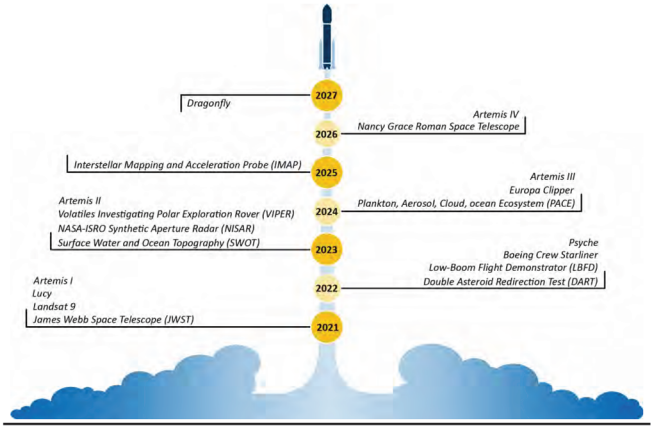
In 2020, NASA altered—essentially overnight—how it does business to protect its employees and contractors from the COVID-19 virus by closing facilities and having 90 percent of its workforce operate from home for an extended period of time. Nonetheless, NASA maintained vital operations such as the ISS and successfully launched and landed the Perseverance Rover on Mars as well as the first commercial flight of astronauts into space, closing a 9-year crew transportation gap after the end of the Space Shuttle Program in 2011. To avoid another gap—this time in a low Earth orbit destination when the ISS retires—NASA is again pursuing alternative acquisition approaches, such as purchasing services instead of using traditional developmental contracts, to become a customer on commercially owned and operated space destinations. The Agency is increasingly relying on public-private partnerships and alternative acquisition approaches in an attempt to achieve cost savings and accelerate development of new technologies, including several key systems for its Artemis mission to return humans to the Moon. This shift in acquisition approaches, however, does not negate the Agency's long-standing challenge to temper its culture of optimism and develop more realistic cost and schedule estimates for its many and varied major projects (see Figure 1). In addition, NASA continues to face long-standing challenges with

[1] The Reports Consolidation Act of 2000 (Pub. L. No. 106–531) requires NASA to include in its performance and accountability report a statement by the Inspector General summarizing the most serious management and performance challenges facing the Agency and the progress made in managing them.

[2] NASA, *NASA Strategic Plan 2018* (February 12, 2018; last accessed October 7, 2021).

cybersecurity, workforce gaps, and aging infrastructure. As the Agency moves forward with key decisions on several of its major projects, addressing the challenges discussed in this report will be paramount to its success.

Figure 1: Agency Timeline of Major Projects and Missions



Source: NASA OIG presentation of Agency information.

Note: Indian Space Research Organisation (ISRO).

In deciding whether to identify an issue as a "top challenge," we considered its significance in relation to NASA's mission; whether its underlying causes are systemic in nature; and its susceptibility to fraud, waste, and abuse. These eight highlighted challenges are not the only significant issues that confront NASA. Moreover, identification of an issue as a top challenge does not denote lack of attention on the Agency's part. Rather, most of these issues are long-standing, difficult challenges that are central to NASA's core missions and will likely remain top challenges for many years. Consequently, they require consistent, focused attention from NASA leadership and ongoing engagement with Congress, the public, and other stakeholders.

This year's list includes many of the same challenges discussed in previous reports. However, we reframed the Artemis and workforce challenges to reflect the most up-to-date Agency perspectives on these issues, and we added a standalone COVID-19 challenge because the impact of the pandemic on NASA's operations will cost billions of dollars, lead to schedule delays, and affect how the Agency conducts business for years to come. Our discussion of each challenge includes an explanation of why it is a challenge, identification of NASA's progress in addressing the challenge, and remaining work that needs to be done.

In this report and all related work, the OIG is committed to providing independent, objective, and comprehensive oversight of NASA programs, projects, and personnel with the singular goal of improving Agency outcomes. To that end, we plan to conduct audits and investigations in the coming year that focus on NASA's continuing efforts to address these and other challenges.



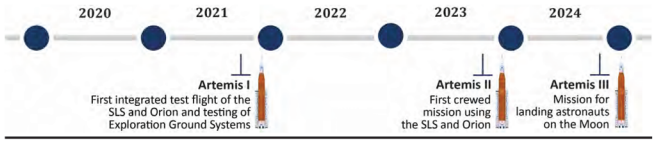
Paul K. Martin
Inspector General

Challenge 1: Returning Humans to the Moon

Why This Is a Challenge

The Artemis program—currently NASA's most ambitious and costly ongoing activity—is projected to cost the Agency $93 billion by fiscal year (FY) 2025 and will require decades-long engagement from NASA and its commercial and international partners to build and support multiple exploration systems, conduct research and technology demonstrations to return humans to the Moon, and prepare for an eventual crewed mission to Mars.[3] Artemis will return astronauts to the Moon more than 50 years after the last Apollo mission, and NASA intends to maintain an ongoing lunar presence (see Figure 2). The date of the long-awaited return, however, remains a question since development delays compounded by the COVID-19 pandemic will preclude NASA from meeting its goal of landing astronauts on the Moon by late 2024.

Figure 2: Planned Artemis Missions Through Moon Landing



Source: NASA OIG presentation of Agency information.

Note: Space Launch System (SLS) and Orion Multi-Purpose Crew Vehicle (Orion). Exploration Ground Systems is comprised of the ground hardware, software, and Launch Control System.

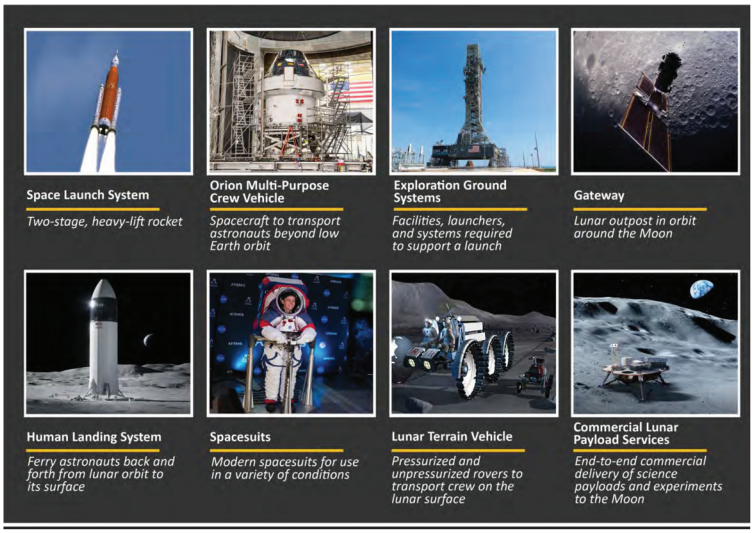
Artemis is a multi-mission program that allows NASA to extend the length and complexity of lunar missions over time. The first three missions—Artemis I, II, and III—culminate with astronauts landing on the Moon with Artemis III. NASA will use the Space Launch System (SLS) heavy-lift rocket and Orion Multi-Purpose Crew Vehicle (Orion) capsule in all three missions. Artemis I will be an uncrewed test flight, and Artemis II will fly astronauts to the Moon's orbit and back. For Artemis III, the Orion capsule—with four astronauts on board—will dock in lunar orbit with a Human Landing System (HLS) to transport astronauts to the lunar surface. Beginning with Artemis III, the astronauts will require next-generation spacesuits, known as Exploration Extravehicular Mobility Units, to explore the lunar surface. Prior to the astronauts' arrival, NASA intends to explore the lunar landing area with robotic systems as part of the Commercial Lunar Payload Services initiative.[4] Subsequent Artemis missions are expected to

[3] We derived the $93 billion figure from examining NASA's obligations, appropriations, and budget projections across all Mission Directorates for programs and projects involved in the Artemis program from FY 2012 through FY 2025.

[4] Initiated in 2018, NASA's Commercial Lunar Payload Services initiative seeks to rapidly acquire lunar delivery services from American companies for payloads that advance capabilities for science, exploration, and commercial development of the Moon.

include a longer-term presence on the Moon that incorporates additional systems including a lunar orbiting outpost called the Gateway and Lunar Terrain Vehicles to transport crew on the Moon's surface. See Figure 3 for images of the various Artemis systems in development. NASA intends to use its human presence on the Moon as a research platform to understand planetary processes, conduct experimental science, and investigate and mitigate long-term exploration risks to humans.

Figure 3: Artemis Systems in Development



Source: NASA OIG presentation of Agency information.

As we have consistently reported in previous reports, NASA's greatest challenge with its human exploration ambitions is development of the systems required to get humans to the Moon and Mars safely with the funding Congress has allocated and within the timeframe the Administration has imposed. In September 2020, more than a year after the White House directed NASA to escalate its timeline to land the first woman and next man on the Moon by 2024, the Agency estimated it would need approximately $28 billion between FYs 2021 and 2025 to achieve the initial crewed lunar landing 4 years ahead of its original schedule.[5] Funding is needed primarily to support development of multiple

[5] The $28 billion figure is for Phase I of the Artemis missions and includes costs for Artemis I, II, and III, but does not include the Gateway.

Artemis systems including the SLS rocket and Orion capsule to transport astronauts to lunar orbit, a Moon orbiting outpost known as Gateway, the HLS to ferry astronauts to the lunar surface, and new spacesuits for the astronauts to operate outside of their spacecraft and on the lunar surface. However, Congress appropriated only $850 million in FY 2021 out of an estimated need of $3.4 billion for the HLS. As a result, the Agency selected a single company, thereby affecting NASA's acquisition strategy to promote competition and redundancy.[6] To mitigate the risk of having only one provider, NASA decided to accelerate its Lunar Exploration Transportation Services procurement to allow other companies to develop technologies and potentially receive a contract to deliver astronauts to the Moon. We also found that delays in development of the Agency's next-generation spacesuits—attributed to technical challenges, funding issues, and COVID-19 impacts—will preclude the new suits from being ready for flight until April 2025 at the earliest and will cost NASA more than a billion dollars for their development and assembly.[7] These are only two recent examples in a series of long-standing challenges to build the systems required for the Agency's Artemis missions and follow-on Mars exploration plans.

Progress in Addressing the Challenge

Artemis systems are making progress in their development and procurement. Over the past year, NASA's SLS, Orion, and Exploration Ground Systems Programs that form the Exploration Systems Development (ESD) Division have made steady progress, and although in a November 2021 report we found that NASA's planned November 2021 Artemis I launch date is not feasible, the Programs are in our estimation positioned to launch the first Artemis mission by summer 2022.[8] In addition, NASA completed all the contract awards necessary for the initial Gateway capability when it awarded Northrop Grumman a fixed-price contract in July 2021 for the final design and build phase of the Habitation and Logistics Outpost where astronauts will live and conduct research on the Gateway. Development continues for the electrical power system for the Gateway's Power and Propulsion Element. For Artemis III, NASA allowed flexibility for HLS proposers to either dock with the Gateway or directly with the Orion. NASA's award to Space Exploration Technologies Corporation (SpaceX) for the Artemis III demonstration includes its HLS Starship linking up directly with the crewed Orion in lunar orbit to ferry astronauts to and from the Moon's surface. NASA aims to have the Gateway operational in time for Artemis IV. Lastly, the Agency continues to develop its next-generation spacesuit capabilities, including a testing suit, two qualification suits, an ISS demonstration suit, and two lunar flight suits. Overall, NASA has made progress towards executing the first three Artemis missions, culminating with the planned return of astronauts to the surface of the Moon.

Artemis I. Four years after inception of the Artemis program but over 10 years into development of its SLS rocket and Orion capsule, NASA's preparations are nearly complete for the inaugural uncrewed flight of its rocket/capsule combination. The stacking of the SLS's Core Stage, Upper Stage, and Solid Rocket Boosters on the Mobile Launcher is complete, and NASA is conducting tests on the Orion before placing

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[6] In April 2021, NASA selected SpaceX for the contract award, concluding that its proposal was the most highly rated, and that HLS funding availability did not allow for a second award.

[7] NASA OIG, *NASA's Development of Next-Generation Spacesuits* (IG-21-025, August 10, 2021). The $1 billion includes $420.1 million spent from 2007 through December 2020 and planned spending of $625.2 million from FY 2021 through FY 2025. The work covered by this funding includes design, testing, qualification, an ISS demonstration suit, two flight-ready suits, related support, and future suit production costs. Related support includes vehicle support hardware, training hardware and facilities, testing facilities, and extravehicular activity tools.

[8] NASA OIG, *NASA's Strategy for the Artemis Missions* (IG-22-003, November 15, 2021).

it on top of the rocket.[9] Once the Orion is stacked, fully integrated, and testing is complete, the system will be transported to Launch Pad 39B for additional testing and eventual launch. While NASA was attempting to launch the system by the end of 2021, in November 2021 we reported that a launch before summer 2022 is more likely due to the first-time challenges integrating a system of this magnitude and the impacts of the COVID-19 pandemic and multiple adverse weather events.[10] With respect to budget, NASA acknowledged the need to control the systems' cost and schedule through a June 2020 rebaselining of the SLS and Exploration Ground Systems Programs. For Artemis I, officials reported that additional cost increases and schedule slippages are expected to be minimal given the high probability of a launch before mid-2022.

Artemis II. For Artemis II, the Orion Program decided to purchase a second set of core avionics for its capsule and will only reuse non-core avionics. Given that astronauts will be flying on this second mission, the Agency needs to add to Orion an environmental control and life support system which is not on Artemis I. To reduce the risk of flying this system for the first time with astronauts on board, the Artemis II flight plan will include additional time in low Earth orbit to test the system before continuing to the Moon. NASA is actively building all the elements for Artemis II, but due to the reuse of the non-core avionics—considered on the critical path—launch preparations will take approximately 27 months between the first two Artemis flights.[11] Given that this flight is crewed, adjustments will also be made to the Mobile Launcher after Artemis I; however, these adjustments are not expected to impact the planned December 2023 launch date.

Artemis III. Besides continued production of the SLS and Orion, Artemis III preparations include development and testing of the HLS Starship being built by SpaceX. The HLS contract has faced numerous challenges from the start, beginning with Government Accountability Office (GAO) protests by two companies—Blue Origin Federation, LLC and Dynetics, Inc.—that were denied in July 2021.[12] Although the protests resulted in a 6-month delay to HLS development according to Agency officials, SpaceX still planned to conduct an orbital flight test of its Super Heavy Booster and Starship by the end of 2021. A subsequent civil suit brought by Blue Origin denied in November 2021 further delayed HLS development and testing.

Crosscutting all Artemis missions are NASA's efforts to reduce future costs of ESD systems. In January 2021, the Human Exploration and Operations Mission Directorate's Associate Administrator announced that a senior advisor would lead a sustainability assessment team to develop ideas on how to make ESD systems more cost effective. Further, as part of the recent FY 2023 budget process, programs were directed to present potential cost-saving actions. Among the ideas suggested were collaboration with contractors on process improvements and a reduction in both the civil servant and contractor workforce. For example, in June 2021 the SLS Program forecasted a 13 percent reduction in labor hours between the production of Core Stage 1 and Core Stage 2. As previously reported, Orion is moving forward on a number of initiatives aimed at reducing production costs with the Program aiming

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[9] The Mobile Launcher is the ground structure that will be used to assemble, process, and launch NASA's SLS rocket and Orion spacecraft from Launch Pad 39B at the Agency's Kennedy Space Center in Florida in support of Artemis mission objectives.

[10] IG-22-003.

[11] Critical path is the sequence of tasks that determines the longest duration of time needed to complete a project. It is important to identify the critical path and the resources needed to complete the critical tasks along the path if a project is to be completed on time and within its allocated resources.

[12] NASA awarded contracts to three companies for initial design work of the HLS—SpaceX, Blue Origin, and Dynetics—which concluded in April 2021 when SpaceX was selected to further develop and demonstrate its HLS.

to transition to a fixed-price contract structure for Artemis IX and beyond.[13] There are also plans to reuse Orion's high-value interior components, including avionics and life support systems beginning on Artemis V, and to reuse the entire assembled pressure vessels and all interior components for two missions beginning with Artemis VI. Additionally, NASA hopes to leverage economies of scale to reduce costs by 21 percent by ordering Orion capsules in batches of three with the first order in 2019 for Artemis III through V.

Key Implemented Recommendations

Confirm at selection the launch system provider for the co-manifested Power and Propulsion Element and Habitation and Logistics Outpost will meet spacecraft mass, length, and other requirements (IG-21-004).

Ensure total development and production contract costs (for Orion) currently not reported as part of the Agency Baseline Commitment are included in quarterly financial status reporting to the Office of the Chief Financial Officer, Office of Management and Budget, and Congress (IG-20-018).

Ensure procurement officials minimize the availability of award fees (for Orion) when contract modifications and value increases are the result of shortcomings in contractor performance and require documentation of the rationale for any award fees granted (IG-20-018).

For new acquisitions of SLS deliverables, develop a cost accounting model that separates each deliverable into its own contract line item number for tracking costs, performance, and award fees (IG-20-012).

Work That Needs to Be Done

Despite progress towards developing its Artemis systems, NASA still needs to produce a comprehensive estimate that consolidates all Artemis costs across Mission Directorates. Because Artemis is not a formal program as defined by the Agency's Space Flight Program and Project Management Requirements, an Artemis-wide full life-cycle cost estimate was not required. Instead, NASA's disparate programs and projects individually submit budget estimates through their divisions and directorates to the Office of the Chief Financial Officer. Without understanding and accurately reporting the overall cost of current and future missions, Congress will lack the information needed to make informed decisions about NASA's long-term funding needs, and the Agency will be challenged to make Artemis a sustainable venture.

Overall, NASA has experienced cost increases of $4.3 billion for SLS, Orion, and Exploration Ground Systems. Furthermore, given that we estimate the cost of the SLS/Orion system at $4.1 billion per launch for at least the first four Artemis missions, NASA must continue to identify ways to make its ESD systems much more affordable.[14] Otherwise, relying on such an expensive heavy-lift rocket system will, in our judgment, inhibit if not derail NASA's ability to sustain its long-term human exploration goals. We have also reported over the last several years that ESD continues to struggle to control its costs and

[13] NASA OIG, *NASA's Management of the Orion Multi-Purpose Crew Vehicle Program* (IG-20-018, July 16, 2020).

[14] The $4.1 billion total cost represents production of the SLS, Orion, and the operations needed to launch the space flight system including materials, labor, facilities, and overhead, but does not include any money spent concurrently on the development of next-generation technologies such as the SLS's Exploration Upper Stage, Orion's docking system, or Mobile Launcher-2.

schedule using more traditional acquisition methods for development and production of its exploration systems, including sole-sourced development and cost-plus production contracts that have suffered from undefined contract requirements and overly generous award fees to underperforming contractors. However, NASA's Commercial Crew Program shows how competitively awarded fixed-price contracts can control costs if requirements are properly defined. NASA has applied this acquisition model to the Gateway's Power and Propulsion Element and HLS procurements and intends to use a commercial services approach for next-generation spacesuits.

Besides reducing costs, NASA needs to develop a realistic, risk-informed schedule that includes sufficient margin to better align Agency expectations with the development schedule. The Artemis I launch date has slipped 3 years, which has delayed the launch date for Artemis II. Although the Agency continues to work towards a late 2024 Moon landing, a Human Exploration and Operations Mission Directorate-directed schedule risk analysis showed that 2026 is a more likely date. While developmental delays in such a complex program are to be expected, NASA has consistently been challenged to manage space flight-related schedules for these primary reasons:

- Changing and evolving requirements, both internally and externally driven (including congressional and presidential directives);
- Developing an overly optimistic schedule for employees and contractors to work toward in the hope it will speed development;
- Underestimating the scope of work and technical challenges in developing human-rated systems; and
- Numerous severe weather events and COVID-19 restrictions affecting both production and testing.

Finally, NASA will continue to face risks maturing the design and critical technologies for the HLS until it ensures its new tailored programmatic approach meets the intent of traditional oversight milestones. While the HLS Program leveraged lessons learned and is modeled, in part, after the Commercial Crew Program, HLS tailored its programmatic milestone approach to better fit a services model approach versus the traditional hardware development program. The tailored approach replaces the traditional hardware development milestones with annual synchronization reviews that provide oversight of provider development.[15] NASA also stood up "collaboration teams" and insight teams that will work with SpaceX throughout HLS development. In our judgment, this is a useful resource but may not compensate for the oversight provided by the design and operational milestone reviews. Notably, NASA's initial success in defining its safety and engineering requirements during the initial HLS design phase will help ensure SpaceX and future HLS contractors understand the human rating standards they are required to achieve. Nonetheless, as was done in the Commercial Crew Program, the Agency will need to utilize a program board to evaluate hazards and variations to NASA standards to ensure safety and human rating standards are met.

[15] For example, NASA is replacing the following milestone reviews that occur in a traditional acquisition: Key Decision Point-D is the milestone event that allows a project to proceed to Assembly, Integration and Test, and Launch; Key Decision Point-E moves the project into Operations and Sustainment. A Systems Integration Review ensures segments, components, and subsystems are on schedule to be integrated into the system. The Operational Readiness Review ensures that all system and support (flight and ground) hardware, software, personnel, procedures, and user documentation accurately reflect the deployed state of the system.

Key Unimplemented Recommendations

Baseline the Gateway requirements and specifications in contract modifications prior to updating and awarding the Power and Propulsion Element and Habitation and Logistics Outpost fixed-price contracts (IG-21-004).

Ensure Power and Propulsion Element and Habitation and Logistics Outpost delivery and launch dates are realistic by including sufficient schedule margin in their development schedules (IG-21-004).

Ensure the maturity of system requirements are fully understood before selecting the acquisition method and contract type for future acquisition strategies supporting Artemis and Mars missions by describing the state of the program requirements in the acquisition strategy memorandum for each new acquisition (IG-21-004).

To the extent practicable, adjust Orion's production schedules for Artemis IV and V to better align with the successful demonstration of Artemis II to reduce schedule delays associated with potential rework (IG-20-018).

Review Human Exploration and Operations Mission Directorate and NASA program management policies, procedures, and Agency Baseline Commitment reporting processes to provide greater visibility into current, future, and overall cost and schedule estimates for the SLS Program and other human space flight programs (IG-20-012).

Ongoing and Anticipated Future Audit Work

NASA's Management of Its Astronaut Corps
This audit will assess to what extent NASA's processes for sizing, training, and assigning its astronaut corps align with the Agency's current and future mission needs.

Mobile Launcher-2
This audit will examine the extent to which NASA has met its cost, schedule, and performance goals for the Mobile Launcher-2 development contract.

Challenge 2: Improving Management of Major Projects

Why This Is a Challenge

For six decades, NASA has been the world's leader in space exploration, advancing knowledge of Earth while making discoveries about the furthest reaches of the universe with its portfolio of major projects.[16] These projects include satellites equipped with advanced sensors to study the Earth; rovers to collect soil and rock samples on other celestial bodies; telescopes intended to explore the far reaches of the universe; and complex systems to support transportation of humans to the ISS, Moon, and beyond. NASA is planning to invest at least $69 billion over the life cycle of its portfolio of 34 major projects currently in development. However, this investment is likely to increase because the number of projects in development is expected to grow as the Agency plans for 8 of 13 major projects in formulation—including 6 Artemis projects—to enter development in 2021. Historically, NASA's major projects have cost significantly more and taken much longer to complete than initially planned with the Agency's current development projects resulting in total cumulative cost growth of $9.6 billion since their original cost baselines were set. Moving forward, NASA's ability to deliver projects on time and within budget is critical to meeting mission objectives, strategic goals, and commitments to Congress and taxpayers.

Although $7.1 billion of $9.6 billion in cumulative cost growth comes from two of NASA's 34 major projects—James Webb Space Telescope (JWST) and SLS—other major projects such as Surface Water and Ocean Topography (SWOT), NASA-Indian Space Research Organisation (ISRO) Synthetic Aperture Radar (NISAR), Low-Boom Flight Demonstrator (LBFD), and Laser Communications Relay Demonstration (LCRD) have also experienced cost growth, schedule delays, or both—some of which can be attributed to the COVID-19 pandemic.[17]

- *James Webb Space Telescope.* JWST is an infrared observatory designed to help understand the origin of the universe, creation and evolution of the first stars and galaxies, and formation of stars and planetary systems. Under development since 2008, in June 2018 NASA established a revised life-cycle cost commitment of $9.7 billion and launch readiness date of March 2021—$828 million more and 2 years later than the baselines established by the project in 2011. Since then, technical challenges, delays related to COVID-19, and issues with Ariane 5, the European Space Agency's rocket that will launch JWST, have pushed the date out until at least December 2021.
- *Surface Water and Ocean Topography.* SWOT will use its wide-swath radar altimetry technology to take repeated high-resolution measurements of the world's oceans and freshwater bodies to develop a global survey. SWOT entered implementation in 2016 with a life-cycle cost commitment of $755 million and an April 2022 launch readiness date. Because SWOT used

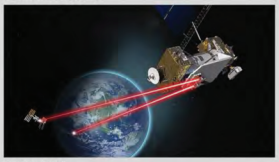
[16] GAO categorizes "major projects" as those with life-cycle costs over $250 million. GAO, *NASA: Assessments of Major Projects* (GAO-21-306, May 20, 2021).

[17] The status of SLS is discussed in Challenge 1, *Returning Humans to the Moon*. COVID-19 impacts on cost growth are discussed in Challenge 8, *Managing the Impacts of COVID-19 on NASA's Mission and Workforce*.

most of its cost and schedule reserves to mitigate instrument delivery delays prior to COVID-19, it did not have sufficient reserves to cover additional delays related to the pandemic.[18] Based on a recent assessment, NASA concluded SWOT will exceed its launch readiness date by 14 months and incur $67.5 million in cost overruns to cover schedule delays and COVID-19 impacts.

- *NASA-ISRO Synthetic Aperture Radar.* NISAR is a joint project between NASA and ISRO to study Earth's ice masses and ecosystems. NASA's FY 2022 budget provides an additional $104 million to support life-cycle cost increases associated with delayed delivery of the S-band SAR instrument and COVID-19 impacts.[19] The updated NISAR life-cycle cost exceeds the Agency's development estimate of $661 million by more than 15 percent and the baseline launch readiness date of September 2022 by 12 months.
- *Low-Boom Flight Demonstrator.* LBFD is a flight demonstration project that plans to show that noise from supersonic flights—a sonic boom—can be reduced to levels acceptable to the public for commercial use in overland flights. In August 2020, NASA approved a net increase of $74.7 million over the LBFD Project's life-cycle cost estimate of $582.4 million and a delay of 5 months beyond its planned January 2022 first flight because the contractor delayed releasing design drawings and had quality issues with supplier deliveries.
- *Laser Communications Relay Demonstration.* LCRD is a technology demonstration mission to advance two-way optical (laser) communication technology for Earth using the LCRD relay satellite. In May 2021, LCRD's launch readiness date was delayed due to launch vehicle readiness issues and launch slot availability, with November 22 or 23, 2021, providing the next available launch opportunity. The mission previously experienced a $47.8 million life-cycle cost increase, with officials anticipating an additional $6.1 million for funding to retain key staff to support this latest launch delay.

Conceptual Image of LCRD Relaying Data Between the International Space Station and the Ground



Source: NASA.

Due to the Agency's history of persistent cost growth and schedule delays in the majority of its major projects, 30 years ago GAO first designated NASA's acquisition management as a high risk and since then has identified a variety of management weaknesses that have exacerbated this challenge.[20] NASA has historically struggled to provide reliable life-cycle cost estimates for complex projects involving multiple, first-of-their-kind components. This includes projects such as JWST, and missions such as Artemis that involve multiple iterations of major projects without a definitive life-cycle end date, like the SLS rocket

[18] Cost reserves are for costs that are expected to be incurred—for instance, to address project risks—but are not yet allocated to a specific part of the project. Schedule reserves are extra time in project schedules that can be allocated to specific activities, elements, and major subsystems to mitigate delays or address unforeseen risks.

[19] The NISAR S-Band SAR instrument is a synthetic aperture radar that actively collects data by producing its own energy and then recording the amount of that energy reflected back after interacting with Earth.

[20] GAO first cited the Agency's acquisition management as a high-risk area in 1990. GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas* (GAO-21-119SP, March 2, 2021) is the most recent list in which NASA's acquisition management was cited as a high risk.

and Orion capsule, which because they are not completely reusable will be built multiple times for an indefinite number of years.[21] Overall, NASA remains challenged to complete its major projects within their planned costs and schedules due to a culture of optimism, underestimating technical complexity, and funding instability—all long-standing issues.

Progress in Addressing the Challenge

NASA's efforts in the last few years to improve management of its major projects have shown indications of improved performance for several projects, including Landsat 9 and Psyche, which have seen reduced costs.[22] In fact, GAO's 2021 High-Risk Series report listed NASA's acquisition management as one of only seven high-risk areas throughout the entire federal government that showed progress toward meeting criteria for removal from the High-Risk List over the past 2 years.[23] Progress toward improving NASA's acquisition management is demonstrated by the Agency's commitment to implement its 2018 Corrective Action Plan, which was designed to address the causes of cost and schedule concerns highlighted in GAO's High-Risk List.[24] In August 2020, NASA updated the Plan and reported completing six of nine initiatives, closing and rewriting one initiative, and adding three new initiatives to expand data collection efforts, implement a schedule repository, and conduct financial evaluations of potential contractors prior to award.

As a result of the Corrective Action Plan's initiatives, NASA has developed best practices, added additional requirements, and implemented external monitoring related to cost and schedule of major projects. For example, NASA published a Technology Readiness Assessment Best Practices Guide that established standard definitions and best practices for critical technologies needed for exploration, science, and technology mission systems to meet operational performance requirements within defined cost and schedule parameters.[25] In addition, NASA added requirements for all projects with life-cycle costs over $1 billion to conduct a Joint Cost and Schedule Confidence Level analysis at additional life-cycle phases to help reduce cost and schedule growth, improve transparency, and increase the likelihood of meeting project expectations.[26] Further, NASA plans to broaden its use of Earned Value Management by delegating all applicable contracts to the Defense Contract Management Agency to integrate information on a project's cost, schedule, and technical efforts for surveillance by

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[21] NASA indicated that it expects the cost of the SLS and Orion to decrease over time as the designs stabilize and production processes mature.

[22] Landsat 9, launched in September 2021, is the latest satellite in the Landsat series, which has provided a continuous space-based record of the Earth's land surface observations to study, predict, and understand the consequences of land surface dynamics, such as deforestation. Psyche, scheduled to launch in 2022, will be the first mission to visit a metal asteroid and aims to understand iron cores, a previously unexplored component of the early building blocks of planets.

[23] NASA now meets three of five criteria for removal from GAO's High-Risk List (leadership commitment, action plan, and monitoring) and partially meets the other two (capacity and demonstrated progress).

[24] NASA, *2020 High Risk Corrective Action Plan* (August 2020, last accessed June 24, 2021) is the Agency's most recent update to the Corrective Action Plan.

[25] NASA Office of the Chief Technologist SP-20205003605, *Technology Readiness Assessment Best Practices Guide* (June 30, 2020).

[26] A Joint Cost and Schedule Confidence Level analysis produces a point-in-time estimate that includes all cost and schedule elements in project life-cycle Phases A through D (i.e., concept and technology development through system assembly, integration and testing, and launch), incorporates and quantifies known risks, assesses the impacts of cost and schedule to date, and addresses available annual resources, among other things.

management and decision makers.[27] Prior to its 2020 update to the Corrective Action Plan, NASA only surveilled 37 percent of its contracts. NASA is also requiring that these same applicable contracts submit data to NASA's new centralized schedule repository to improve access to historical data and include Earned Value Management data during project review.

- **Key Implemented Recommendations**

  Ensure total development and production contract costs currently not reported as part of the Agency Baseline Commitment are included in quarterly financial status reporting to the Office of the Chief Financial Officer, Office of Management and Budget, and Congress (IG-20-018).

  Document and provide the Joint Cost and Schedule Confidence Level analysis approach used by LBFD to the NASA Chief Knowledge Officer to serve as a reference for future large-scale X-plane development projects (IG-20-015).

  Establish a process to be used during source evaluation boards and source selections that includes direct contact with the Center Earned Value Management Working Group Representative and cognizant Defense Contract Management Agency office to verify all contractor proposed information related to Earned Value Management (IG-20-015).

  Direct Boeing to complete delivery of the two Core Stages and the Exploration Upper Stage using an Earned Value Management System with realistic schedule assumptions and appropriate cost estimates through the end of the contract in 2021 (IG-19-001).

Work That Needs to Be Done

We have consistently reported on NASA's culture of optimism and the effects this has had on project management. NASA's ability to overcome technological and scientific obstacles to accomplish its objectives has become part of the Agency's culture and helped foster a belief that NASA can accomplish anything. However, many of the Agency's planned missions are ambitious endeavors that need to be grounded in more realistic cost and schedule commitments, which NASA needs to remain cognizant of when establishing baselines for the newly announced Earth System Observatory and Venus missions.[28] NASA should carefully consider its commitment to Congress and other stakeholders and seek to establish sustainable budgets and realistic timelines that take into account the Agency's overall goals and priorities. To put NASA's budget into historical context, during the Apollo missions of the late 1960s the Agency's budget reached a high of 4.4 percent of the overall federal budget, while NASA's current funding amounts to 0.5 percent of the federal budget. Artemis is NASA's most ambitious and costly mission to date, with a projected cost of $93 billion through FY 2025. Given that the Agency is

[27] Earned Value Management measures the value of work accomplished in a given period and compares it with the planned value of work scheduled for that period and the actual cost of work accomplished. At the Defense Contract Management Agency, surveillance is often a multifunctional insight effort to review and analyze contractor plans, schedules, policies, procedures, systems, processes, process outputs, and/or products to determine compliance to contractual, statutory, regulatory, or contractor requirements.

[28] The Earth System Observatory will provide key information to guide efforts related to climate change, disaster mitigation, fighting forest fires, and improving real-time agricultural processes. NASA recently selected two new missions to Venus, Earth's nearest planetary neighbor, to understand how Venus became an inferno-like world when it has so many other characteristics similar to Earth, and how it may have been the first habitable world in the solar system, complete with an ocean and Earth-like climate.

anticipated to operate with an annual budget of approximately $25 billion for the next several years, absent transparent and accurate reporting of cost and schedule commitments, it will be difficult for NASA, Congress, and external stakeholders to make informed decisions that will ensure the success of current and future programs and projects. To this end, NASA must redouble its efforts to ensure that its science and space exploration projects are grounded in accurate estimates and meet cost, schedule, and performance goals. Given a limited budget to fund multiple ambitious projects, it is critical that NASA implement planned changes to its Joint Cost and Schedule Confidence Level policy, as well as demonstrate sustained progress completing initiatives in its 2020 Corrective Action Plan.

Furthermore, when taking on a mission, requirements should be clearly defined, affordable, captured, and communicated early in the development effort to reduce the risk of costly design changes.[29] NASA has begun to acquire major Artemis systems such as the Gateway and HLS through public-private partnerships, but it has still not fully defined the lunar system architecture or established requirements for its lunar missions. Consequently, NASA will need to address potential requirements and technology development knowledge gaps in Artemis projects due to a lack of firm requirements before entering implementation.

Key Unimplemented Recommendations

Implement the National Academies recommendation to establish a common interface for Commercial Lunar Payload Services contractors between instrument and spacecraft or to require that each commercial provider supply a document that describes provider and payload capabilities (IG-20-023).

Evaluate whether the monetary threshold for performing internal Earned Value Management is sufficient or additional criteria would be beneficial regarding the dollar-value of tasks related to providing government furnished equipment and performing in-house development work (discrete work) compared to NASA personnel performing integration, review, and management functions (level-of-effort work) (IG-20-015).

Review Human Exploration and Operations Mission Directorate and NASA program management policies, procedures, and Agency Baseline Commitment reporting processes to provide greater visibility into current, future, and overall cost and schedule estimates for the SLS Program and other human space flight programs (IG-20-012).

Ongoing and Anticipated Future Audit Work

NASA's Multi-Mission Program Cost Estimating and Reporting Practices
This audit will assess the effectiveness of the Agency's cost estimating and reporting practices for large, multi-mission programs such as those supporting the Artemis program.

Audit of the Volatiles Investigating Polar Exploration Rover (VIPER) Mission
This audit will assess NASA's management of VIPER relative to achieving technical objectives, meeting established milestones, and controlling costs.

[29] GAO, *Best Practices: Capturing Design and Manufacturing Knowledge Early Improves Acquisition Outcomes* (GAO-02-701, July 15, 2002).

Review of Astrophysics Portfolio
This audit will evaluate the current state of the Agency's Astrophysics portfolio, identify and assess risks to future missions, and provide recommendations in support of the next decadal survey.

Review of NASA's Management of the Johns Hopkins University Applied Physics Laboratory Portfolio
This audit will assess NASA's processes and controls ensuring the effective management of the contracts and portfolio of Agency projects developed by the Johns Hopkins University Applied Physics Laboratory.

Challenge 3: Sustaining a Human Presence in Low Earth Orbit

Why This Is a Challenge

For more than 20 years, humans have continuously lived and worked in space, building the ISS, conducting microgravity research, and testing new technologies required for long-term deep space travel to the Moon and Mars including those needed for the Agency's near-term Artemis missions. At a cost of approximately $3 billion annually to operate the ISS and transport astronauts to and from the Station, NASA's activities in low Earth orbit—the region in space from 100 to 600 miles above the Earth's surface—consume about one-third of the Agency's annual human space flight budget.[30] This expense is expected to continue through the Station's anticipated retirement in 2030.[31]

The continuous operation of research and technology demonstrations in low Earth orbit is critical to achieving NASA's goals in science, technology, and human space flight. The unique microgravity laboratory offered by the ISS has delivered benefits in human health, Earth observations and disaster response, innovative technology, global education, and the economic development of space. Without the availability of a low Earth orbit platform to conduct critical health research and demonstrate key technologies, NASA would be faced with the difficult decision of accepting a higher level of risk or delaying human missions to the Moon and Mars.

While the U.S. segment of the ISS is structurally certified to operate until 2028, recent events highlight some of the risks associated with the harsh space environment, which require continuous assessment of the Station's operational performance.[32] Since October 2020, astronauts have identified several cracks in the Russian-built Service Module Transfer Tunnel that are causing cabin air to leak at twice the normal rate.[33] While the current amount of cabin air leakage does not pose an immediate risk to astronaut health and safety, and to date, ISS teams have not observed any indications that crack growth is continuing towards a catastrophic failure, cracks can grow over time increasing risk. NASA and Russia's space agency continue to investigate the cause of the leaks and potential structural impacts. In addition, in February 2021 NASA identified a hole in the Station's Canadarm2 caused by a micrometeoroid or orbital debris.[34] On-orbit inspections revealed that the damage would have no

[30] The ISS orbits roughly 250 miles above the Earth's surface.

[31] The United States Innovation and Competition Act of 2021 (S.1260), a bill approved by the Senate in June 2021, would extend ISS operations through September 30, 2030.

[32] Currently, the U.S. portions of the Station are certified to operate through 2028—30 years after the first segment of the ISS was launched.

[33] The Service Module—the structural and functional center of Russia's ISS segment and the third oldest segment of the Station—is currently the source of multiple cabin air leaks of unknown cause, some of which have yet to be located.

[34] Orbital debris consists of human-made objects in space that no longer serve a useful purpose. With the rapid increase of space activity and the state of orbital debris in low Earth orbit, we reported in January 2021 that the Agency's mitigation-only activities focused solely on prevention were insufficient to stabilize the orbital debris environment. NASA OIG, *NASA's Efforts to Mitigate the Risks Posed by Orbital Debris* (IG-21-011, January 27, 2021). Canadarm2—part of Canada's contribution to the ISS—is used to conduct regular maintenance checks and operations on the outside of the Station; move supplies, equipment, and astronauts conducting spacewalks; and capture visiting vehicles to connect them to the Station.

impact on the arm's operations through the end of the Station's certified life. In July 2021 the ISS also experienced a loss of attitude control after Russia docked its new Multi-Purpose Laboratory Module.[35] The new module inadvertently fired its thrusters, resulting in the vehicle becoming inverted and losing satellite communications for several minutes on two separate occasions. After the event, NASA assessed the inadvertent thruster firing anomaly data and determined there was no structural damage or long-term concerns as a result of structural loading. While NASA determined that these events do not pose an immediate threat to the Station's operational longevity, either in response to an emergency event or at the end of the Station's useful service life, NASA and its partners will eventually have to come to a decision to initiate its decommissioning and deorbit.

Looking forward, NASA plans to maintain a human presence in low Earth orbit after the ISS is retired by becoming a customer of commercially owned and operated space destinations, which will require a sustained but largely undetermined financial investment by the federal government and private companies. To further its goal to become one of many customers in a commercial low Earth orbit economy, NASA has made several attempts over the past decade to commercialize space. The Agency's initial efforts to commercialize low Earth orbit were unsuccessful after 10 years of trying to develop a commercial market and relying on the Center for the Advancement of Science in Space, Inc. (CASIS) to advance research endeavors for the commercial sector.[36] In response, NASA released a plan in 2019 focused on near-term actions to expand commercial opportunities in space beyond what was initially allowed under CASIS, including private astronaut missions to the ISS. However, Congress authorized NASA to spend only $17 million to support commercial low Earth orbit development in FY 2021—just over 10 percent of the Agency's requested $150 million.

Key to maintaining a presence in low Earth orbit is reliable and cost-effective transportation of cargo and crew. Between the end of the U.S. Space Shuttle Program in 2011 and the first commercial crew mission in November 2020, NASA faced a 9-year transportation gap where it was forced to pay Russia for crew transportation to the Station. In the intervening years, NASA's Commercial Cargo and Crew Programs have enabled commercial partners to successfully transport cargo to and from the ISS since 2012 and crew since 2020. However, the road to developing a commercial crew transportation capability has been long. While SpaceX has successfully launched three commercial crew missions to the ISS, as of November 2021 the Boeing Corporation (Boeing), the other of the Agency's two commercial crew partners, has encountered numerous delays and technical issues that have to date thwarted its first crewed flight. Crew transportation is crucial, not just for fully utilizing the ISS, but also for developing and utilizing future commercial destinations to maintain a continuous human presence in low Earth orbit.

NASA continues to face challenges with low Earth orbit transportation and commercialization, as we have reported in previous audits and prior top management and performance challenges reports. Addressing these challenges is more urgent as NASA works to avoid the possibility of a gap in maintaining a human presence in low Earth orbit without the ISS or a commercial destination.

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[35] Attitude is the orientation of the ISS with respect to the Earth and Sun, which is important for maintaining communications, microgravity, power, and thermal levels on the Station.

[36] CASIS is a non-profit organization that manages the ISS U.S. National Laboratory, a U.S. government-funded laboratory with principal research facilities located in the U.S. Orbital Segment of the ISS. In August 2011, NASA signed a 10-year, $136 million cooperative agreement with CASIS to manage all non-NASA research on the ISS. In July 2017, NASA extended the cooperative agreement to September 2024 and added another $60 million to the agreement.

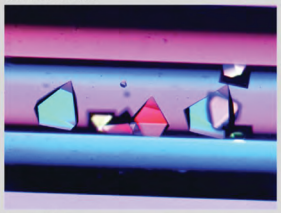
Progress in Addressing the Challenge

To its credit, during a pandemic that closed NASA's facilities and forced 90 percent of its workforce to operate from home, the first certified commercial flight of astronauts was launched into space in November 2020 from Crew Dragon, SpaceX's commercial crew transportation vehicle. This flight represents the first time in 9 years that American astronauts were able to launch on a U.S. vehicle since the end of the Space Shuttle Program.

In June 2021, NASA also completed installation of its new Roll-Out Solar Array to increase the Station's power production and ensure its future power requirements are met through the life of the ISS including power needed for new commercial modules. Astronauts also replaced the Station's aging batteries with more efficient lithium-ion batteries. In addition, NASA installed the first privately-funded commercial airlock on the ISS in late 2020—the NanoRacks Bishop Airlock increased the Station's capability for transferring equipment, payloads, and deployable satellites to meet growing customer demands.

In FY 2021, NASA invested more than $13 million in seed money for seven companies to develop in-space production applications in what industry studies indicate are the most promising areas for profitable manufacturing in space, such as advanced fiber optics, crystals, and regenerative medicine. Most of these in-space production applications are sponsored by CASIS, which in response to long-standing issues with oversight, its organizational structure, and its integration with the scientific community, is working with NASA to implement a six-point plan to ensure they maximize the benefit of the ISS National Laboratory for the remainder of its time in orbit.

Protein Crystals Formed in Microgravity Aboard the ISS



Source: NASA.

In addition, NASA is expanding commercial access to low Earth orbit beyond the scientific research and development allowed in the National Laboratory by enabling commercial and marketing activities onboard the ISS, such as shooting photographs and videos of an Estēe Lauder skin serum using the backdrop of space, and allowing private astronaut missions, such as the first Axiom Space mission expected to launch to the ISS in February 2022. In fact, due to the level of demand for private astronaut missions to the Station, in June 2021 NASA moved to an annual competitive process for selecting up to two private astronaut missions per year based on availability.

Finally, NASA is contributing to the development of low Earth orbit commercial destinations. In 2020, the Agency awarded Axiom Space a firm-fixed-price contract of $140 million to provide at least one habitable commercial module attached to the ISS, which will detach and become a free-flying destination prior to deorbiting the Station. In July 2021, NASA announced its Commercial Low Earth Orbit Destinations initiative to encourage development of a commercial successor to the ISS through public-private partnerships.

● Key Implemented Recommendations

Continue to ensure the purchase of future commercial space services complies with government contracting regulations (IG-20-005).

Complete all end-of-mission critical systems and open work related to nominal and contingency deorbit operations (IG-18-021).

Work That Needs to Be Done

Reliable transportation to low Earth orbit continues to be a priority for the Agency. Despite recent progress, the Commercial Crew Program continues to be challenged by Boeing's CST-100 Starliner vehicle, which encountered numerous delays and technical issues that precluded a second uncrewed test flight planned for July 2021. This second test flight was necessary because Boeing's first flight in December 2019 encountered significant software glitches that prevented the capsule from reaching the ISS.[37] Given the ongoing root cause analysis and technical issues facing the Boeing vehicle, it is not clear when the Starliner will conduct its first crewed flight. Until that time, NASA will be required to rely on SpaceX for commercial transportation to the ISS.

Whether on the ISS or a future commercial low Earth orbit destination, NASA is counting on the availability of a continuously crewed laboratory well beyond 2030 to conduct research and technology demonstrations required for deeper and longer-term space travel. Eleven of 27 technology gaps that require microgravity testing and 8 out of 12 critical human health risks that require mitigation using a microgravity environment will not be completed by the Station's proposed end-of-life in 2030.[38]

NASA intends for one or more commercial low Earth orbit destinations to be operational by 2028, allowing a 2-year overlap with the ISS before its anticipated retirement in 2030. The Agency's plan to develop a commercial economy continues to be an urgent priority so that it can avoid a gap in its ability to sustain a human presence in low Earth orbit.

○ Key Unimplemented Recommendations

Lead national and international collaborative efforts to mitigate orbital debris including activities to encourage active debris removal and the timely end-of-mission disposal of spacecraft (IG-21-011).

Explore alternative orbital debris radar assets to fill the data gaps caused by the increased costs of utilizing existing radars and the loss of legacy assets (IG-21-011).

Correct identified safety-critical technical issues before the crewed test flights, including parachute, propulsion, and launch abort systems, to ensure sufficient safety margins exist (IG-20-005).

[37] NASA and Boeing cooperated to form a joint Independent Review Team in December 2019 following the Starliner's first test flight. The assessment examined the three primary anomalies experienced during the initial test. NASA officially closed all actions recommended by the Independent Review Team which included additional dress rehearsals, refurbishing of the first Orbital Flight Test crew module, and outfitting a new service module.

[38] Eight of the 11 technology gaps that require microgravity testing are individual components of the Environmental Control and Life Support System, which will be integrated into a single system on the ISS by 2029.

Ongoing and Anticipated Future Audit Work

NASA's Management and Utilization of Low Earth Orbit
This audit will examine NASA's utilization and management of the ISS and its plans and progress toward developing a commercial market in low Earth orbit.

Challenge 4: Managing and Mitigating Cybersecurity Risk

Why This Is a Challenge

Cybersecurity is profoundly difficult and complex to manage, especially in an ever-changing threat environment where mitigation is a marathon, not a sprint. Over the past 20 years, we identified securing NASA's information technology (IT) systems and data as a top management challenge due, in large part, to the Agency's deficient IT management practices.[39] Given its more than 500 IT systems, high-profile mission, and broad connectivity with the public, educational institutions, research facilities, and other outside organizations, NASA is a larger and more attractive potential target for cybercriminals than most government agencies (see Figure 4).

Figure 4: NASA IT by the Numbers



Source: NASA OIG representation of Agency data.

With more than 72,000 applications and devices connecting to NASA's networks, effectively managing and mitigating cybersecurity risk is key to ensuring mission success—a fact underscored by mandatory telework as a result of the COVID-19 pandemic and the 2020 SolarWinds cyberattack.[40] To this end,

[39] NASA's IT systems include institutional systems that support the day-to-day work of Agency employees, such as laptop and desktop computers, and mission-specific systems that support the Agency's aeronautics, science, and space exploration programs, such as the Deep Space Network, which supports interplanetary spacecraft missions.

[40] Hackers believed to be operating on behalf of the Russian Foreign Intelligence Service breached software provider SolarWinds and deployed a malware-laced update to infect the networks of multiple U.S. companies and government networks, including NASA.

the Office of the Chief Information Officer (OCIO) allocated approximately $69 million during FY 2021 to implement institutional cybersecurity measures because challenges and threats continue to evolve as adversaries routinely attempt to compromise NASA's IT assets.[41] For instance, in 2019 two Chinese nationals, members of a hacking group operating in China, were indicted on criminal charges for gaining unauthorized access to a NASA computer to steal data. Separately, in April 2020 we issued a Management Referral detailing the unauthorized access and deletion of data from an Agency IT system following an employee's separation. The investigation found that a contractor was permitted access to a NASA system following termination in which artifacts were deleted in violation of Agency policy and best practices. In addition, our investigation found that mission IT personnel did not follow established NASA incident response procedures that precluded the possibility of pursuing criminal charges against the former employee related to the potential intentional destruction of Agency data.

To help frame the scope and urgency of cybersecurity, the Federal Information Security Modernization Act (FISMA) and Federal Information Technology Acquisition Reform Act (FITARA) ratings provide broad insight into NASA's cyber health.[42] During the 2021 FISMA evaluation, NASA's information security program showed some improvement but still fell short of the Office of Management and Budget's watermark for a program to be considered effective.[43] Similarly, in July 2021 NASA received an overall FITARA grade of C+ given its challenges in managing cyber risks.

Strengthening foundational cybersecurity efforts, such as Enterprise Architecture and Enterprise Security Architecture—the blueprints for how an organization analyzes and operates its IT and cybersecurity—continues to be challenging as the Agency struggles to balance two competing priorities: protecting against cyber threats and fulfilling its mission. As we reported in May 2021, the Agency's cybersecurity preparedness is strained due to ambiguity surrounding the requisite technical integration between Enterprise Architecture and Enterprise Security Architecture as well as disjointed internal management structures and funding authorities.[44]

The Agency's organizational structure has three primary levels with varying responsibilities—and numerous lines of funding control—for cybersecurity management. Typically, missions fund their own computer networks and IT personnel; therefore, in most cases the mission directorate personnel rather than OCIO have visibility over the operational and security aspects of mission networks. This long-standing practice of having missions with independent budgets and sometimes competing interests impedes the Agency's ability to build a comprehensive Enterprise Architecture.

While the OCIO has responsibility for institutional governed IT that support the day-to-day work of NASA employees, missions are left to their own discretion to interpret and implement requirements and, importantly, absorb costs associated with cybersecurity. Smaller missions lack assets (people, tools, and funding) to devote to cyber efforts and tend to prioritize gathering science while putting cybersecurity low on their "to-do" lists.

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[41] OCIO personnel oversee the systems and security capabilities that comprise NASA's institutional networks, data centers, web services, and computers.

[42] FISMA, as amended in 2014 (Pub. L. No. 113-283), requires agencies to develop, implement, and document an agency-wide information security program. FITARA puts federal agency Chief Information Officers in control of their agency's IT investments.

[43] NASA OIG, *Evaluation of NASA's Information Security Program under the Federal Information Security Modernization Act for Fiscal Year 2021* (ML-22-001, November 9, 2021).

[44] NASA OIG, *NASA's Cybersecurity Readiness* (IG-21-019, May 18, 2021).

Adopting an integrated Enterprise Architecture and Enterprise Security Architecture would not only dramatically improve situational awareness but would also enable NASA's decision makers to effect positive change on the Agency's cybersecurity posture. However, these efforts take time to implement and require sustained leadership commitment. This year, we focused on three specific cybersecurity challenges the Agency is facing with an emphasis on practical issues where meaningful improvement and near-term progress is achievable: (1) improper use incidents, (2) mobile device security, and (3) assessment and authorization (A&A) process.[45]

- *Improper Use Incidents*. Improper use incidents result from a violation of an organization's acceptable use policies. In a May 2021 audit, we found that improper use incidents increased from 249 in 2017 to 1,103 in 2020—a 343 percent growth—with failing to protect Sensitive But Unclassified information the most prevalent abuse.[46] For instance, unencrypted email containing Sensitive But Unclassified data, Personally Identifiable Information, and International Traffic in Arms Regulations data continues to expose the Agency to unnecessary cyber risk that can affect national security, loss of intellectual property, and compromise of employee and contractor data.[47]
- *Mobile Device Security*. The OCIO manages over 15,000 mobile devices that store, process, and transmit Agency information, thereby requiring continuous protection. In an August 2020 audit, we found that the OCIO is not adequately monitoring and enforcing the business rules established for mobile devices, potentially exposing the email system and data to viruses, malware, or hacking through connected mobile devices.[48] Moreover, since the outbreak of COVID-19, exposure to cyber threats has increased because NASA's workforce has shifted to a work-from-home environment, increasing the usage of mobile devices.
- *Assessment and Authorization Process*. To ensure its IT systems meet cybersecurity requirements, NASA is required to perform a thorough A&A review process for newly introduced systems and annually for all other systems. In May 2021, we reported that NASA is inconsistent and ineffective with its A&A process because of its decades-long decentralized approach to cybersecurity.[49] Over the past 6 years, we have reported that certain types of assessment data have been ignored or discarded as irrelevant during the A&A process, leaving systems incorrectly categorized at lower risk impact levels than their criticality requires and resulting in increased vulnerability to cyber risks.

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[45] A&A consists of a review of security policies and procedures (management controls); physical facility infrastructure (operational controls); and network testing, server testing, application security testing, penetration testing, and scanning (technical controls). End products of A&A include an authorization to operate the IT system, risk-based decisions on the application of individual controls, and a plan of action and milestones to address identified deficiencies.

[46] IG-21-019. Sensitive But Unclassified has been replaced by a newly mandated government-wide initiative and renamed as Controlled Unclassified Information. NASA was issued a waiver that permitted both information classifications to coexist until October 1, 2021.

[47] Personally Identifiable Information is any data, such as a social security number or date of birth, that could potentially identify a specific individual. International Traffic in Arms Regulations control the export and import of defense-related articles and services on the United States Munitions List and affects the manufacture, sale, and distribution of technology.

[48] NASA OIG, *Audit of NASA's Policy and Practices Regarding the Use of Non-Agency Information Technology Devices* (IG-20-021, August 27, 2020).

[49] IG-21-019.

Progress in Addressing the Challenge

The Agency has taken steps to improve its management and mitigation of cybersecurity risks over the last several years. Most important has been the stability of having a tenured Senior Agency Information Security Officer in place for more than 4 years—longer than any other in NASA history. The continuity of leadership has been critical for the OCIO, and the Agency as a whole, to advance cybersecurity readiness. Additionally, NASA senior management has made a combination of strategic, risk management, and collaboration decisions that have begun to strengthen the Agency's cybersecurity posture.

- *Strategic Decisions*. Agency officials formed a Cybersecurity Program Management Board with key senior team members to broaden visibility and provide input into programmatic decision-making to better manage cyber risk for programs, projects, and initiatives. In addition, NASA implemented security enforcements requiring End-of-Life/End-of-Support systems to be upgraded in order to remotely connect to NASA's Virtual Private Network (VPN).
- *Risk Management Decisions*. NASA replaced and expanded the Agency's secure VPN infrastructure in the fall of 2019, an action that proved critical for supporting the unanticipated move in March 2020 to mandatory telework for approximately 90 percent of the Agency's workforce during the COVID-19 pandemic. Likewise, NASA has deployed Agency Endpoint Threat Detection and Response software across more than 50,000 systems.[50] The Agency is also creating a mobile VPN for government furnished iOS phones and tablets that utilize Mobile Device Management, allowing secure access over the internet to files stored on shared drives.[51]
- *Collaboration Decisions*. In 2020, NASA embedded a cybersecurity executive within the Artemis program to provide coordination and codify a tailored cross-Center enterprise cybersecurity risk approach for the program. The Agency also established the Cybersecurity Integration Team—comprised of stakeholders across the Agency including all mission organizations—which issued guidance to improve High Value Asset identification and management.[52]

Lastly, the OCIO is in the process of implementing two important cyber-related initiatives. In January 2022, under the Mission Support Future Architecture Program, Center Chief Information Security Officers and cybersecurity staff will be realigned from the Center OCIO to the Senior Agency Information Security Officer, moving the Agency towards an enterprise computing model that would centralize and consolidate IT capabilities, such as software management and cybersecurity. Additionally, in February 2022 the OCIO anticipates it will award the Cybersecurity and Privacy Enterprise Solutions and Services contract that expects to eliminate duplicative cyber services and the need for Center-based IT security contracts.

[50] Endpoint detection and response software is used to gather and analyze security threat-related information from computer workstations and other endpoints with the goal of finding security breaches as they happen and facilitating a quick response to discovered or potential threats.

[51] iOS is a mobile operating system for Apple-manufactured devices such as the iPhone and iPad.

[52] A High Value Asset is information or an information system that is so critical to an organization that the loss or corruption of this information or loss of access to the system would have serious impact to the organization's ability to perform its mission or conduct business. These sensitivities make High Value Assessments of particular interest to criminal, politically-motivated, or state-sponsored actors for either direct exploitation of the data or to cause a loss of confidence by the public.

Key Implemented Recommendations

Require the Jet Propulsion Laboratory Cybersecurity/Identity Technologies and Operations Group to identify and remediate weaknesses in the security problem log ticket process and provide periodic aging reports to the Jet Propulsion Laboratory Chief Information Officer detailing the status of open security problem log tickets, pending patches, and outdated security waivers (IG-19-022).

Ensure OCIO and Office of Strategic Infrastructure representatives are included in functional reviews of NASA's critical infrastructure assets and facility security assessments so that cyber and facility interdependencies are addressed appropriately (IG-17-011).

Work That Needs to Be Done

As cyber threats continue to evolve and become more sophisticated, they pose ongoing challenges for NASA to fortify and safeguard its IT systems. Space is both a collaborative and competitive business; NASA's potential cyber threats are as varied as its missions. The ongoing tension between collaboration and competition will continue to define space activities in the coming years requiring the Agency to combat threats in order to maximize the utility of space partnerships while protecting intellectual property against theft.

While NASA has implemented countermeasures to reduce the likelihood and overall risk associated with cyber threats, it continues to face challenges in improving its defenses to protect mission data and thwart vulnerabilities. The Agency's cybersecurity preparedness continues to be strained due to ambiguity surrounding the technical integration between Enterprise Architecture and Enterprise Security Architecture and gaps in visibility of the mission networks. To counter a broad range of exploitation techniques and to continue forward progress, the OCIO needs to (1) reduce improper use incidents, (2) ensure that mobile device security is addressed, and (3) implement a consistent A&A process. Additionally, as the Mission Support Future Architecture Program and Cybersecurity and Privacy Enterprise Solutions and Services contract come to fruition, sustained focus by Agency leadership is critical to integrating these dual initiatives into its enterprise-wide cyber portfolio to avoid implementation gridlock.

Furthermore, previous concerns such as the large size of the Agency's web footprint and emerging concerns related to the supply chain warrant continued action by NASA officials. Activities to streamline websites, revamp the main website, create an Agency web-archiving program, and implement a new Agency web governance structure are ongoing. As of July 2021, NASA has completed a comprehensive internal review of 2,867 websites and is working toward implementing a new nasa.gov information architecture to streamline the Agency web space. Finally, like many other agencies, NASA is dependent on a supply chain that is vulnerable to disruption and cyber threats, and the impact on NASA IT systems must be monitored with a sense of urgency because much of the supply chain issues stem from the dependence on single and sole-source nations, primarily China.

Key Unimplemented Recommendations

Improve the patch and vulnerability management program (IG-21-005).

Assign the personnel resources necessary to ensure the Agency's security plans for systems that inherit the controls within the Agency's new hybrid common controls system are updated and that those hybrid controls are removed from the Agency Common System security plan (IG-21-010).

Integrate Enterprise Architecture and Enterprise Security Architecture and develop metrics to track the overall progress and effectiveness of Enterprise Architecture (IG-21-019).

Collaborate with the Chief Engineer on strategies to identify and strengthen Enterprise Architecture gaps across mission and institutional IT boundaries (IG-21-019).

Ongoing and Anticipated Future Audit Work

Review of NASA's Information Security Program under the Federal Information Security Modernization Act for Fiscal Year 2021
As required by FISMA, this annual review will evaluate NASA's information security program for FY 2021.

Audit of NASA's Insider Threat Program
This audit will examine whether the Agency has established and implemented an effective insider threat program in accordance with federal policies, NASA policies, and best practices.

Challenge 5: Improving Oversight of Contracts, Grants, and Cooperative Agreements

Why This Is a Challenge

NASA uses contracts, grants, and cooperative agreements to fund research and development activities and purchase services, supplies, and equipment to support every facet of its operations. In FY 2020, NASA spent approximately $19.7 billion of its $27.7 billion in available resources on contracts, grants, and cooperative agreements awarded primarily to businesses, educational institutions, and nonprofit organizations. The breadth and scale of these acquisitions underlie the significant challenge NASA faces to ensure the Agency receives good value for its investments and that recipients spend NASA funds appropriately to accomplish agreed-upon goals.[53] Moreover, the Agency is also increasingly relying on public-private partnerships and alternative acquisition approaches in an attempt to achieve cost savings and accelerate development of new technologies, including several key systems for its Artemis mission to return humans to the Moon.

Contract, Grant, and Cooperative Agreement Definitions

Contract
Mutually binding legal relationship obligating the seller to furnish the supplies or services and NASA to pay for them. Contracts include but are not limited to awards, job orders, task letters, purchase orders, letter contracts, and bilateral contract modifcations.

Grant
A type of financial assistance a federal agency enters into with a recipient that supports or stimulates a public purpose. A grant does not provide for substantial involvement or collaboration between NASA and the recipient.

Cooperative Agreement
An arrangement where NASA provides funds to a recipient for a specific purpose. A cooperative agreement typically requires substantial collaboration between the Agency and the recipient.

NASA has faced long-standing challenges with oversight of its contracts, grants, and cooperative agreements. GAO first designated the Agency's acquisition management as a high risk in 1990, and it has remained a high-risk area for three decades due to persistent cost growth and schedule delays in many of NASA's major projects.[54] Similarly, we have highlighted acquisition as an Agency management challenge for the past 15 years with identified weaknesses in both oversight of the acquisition process and the readiness of its acquisition workforce.

NASA also continues to be challenged with oversight of its acquisition process. Most recently, in a July 2021 audit of NASA's cooperative agreements with the Universities Space Research Association, we reported that the Agency needed to take additional steps to improve its management and financial oversight of cooperative agreements, especially with regard to significant extensions and augmentations to those agreements.[55] Furthermore, our financial statement audits over the past decade have

[53] NASA's contracts are managed by the Office of Procurement, while grants and cooperative agreements are issued by the NASA Shared Services Center and managed by the Office of the Chief Financial Officer.

[54] This issue is discussed in Challenge 2, *Improving Management of Major Projects*.

[55] NASA OIG, *NASA's Management of Universities Space Research Association's Cooperative Agreements* (IG-21-022, July 14, 2021). Funded extensions are supplements used to extend grants that require additional funding beyond their expiration dates. Augmentations are supplements that can be used at any time for work outside the scope of the approved proposal.

identified challenges in timely closing out of contracts to ensure the government received what it contracted for, detected and recovered erroneous payments, made final payments to the contractors, and deobligated excess funds. Our FY 2020 financial statement audit also revealed oversight issues with the Agency's internal controls related to the grant management process that we found were not designed to effectively monitor grantees and the federal awards they received.[56] Also, over the past 3 years our Office of Investigations conducted 40 criminal investigations involving grant fraud and abuse. The investigations resulted in 4 indictments, 2 prosecutions, and 4 suspensions with NASA receiving $341,266 in restitution, $731,131 in recoveries, and $3,272,790 in civil settlements.

More broadly, NASA is challenged with Agency-wide oversight of its acquisition workforce. In an October 2020 audit, we found that NASA does not collect Agency-wide acquisition workforce workload or performance data, which limits its ability to have an accurate picture of who comprises the acquisition workforce, determine whether they are certified as required, and measure workforce performance consistently across the entire Agency.[57] Further, the practice of Center procurement offices functioning autonomously resulted in institutionalized inefficiencies such as redundant capabilities and contracts, legal and policy offices reviewing inconsistent monetary thresholds across Centers, and lack of workforce flexibility.

In our judgment, these challenges expose NASA's contracts, grants, and cooperative agreements to an increased risk of fraud, waste, and abuse. In particular, fraud and misconduct with the Agency's Small Business Innovation Research (SBIR) and Small Business Technology Transfer programs are a long-standing OIG concern. Recent examples include:

- A Kansas engineering company agreed to a civil settlement of $672,352 to resolve allegations that it submitted false claims to obtain grant funds from the SBIR and Small Business Technology Transfer programs. The investigation determined that the company received small business funding for which it was ineligible.
- A New York company agreed to a settlement of $490,000 to resolve allegations under the civil False Claims Act that it did not satisfy ownership and control requirements under the SBIR program. The company was ineligible for SBIR awards from NASA and the U.S. Department of Defense due to the involvement of Canadian investors.
- A Wyoming small business agreed to pay damages of $557,684 in a civil settlement to resolve allegations that it accepted SBIR funding to which it was not entitled from NASA, the U.S. Department of Energy, and the U.S. Department of Health and Human Services.

In addition, the ongoing COVID-19 pandemic has impacted NASA's management of its contracts. Under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act—the pandemic relief legislation known as the CARES Act—agencies are permitted to reimburse contractors for work stoppages caused by the pandemic to keep employees and subcontractors in a ready state given the closure of NASA Centers.[58] This provision is particularly relevant to an agency like NASA that relies so heavily on private contractors for its science and space exploration projects. The CARES Act provided NASA with $60 million for safety, security, and mission support to prevent, prepare for, and respond to the

[56] NASA OIG, *Fiscal Year 2020 Financial Accounting Management Letter* (IG-21-008, December 14, 2020).

[57] NASA OIG, *NASA's Management of Its Acquisition Workforce* (IG-21-002, October 27, 2020).

[58] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020).

coronavirus. However, the Agency is planning to pay for subsequent adjustments using non-CARES Act appropriated funds and we anticipate additional significant costs to NASA in the future.

Progress in Addressing the Challenge

NASA has taken numerous steps to address its contract management challenges. The Office of Procurement continues to implement the ongoing Mission Support Future Architecture Program, NASA's transition to an enterprise-wide workforce that leverages employees' skills for use across the Agency; developed a Strategic Workforce Plan to maintain a workforce capable of responding to current and future contracting needs; and developed an Acquisition Portfolio Assessment Team to assess all Agency contracts and identify redundant contracts managed at the Center level.

In the past year, NASA has also made several enterprise-wide changes to address acquisition management and oversight concerns. The Agency has consolidated the award and administration of grants and cooperative agreements through the NASA Shared Services Center. This consolidation is designed to improve service and data quality, standardize processes, leverage skills and investments, and provide economies of scale. NASA has also developed and implemented a new pre-award risk assessment policy and the Pre-Award Risk Assessment Tool to help standardize reviews across Centers. This tool has been in use by the NASA Shared Services Center for all recipients of new grants and cooperative agreements since October 1, 2020. In addition, NASA has made efforts to increase its efficiency in closing expired grants by incentivizing closeout contractors to complete timely and proper grant closeout.

In an August 2021 report, we found that NASA appropriately managed $60 million provided by the CARES Act. For the Section 3610 transactions, NASA developed advanced agreements, a vehicle contracting officers and contractors use for special or unusual costs, specifically designed for the unique circumstances presented by the pandemic. We found that the advanced agreements and supporting documentation for the 27 Section 3610 transactions in our sample were all pandemic-related, and the advanced agreements adequately described the conditions such as facility closures and listed the contractor employees and the job functions that could not be performed remotely.[59]

[59] NASA OIG, *Review of Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding* (IG-21-024, August 9, 2021).

Key Implemented Recommendations

Establish a process to be used during source evaluation boards and source selections that includes direct contact with the Center Earned Value Management Working Group Representative and cognizant Defense Contract Management Agency office to verify all contractor proposed information related to Earned Value Management (IG-20-015).

Provide information and training to contracting officers and source evaluation board members on the availability, use, and responsibilities of the Defense Contract Management Agency during source evaluation boards and source selections. Specifically, the NASA Federal Acquisition Regulation Supplement and NASA-Defense Contract Management Agency Memorandum of Understanding for Earned Value Management (IG-20-015).

Establish policies and procedures as part of the NASA Grant and Cooperative Agreement Manual to periodically review a recipient's actual cost match and document award requirements are met prior to obligating the next increment of funding (IG-16-013).

Work That Needs to Be Done

Collectively, our audit and investigative work has shown that NASA's inadequate management and oversight of contracts, grants, and cooperative agreements has, at times, resulted in inappropriate expenditures and wasted taxpayer dollars that negatively impacted the Agency's mission.

Successful implementation of NASA enterprise-wide initiatives—such as the Mission Support Future Architecture Program—should provide more consistency in oversight and management of contracts, grants, and cooperative agreements, as well as sharing of lessons learned. However, as we have seen in past enterprise-wide initiatives, progress can be slow and halting due largely to the Agency's decentralized management structure, lack of insight into Agency-wide operations, and the limited authority of Headquarters officials to control budgets and implement change at the Center level. We have similar concerns with the Agency's ability to reorganize procurement management authority, operations, and oversight into a headquarters-based, enterprise-level function. A recent recommendation made as part of our audit of NASA's acquisition workforce to link program and project managers to their contract assignments remains unresolved because the Office of Procurement lacks an existing source that contains this data. In our view, the ability to link contract assignments to acquisition workforce personnel is essential to the Office of Procurement's efforts to monitor and measure workforce performance and establish a baseline for operations at an enterprise level as part of the Agency's Mission Support Future Architecture Program.

NASA also needs to continue its work towards improving the timely closeout of contracts. In FY 2020, the Office of Procurement implemented several corrective action plans regarding timely closing out of contracts, especially the controls over the deobligation of any funds remaining on such contracts. The plans included establishing a Closeout Capability Group, Contract Closeout Guidebook, and a closeout repository to strengthen communication about closeout duties and store closeout documentation in a centralized location to expedite the closeout process. In November 2020, the Contract Closeout

Guidebook was incorporated into the NASA FAR Supplement. The Office of Procurement also continuously monitors closeout performance at each Center and collects quarterly and annual metrics for review.

Additionally, NASA needs to improve its oversight of the grants process to include strengthening documentation requirements and developing a process for tracking questioned costs. Moving forward, ensuring proper use of NASA's resources remains a top priority and Agency contracting personnel need to be proactive in their efforts to prevent fraud, waste, and abuse.

Finally, with regard to COVID-19 contracting challenges, Agency officials have reported as much as $89 million in potential Section 3610 reimbursements as of June 2021, and they expect that amount will increase as they receive additional requests from contractors. NASA officials said they intend to follow their established contracting practices for future pandemic-related adjustments, with contracting officers responsible for ensuring invoices and claims are in line with the contracts, advanced agreements, and NASA policies. Given the significant costs and efforts that will likely be associated with these adjustments, we plan to continue our oversight work in this area.

Key Unimplemented Recommendations

Finalize and fully implement the performance metrics dashboard to measure acquisition performance (IG-21-002).

Document contract assignments to contracting officers, contracting officer's representatives, and program and project managers in a centralized system for inclusion in the performance metrics dashboard (IG-21-002).

In coordination with the NASA Shared Services Center, comply with the Federal Grant and Cooperative Agreements Act of 1977 on the proper use of grants and contracts to allow Center and Program personnel greater visibility into partner operations and to ensure that funding levels and performance are commensurate with requirements (IG-20-023).

Ongoing and Anticipated Future Audit Work

The OIG's Offices of Audits and Investigations, in conjunction with our Advanced Data Analytics Program, will continue to assist NASA in strengthening its acquisition oversight efforts by examining Agency-wide procurement and grant-making processes.[60] These efforts will include assessing actions NASA is taking to identify and mitigate grant fraud risks; auditing individual contracts, grants, and cooperative agreements; and investigating potential misuse of contract and grant funds. Additionally, we plan a second round of contracts with several external entities to perform incurred cost audits of NASA contractors.

Review of NASA's Management of the Johns Hopkins University Applied Physics Laboratory Portfolio
This audit will assess NASA's processes and controls ensuring the effective management of the contracts and portfolio of Agency projects developed by the Johns Hopkins University Applied Physics Laboratory.

[60] Since 2015, our Advanced Data Analytics Program has provided analytic products to our audit and investigative teams that show indicators of and help identify potential contract, grant, and procurement fraud. We continue to use a variety of statistical and mathematical techniques to gather, analyze, and interpret Agency and open-source data to identify fraud indicators and help target OIG audit and investigative resources.

Science Mission Directorate's Management of Research and Analysis Grants
This audit will evaluate whether the Science Mission Directorate and NASA Shared Services Center have sufficient controls in place to adequately oversee its Research and Analysis grants.

Challenge 6: Attracting and Retaining a Highly Skilled and Diverse Workforce

Why This Is a Challenge

The success of NASA's missions, programs, and projects relies on the Agency attracting and retaining a highly skilled and diverse workforce with varied technical and management skills. As of May 2021, NASA had approximately 18,000 civil service employees working at its facilities nationwide, most in science and engineering fields. Our prior work has shown that NASA faces interrelated workforce challenges including not having enough employees with the right skills in technical areas; implementation shortfalls; an aging workforce; and Science, Technology, Engineering, and Mathematics (STEM) pipeline risks. Workforce challenges are not unique to NASA but are a government-wide concern. The U.S. Office of Personnel Management's 2018 Federal Workforce Priorities Report observed that human capital challenges appeared in at least 10 percent of 221 Inspectors' General management challenges and at least 25 percent of GAO's 32 High-Risk List areas.[61] In GAO's 2021 High-Risk List, federal strategic human capital management—a high risk since at least 2001—was downgraded from "met" to "partially met," with GAO noting that persistent mission-critical skills gaps within federal agencies reduce their effectiveness.[62]

NASA OIG and GAO have reported on multiple NASA projects—Low-Boom Flight Demonstrator, Europa Clipper, and Mars 2020 to name a few—that have experienced workforce challenges, including not having enough staff at the right times or staff with the right skills.[63] Last year we reported that NASA's engineering technical disciplines faced significant risks to their specialized workforces, with particular concern to the loss of unique skillsets from retiring employees before their knowledge could be passed on to others within the Agency. More recently, we reported on NASA's challenges to develop an agile and mission-driven acquisition workforce as it continues to implement an enterprise-wide approach to procurement under the Mission Support Future Architecture Program. Our audits have shown that despite establishing strategic frameworks for change, NASA has had limited success implementing these efforts to reorganize Agency-wide operations.[64] Furthermore, the Aerospace Safety Advisory Panel noted in its 2020 Annual Report that NASA was not addressing certain workforce issues at the strategic level, risking an "erosion of expertise and experience in the NASA workforce, thereby

[61] U.S. Office of Personnel Management, *2018 Federal Workforce Priorities Report* (February 2018).

[62] GAO-21-119SP.

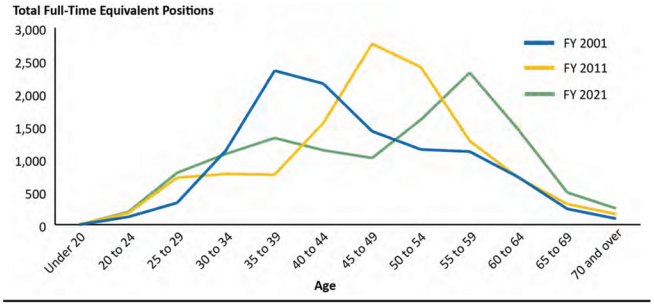
[63] NASA OIG, *Management of the Low-Boom Flight Demonstrator Project* (IG-20-015, May 6, 2020), *Management of NASA's Europa Mission* (IG-19-019, May 29, 2019), and *NASA's Mars 2020 Project* (IG-17-009, January 30, 2017). GAO, *NASA: Assessments of Major Projects* (GAO-18-280SP, May 1, 2018). The Europa Clipper plans to launch in October 2024 to Jupiter's moon Europa and over a 4-year period investigate whether conditions on the moon are potentially suitable for life. The Mars 2020 Perseverance Rover, which launched in July 2020 and landed in February 2021, seeks to better understand the geology of Mars, identify evidence of ancient life, collect Martian surface samples, and test new technologies.

[64] NASA OIG, *NASA's Planetary Science Portfolio* (IG-20-023, September 16, 2020) and IG-21-002.

undermining NASA's ability to effectively manage the highly complex risk problems of future exploration programs, including those envisioned for the Artemis campaign."[65]

Our prior top management and performance challenges reports have also highlighted that NASA's workforce age distribution should raise additional human capital concerns. Nearly 12,000 of NASA's 18,000 civil service employees (65 percent) fall under the occupation category "science and engineering"—the portion of the workforce that provides technical capabilities to enable space flight and science missions. Within this category, 6,000 are more than 50 years old, and of those employees approximately 3,000 are eligible to retire in 2021. These potential impending retirements, shown in Figure 5, could result in a significant loss of institutional knowledge and skills.

Figure 5: Science and Engineering Workforce Trend



Source: NASA OIG presentation of Agency workforce data.

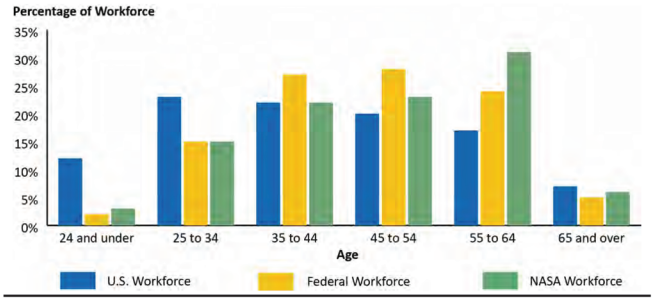
The Partnership for Public Service recently reported that agencies struggle with staffing shortages and report gaps in knowledge and skills. These issues are compounded by an aging federal workforce with a wave of retirements threatening to further stretch staffing capabilities as roughly one-third of employees onboard at the beginning of FY 2019 were eligible to retire by the end of FY 2023.[66] The Office of Personnel Management reported for June 2021 that there were six times more federal employees older than 50 than under 30 (44.1 percent compared to 6.9 percent).[67] It is noteworthy that NASA has a significantly larger percentage of its workforce in the 55 to 64 year age range than the federal average (see Figure 6).

[65] Aerospace Safety Advisory Panel, *Annual Report for 2020* (January 2020). The Panel evaluates NASA's safety performance, advises the Agency on ways to improve that performance, and reports to both NASA and Congress.

[66] Partnership for Public Service, *A Time for Talent—Improving Federal Recruiting and Hiring* (August 2020). Partnership for Public Service is a nonpartisan, nonprofit organization that works to make the government more effective and efficient.

[67] The Office of Personnel Management serves as the chief human resources agency and personnel policy manager for the federal government.

Figure 6: Workforce Distribution by Age in May 2021



Source: NASA OIG presentation of U.S. Department of Labor, Office of Personnel Management, and NASA data.

Additionally, as an agency highly dependent on skilled STEM workers to accomplish its mission, NASA remains at risk from a shortage of such staff. The U.S. Bureau of Labor Statistics reported the STEM labor market is highly segmented into different disciplines, sectors, and skill levels with varying degrees of supply and demand.[68] In 2018, the Executive Director of the American Institute of Aeronautics and Astronautics testified before Congress about a STEM worker shortage in the aerospace community.[69] The Institute also highlighted in its work the need to increase diversity and foster inclusion by encouraging women and underrepresented minorities to pursue careers in the aerospace industry and emphasized that STEM school curriculums should be aligned to current workforce needs.[70]

Progress in Addressing the Challenge

For the past 9 years, NASA has been voted the best large agency to work for in the federal government and again held the top rank in 2020 according to the Partnership for Public Service.[71] NASA is attempting to cultivate a diverse and innovative workforce with the right balance of skills and experience to provide an inclusive work environment. Moreover, NASA added "inclusion" as an Agency core value in FY 2020.[72] To this end, NASA is rolling out at least two initiatives—"Agency Unity Campaign" for employees emphasizing mission success through increased collaboration, connection,

[68] Yi Xue and Richard C. Larson, U.S. Bureau of Labor Statistics, *Monthly Labor Review,* "STEM crisis or STEM surplus? Yes and yes" (May 2015).

[69] NASA's Cost and Schedule Overruns: Acquisitions and Program Management Challenges. Before the Subcommittee on Space, Committee on Science, Space, and Technology, 115th Congress (2018) (statement of Executive Director Daniel L. Dumbacher). The American Institute of Aeronautics and Astronautics' membership includes nearly 30,000 engineers and scientists from 88 countries involved in global aerospace.

[70] American Institute of Aeronautics and Astronautics, *A&D Workforce: Industry Overview, Industry Challenges, and Industry Needs* (February 2021).

[71] The Partnership for Public Service's results were calculated based on responses to the Office of Personnel Management's annual Federal Employee Viewpoint Survey.

[72] NASA core values are safety, integrity, teamwork, excellence, and inclusion.

and communication, and "Mission Equity," a comprehensive effort to assess expansion and modification of NASA programs, procurements, grants, and policies, and examine potential barriers and challenges for communities that are historically underrepresented and underserved.

Furthering its efforts to strategically hire staff with the right skills, NASA's Office of the Chief Human Capital Officer (OCHCO) is undertaking activities to better align the Agency's workforce to its current and future missions. This includes aligning specific OCHCO goals to NASA's strategic objectives. Other initiatives include implementing a flexible and agile workforce approach through the Strategic Workforce Plan and replacing NASA's aging talent acquisition system with one that will enable the Agency to more strategically hire, develop, and manage its workforce. OCHCO has also made efforts to reduce the hiring cycle time, leverage special hiring authorities, clear the hiring backlog from prior years, and work with Centers and Mission Directorates to develop plans to lessen the impact of a future retirement wave.

As the Agency plans to improve the pipeline of candidates to fill current and future open positions, it is making efforts to attract and retain underserved and underrepresented students in engineering and other STEM fields in partnership with minority serving and other higher education institutions. One important change from previous years is that in its FY 2022 budget request NASA did not recommend eliminating its Office of STEM Engagement funding. Instead, the Agency requested $147 million for FY 2022 after receiving $127 million from Congress in FY 2021. The Minority University Research and Education Project, which is administered through NASA's Office of STEM Engagement and provides financial assistance via competitive awards to minority serving institutions, is seeing the largest increase, with $10 million more requested for 2022 over what it received in 2021. Further, NASA is integrating metrics and using data to inform decisions on how to better reach the public, engage stakeholders, and evaluate outcomes. Critically, the STEM Engagement strategy is designed to enable relevant student contributions to NASA's mission and work.

Key Implemented Recommendations

Develop procedures for periodic communication of the available hiring authorities (IG-20-023).

Evaluate current and future critical technical staffing requirements by project over the next 5 years (IG-19-019).

Create standardized guidance for performing annual capability assessments that considers, at a minimum, the appropriate time and resources for performing the assessments and the required data, analyses, and expected goals or results (IG-17-015).

Work That Needs to Be Done

To maintain a world-class workforce, NASA must fill current critical workforce gaps and prepare for those on the horizon by planning how to mitigate a forthcoming wave of retirements. Furthermore, the ability to successfully address that risk will require the Agency to have detailed visibility into workforce skill types—data that the Agency currently does not collect. The Center for Space Policy and Strategy recently emphasized the need for agencies to use data to measure their success in investing in their STEM workforce, stating "there should be a continuous evaluation of what works and what does not

work."[73] Having the right data will also help NASA meet the Succession Planning and Knowledge Transfer priority outlined in the 2018 Federal Workforce Priorities Report, which notes that agencies should maintain "a multi-faceted succession plan that is designed to capture the valuable knowledge and insights of current employees, convey captured knowledge to new and retained employees, and create and utilize a multi-generational pipeline."

NASA management knows it will need a significant number of well-trained engineers, scientists, statisticians, accountants, human resources and procurement professionals, IT developers, and support specialists into the next decade. They must continue to work to ensure that their ongoing investments develop a continuous stream of candidates with the passion and skills to study the Earth, the Sun, and solar system; conduct aeronautics research, testing, and development; and lead crewed and uncrewed space exploration efforts. Looking forward to a post-pandemic environment, NASA will need to confront head-on the challenges and opportunities in managing a workforce using much greater telework and remote work flexibilities.

Key Unimplemented Recommendations

Finalize and fully implement the performance metrics dashboard to measure acquisition performance (IG-21-002).

Engage relevant Centers and technical capability leaders to identify budgetary and accounting system solutions within the current budgetary and full cost accounting system to adequately fund and sustain critical technical discipline capabilities needed to support current and future projects (IG-20-023).

Review and identify opportunities based on existing NASA leading practices to foster and monitor mentoring to ensure a robust pipeline for Planetary Science Division-related disciplines (IG-20-023).

Ongoing and Anticipated Future Audit Work

We will continue to monitor progress on the Agency's workforce master plan and examine specific workforce issues as part of broader OIG audits and reviews.

Review of Astrophysics Portfolio
This audit will evaluate the current state of the Agency's Astrophysics portfolio, identify and assess risks to future missions, and provide recommendations in support of the next decadal survey.

NASA's Management of Its Astronaut Corps
This audit will assess to what extent NASA's processes for sizing, training, and assigning its astronaut corps align with the Agency's current and future mission needs.

NASA's Diversity, Equity, Inclusion, and Accessibility Efforts
This audit will evaluate NASA's efforts to advance diversity, equity, inclusion, and accessibility throughout the Agency.

[73] The Center for Space Policy and Strategy provides nonpartisan research and strategic analysis in support of the development of well-informed, technically defensible, and forward-looking space and technology policy. The Center is part of The Aerospace Corporation, a nonprofit organization that advises the government on complex space enterprise and systems engineering problems. Colleen Stover, *Developing Future Space Workers: Leadership Needed Today* (April 2021).

Challenge 7: Managing NASA's Outdated Infrastructure and Facilities

Why This Is a Challenge

Over the past 60 years, NASA and its commercial partners have relied on the Agency's facilities and infrastructure, including laboratories, launch complexes, test stands, and wind tunnels, to develop new and innovative technologies to advance space exploration missions, scientific research, and aeronautics. NASA is one of the largest property holders in the federal government with $40 billion in physical assets and an inventory of more than 5,000 buildings and structures across 12 states and at its headquarters in Washington, D.C. However, over 75 percent of its facilities are beyond their original design life and require a significant investment in maintenance, including 166 abandoned properties worth $291 million that present a safety and maintenance liability due to their structural or interior deficiencies. To achieve its current exploration and research goals, the Agency needs to be smart about what facilities to invest, divest, or consolidate and maintain in a safe condition.

While it strives to keep its facilities operational, NASA faces a deferred maintenance backlog estimated at $2.8 billion as of 2021, which has resulted in unscheduled maintenance costing up to three times more to repair or replace equipment after it has failed than if NASA conducted regular scheduled maintenance. Further compounding this issue, in March 2020 the Agency implemented its emergency pandemic response plan that closed facilities across the country except those necessary to protect critical infrastructure and ongoing missions. Consequently, NASA was forced to scale back work on construction and maintenance projects, resulting in increased costs and schedule delays. In a September 2021 audit, we found that 101 construction projects across the Agency reported nearly $11 million in contractor requests for equitable adjustment, and facility closures delayed project schedules by 5 months on average.[74]

For facilities the Agency is not currently utilizing but may need to meet future mission needs, NASA has several options. The Agency may retain the property in its present state, demolish the property, transfer the property to the General Services Administration for sale, or make the property available for lease. Leasing has several benefits including generating revenue that the Agency can use to help reduce expenses and defray the costs of maintaining and improving facilities. In addition, leasing enables NASA to keep facilities in its inventory that although may be underutilized currently, may be needed for future projects. The challenge is ensuring that leasing does not replace disposing of property that is no longer needed now or in the foreseeable future.

In addition, we found in a December 2020 audit that hazardous materials pose a safety risk to NASA installations. Hazardous materials are used on a daily basis, including acids, bases, and oxidizers in research laboratories; propellants and fuels in engine testing; ethanol-based solvents in engineering laboratories; ammonia, acetone, and glycols in flight equipment operations; and chemicals in simulated

[74] NASA OIG, *NASA's Construction of Facilities* (IG-21-027, September 8, 2021). A contractor may submit a request for equitable adjustment to the government for payment when unforeseen or unintended changes occur within the contract causing an increase in contract costs such as government modification of the contract, differing site conditions, defective or late-delivered government property, or issuance of a stop work order.

planetary environmental testing. These materials can be toxic, reactive, flammable, or explosive and, if poorly managed, can result in costly cleanup efforts, damage to facilities and equipment, personal injury, and loss of mission capabilities. Our review found that hazardous materials are not managed uniformly across NASA and the Agency lacks adequate internal controls for managing its hazardous materials inventory.[75]

Overall, NASA remains challenged to make the difficult decisions to invest, divest, or consolidate unneeded infrastructure; effectively communicate those decisions to stakeholders; and withstand the inevitable political pressure to retain unnecessary capabilities and facilities at Centers throughout the country—all long-standing issues that we have discussed in previous top management and performance challenges reports. These decisions will become even more essential following the COVID-19 pandemic, which has resulted in widespread telework and highlighted issues about the number and size of facilities the Agency will need in the future.

Progress in Addressing the Challenge

Aerial View of Launch Complex 39B with Exploration Ground Systems' Mobile Launcher for Artemis I on the Pad



Source: NASA.

One key goal of NASA's Construction of Facilities (CoF) program is to modernize the Agency's infrastructure into fewer, more sustainable facilities and repair failing infrastructure to reduce overall maintenance costs. Between FYs 2016 and 2020, NASA received nearly $1.8 billion in CoF funding that has resulted in an increasing number of projects to construct and facilities to upgrade. For example, the Exploration Ground Systems Program at Kennedy Space Center is upgrading infrastructure and facilities required for the Artemis program, including modernization of Launch Pad 39B and modification of the Vehicle Assembly Building to accommodate the SLS rocket and Orion capsule. Langley Research Center utilized a large portion of its CoF funds to construct the Measurement Systems Laboratory, a 175,000 square foot facility for research and development of new measurement concepts, technologies, and systems. In addition, the Center plans to begin construction on its Flight Dynamics Research Facility, a wind tunnel the Center will utilize for enhanced vertical spin testing of aircraft and spacecraft. The Jet Propulsion Laboratory continued construction on an array of antennas known as the Deep Space Network and also began construction of a 5-story, 85,000 square foot laboratory known as the Flight Electronics Integration Facility that will support spacecraft avionics and electronic hardware fabrication and testing. Glenn Research Center constructed a 64,000 square foot multi-use office building known as the Research Support Building along with a 55,000 square foot Aerospace Communications Facility that will be utilized for radio frequency communications technology research and development. Other significant projects included construction of a 41,000 square foot facility at Ames Research Center known as the Biosciences Collaborative Facility that houses laboratories for space biology, astrobiology, and synthetic biology and construction of the Goddard Space Flight Center's Instrument Development Facility, a 54,200 square foot multi-story laboratory and office facility.

[75] NASA OIG, *NASA's Management of Hazardous Materials* (IG-21-006, December 3, 2020).

In relation to hazardous materials, NASA is updating policies and procedures to designate appropriate officials to approve hazardous materials purchases, track and report hazardous material inventories, and inspect and evaluate storage sites.

Key Implemented Recommendations

Establish a unified purchase card policy and designate an appropriate official at each Center to ensure hazardous material acquisitions made via purchase cards are appropriately approved, received, and tracked (IG-21-006).

Inspect and evaluate Centers' 90-day storage facilities and processes and make improvements as warranted (IG-21-006).

Work That Needs to Be Done

Over the past few years, we have assessed a variety of infrastructure issues including the Agency's environmental remediation efforts; management of NASA's historic real and personal property; efforts to "rightsize" NASA's workforce, facilities, and other supporting assets; construction of new assets such as test stands; NASA's efforts to reduce unneeded infrastructure and facilities; and the process to select, prioritize, and fund CoF projects. Common themes from these reviews are NASA's slow implementation of corrective actions, inconsistent implementation of Agency policies, the need for stronger life-cycle cost considerations in facility construction decisions, and a decentralized strategy and decision-making process.

For example, in September 2021 we reported that NASA's process for selecting and prioritizing CoF projects is largely driven by Centers regardless of Agency goals, mission needs, or economic efficiencies.[76] Further, at the time NASA lacked an Agency-wide facility master plan that considered consolidation of activities between Centers. Instead, the Agency has relied primarily on Center-based planning and may not be constructing the highest priority projects to meet future mission needs while diluting funds needed for repairs. We also reported that CoF projects incurred significant cost overruns ranging from $2.2 million to $36.6 million and took longer to complete than initially planned with projects running 3 months to more than 3 years behind schedule.

In December 2020 we reported that hazardous materials were not managed uniformly across the Agency, the Centers we visited did not consistently implement adequate controls, and employees and contractors at times circumvented existing controls to acquire hazardous materials.[77] Also, some storage facilities were in need of improvements and repairs, and one hazardous waste facility required physical improvements. As a result, NASA has accepted increased risks associated with the acquisition of hazardous materials that could result in personal injury or property and environmental damage.

[76] IG-21-027.

[77] IG-21-006.

Key Unimplemented Recommendations

Develop and institute an Agency-wide process to prioritize and fund institutional and programmatic CoF projects that align with Agency-level missions and require business case analyses to be completed and considered as part of the process prior to the projects' approval (IG-21-027).

Reexamine policies regarding oversight of the CoF program to identify alternative approaches to more effectively oversee the program (IG-21-027).

Require Center Directors to inspect and replace, as required, laboratory hazardous material storage structures and improve shelters that do not follow Centers for Disease Control and Prevention guidelines or comply with Agency requirements (IG-21-006).

Ongoing and Anticipated Future Audit Work

Audit of Ames Research Center's Lease Management Practices
This audit will examine Ames Research Center's implementation and management of its lease agreements.

NASA's Efforts to Upgrade Its Space Communications Infrastructure
This audit will assess NASA's progress towards upgrading the Agency's Space Network and Deep Space Network and the ability of the networks to support current and future mission requirements.

Challenge 8: Managing the Impacts of COVID-19 on NASA's Mission and Workforce

Why This Is a Challenge

Since March 2020, NASA and the entire federal workforce has faced unprecedented challenges due to the COVID-19 pandemic. In an effort to protect public health and safety, many businesses and government agencies—including NASA—changed the way they operate to restrict physical access to facilities, resulting in disruptions to the Agency's tens of thousands of civilian and contractor employees, materials, and supply chain that have increased costs, delayed launch readiness dates, and impacted operational activities.

During the first 6 months of the pandemic, we found that 56 of NASA's programs and projects were impacted and could potentially incur a total lifetime cost growth of $3 billion.[78] In addition, we estimated that the pandemic would continue to affect 35 programs and projects into FY 2022 and beyond. As of July 2021, the top-line estimate of the total lifetime cost for these delays and challenges decreased to approximately $2.75 billion. After more than 19 months in a mandatory telework mode for the bulk of its workforce, NASA continues to face similar challenges as it did during the onset of the pandemic, such as an inability to conduct on-site activities, workforce startup inefficiencies, and delivery delays of government furnished equipment. For example, the estimated cost impact to the Nancy Grace Roman Space Telescope for FY 2021 and beyond increased from $400 million in October 2020 to $502 million in April 2021 due to continued loss of efficiency, reduced availability of supply chain vendors, and limited on-site work access at Goddard Space Flight Center and the Jet Propulsion Laboratory.[79]

Illustration of Nancy Grace Roman Space Telescope



Source: NASA.

In addition, the dramatic shift in NASA's operations during which the Agency closed 12 of its 18 major facilities and required 90 percent of its workforce to work from home for an extended period of time has raised fundamental questions about how the workforce will "return to on-site work" after it is deemed safe to do so. As of September 2021, over 85 percent of NASA's workforce was still teleworking full-time, and many will continue to work from home until further guidance from the Centers for Disease Control and Prevention and Office of Management and Budget advise otherwise. Also, in September 2021 the Administration released a pair of Executive Orders requiring COVID-19 vaccinations

[78] NASA OIG, *COVID-19 Impacts on NASA's Major Programs and Projects* (IG-21-016, March 31, 2021).

[79] Scheduled to launch no earlier than 2026, the Nancy Grace Roman Space Telescope (formerly known as the Wide Field Infrared Survey Telescope) is a NASA observatory designed to study dark energy and dark matter, search for and image exoplanets, and explore topics in infrared astrophysics.

for federal employees and contractors.[80] While last year we discussed the effects of COVID-19 in each of the top management and performance challenges sections of this report, this year we added it as a stand-alone challenge because it is clear that the impact of the pandemic on NASA's operations will cost billions of dollars, lead to significant schedule delays in multiple projects, and affect how the Agency conducts business for years to come.

Progress in Addressing the Challenge

Despite the ongoing challenges NASA continues to face due to COVID-19, the Agency has demonstrated flexibility and adaptability in its operations. The Office of the Chief Financial Officer began categorizing and tracking COVID-19's impact on NASA programs and projects beginning in April 2020. Officials from NASA's Mission Support Directorate as well as the Agency's four Mission Directorates—Aeronautics Research, Human Exploration and Operations, Science, and Space Technology—provided the Office of the Chief Financial Officer monthly updates initially (and quarterly updates starting in October 2020) highlighting issues and impact levels. This regular communication across the organization allowed the Agency to be responsive and agile in order to continue critical operations.

Work on NASA programs and projects in formulation and development continues, as do operations on other missions. For example, in addition to maintaining ISS operations, NASA successfully launched the first astronauts on a Commercial Crew Program mission to the ISS, launched and landed the Mars 2020 Perseverance Rover on the Red Planet, and launched the Sentinel-6 Michael Freilich spacecraft.[81] To accommodate new work-life dynamics resulting from COVID-19, NASA successfully expanded its telework capabilities and continued software development remotely. In addition, NASA used about 35 percent of its $60 million CARES Act appropriation to pay for contractor leave authorized under Section 3610. Our August 2021 review of the Agency's CARES Act spending found that NASA appropriately managed these funds to meet congressional mandates as well as Agency and federal guidance.[82]

Key Implemented Recommendations

There are no key implemented recommendations related to COVID-19.

Work That Needs to Be Done

Since uncertainties surrounding the pandemic likely will remain well into 2022, NASA must continue to address and anticipate impacts to its programs, projects, and workforce. Agency managers will need to continuously monitor workforce and supply chain readiness, and update program and project cost and schedule estimates. While NASA will be unable to quantify the complete impact of the pandemic until

[80] Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, Exec. Order No. 14043, 86 Fed. Reg. 175 (September 9, 2021) and Ensuring Adequate COVID Safety Protocols for Federal Contractors, Exec. Order No. 14042, 86 Fed. Reg. 175 (September 9, 2021).

[81] The Sentinel-6 Michael Freilich spacecraft launched in November 2020 to collect data on global sea level, atmospheric temperature and humidity, and how oceans are rising in response to climate change.

[82] IG-21-024.

after the COVID-19 emergency has subsided, the Agency has established a long-term baseline for normal operations. Looking forward, the Agency faces new challenges in implementing a far-reaching return-to-onsite-work plan for large swaths of its workforce that likely will embrace significantly expanded telework and remote work flexibilities. We plan to continue monitoring the impact of COVID-19 on NASA's programs and projects as well as NASA's return to on-site work efforts.

Key Unimplemented Recommendations

There are no key unimplemented recommendations related to COVID-19.

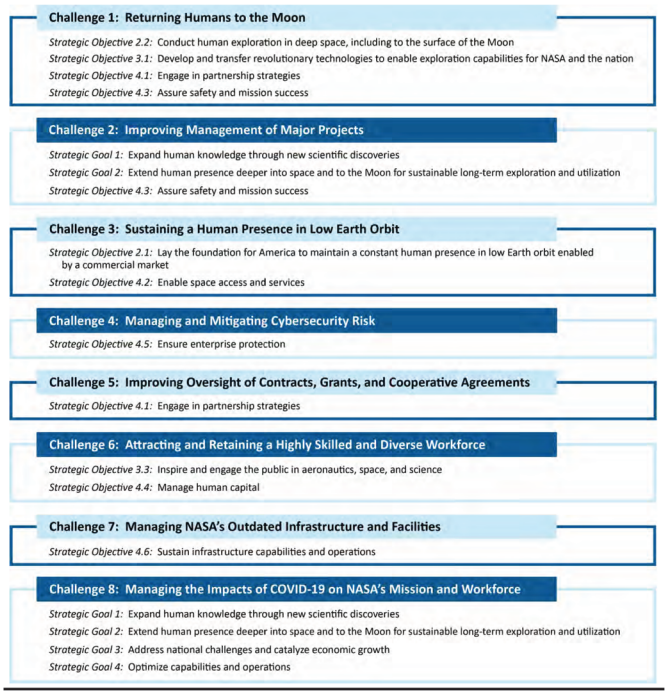
Ongoing and Anticipated Future Audit Work

We will continue to monitor COVID-19 impacts as part of a series of broader OIG audits and reviews. Also, when appropriate, we will conduct a review of NASA's return-to-work efforts.

APPENDIX A: STRATEGIC GOALS AND OBJECTIVES

The figure below shows the eight challenges we identified for 2021 and the related NASA strategic goals and objectives.

Figure 7: 2021 Top Management and Performance Challenges Linked to NASA Strategic Goals and Objectives



Source: NASA OIG analysis of the Agency's 2018 Strategic Plan.

APPENDIX B: ACRONYMS

A&A	assessment and authorization
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CASIS	Center for the Advancement of Science in Space, Inc.
CoF	Construction of Facilities
COVID-19	Coronavirus Disease 2019
ESD	Exploration Systems Development
FISMA	Federal Information Security Modernization Act of 2014
FITARA	Federal Information Technology Acquisition Reform Act
FY	fiscal year
GAO	Government Accountability Office
HLS	Human Landing System
ISRO	Indian Space Research Organisation
ISS	International Space Station
IT	information technology
JWST	James Webb Space Telescope
LBFD	Low-Boom Flight Demonstrator
LCRD	Laser Communications Relay Demonstration
NISAR	NASA-ISRO Synthetic Aperture Radar
OCHCO	Office of the Chief Human Capital Officer
OCIO	Office of the Chief Information Officer
OIG	Office of Inspector General
SBIR	Small Business Innovation Research
SLS	Space Launch System
STEM	Science, Technology, Engineering, and Mathematics
SWOT	Surface Water and Ocean Topography
VIPER	Volatiles Investigating Polar Exploration Rover
VPN	Virtual Private Network

APPENDIX C: RELEVANT OIG REPORTS

Returning Humans to the Moon

NASA's Strategy for the Artemis Missions (IG-22-003, November 15, 2021)

NASA's Development of Next-Generation Spacesuits (IG-21-025, August 10, 2021)

Artemis Status Update (IG-21-018, April 19, 2021)

NASA's Management of the Gateway Program for Artemis Missions (IG-21-004, November 10, 2020)

NASA's Management of the Orion Multi-Purpose Crew Vehicle Program (IG-20-018, July 16, 2020)

Audit of NASA's Development of Its Mobile Launchers (IG-20-013, March 17, 2020)

NASA's Management of Space Launch System Program Costs and Contracts (IG-20-012, March 10, 2020)

NASA's Management of the Space Launch System Stages Contract (IG-19-001, October 10, 2018)

NASA's Plans for Human Exploration Beyond Low Earth Orbit (IG-17-017, April 13, 2017)

Improving Management of Major Projects

Artemis Status Update (IG-21-018, April 19, 2021)

COVID-19 Impacts on NASA's Major Programs and Projects (IG-21-016, March 31, 2021)

NASA's Management of the Gateway Program for Artemis Missions (IG-21-004, November 10, 2020)

NASA's Planetary Science Portfolio (IG-20-023, September 16, 2020)

NASA's Management of the Stratospheric Observatory for Infrared Astronomy Program (IG-20-022, September 14, 2020)

NASA's Management of the Orion Multi-Purpose Crew Vehicle Program (IG-20-018, July 16, 2020)

Management of the Low-Boom Flight Demonstrator Project (IG-20-015, May 6, 2020)

NASA's Management of Space Launch System Program Costs and Contracts (IG-20-012, March 10, 2020)

NASA's Management of the Space Launch System Stages Contract (IG-19-001, October 10, 2018)

NASA's Surface Water and Ocean Topography Mission (IG-18-011, January 17, 2018)

NASA's Plans for Human Exploration Beyond Low Earth Orbit (IG-17-017, April 13, 2017)

NASA's Mars 2020 Project (IG-17-009, January 30, 2017)

Sustaining a Human Presence in Low Earth Orbit

NASA's Efforts to Mitigate the Risks Posed by Orbital Debris (IG-21-011, January 27, 2021)

NASA's Management of Crew Transportation to the International Space Station (IG-20-005, November 14, 2019)

NASA's Management and Utilization of the International Space Station (IG-18-021, July 30, 2018)

NASA's Management of the Center for the Advancement of Science in Space (IG-18-010, January 11, 2018)

Managing and Mitigating Cybersecurity Risk

Evaluation of NASA's Information Security Program under the Federal Information Security Modernization Act for Fiscal Year 2021 (ML-22-001, November 9, 2021)

NASA's Cybersecurity Readiness (IG-21-019, May 18, 2021)

Fiscal Year 2020 Federal Information Security Modernization Act Evaluation—A Contractor-Operated Communications System (IG-21-015, March 24, 2021)

Fiscal Year 2020 Federal Information Security Modernization Act Evaluation—A Center Command and Control System (IG-21-014, March 2, 2021)

Fiscal Year 2020 Federal Information Security Modernization Act Evaluation—A Center Communications System (IG-21-013, February 16, 2021)

Fiscal Year 2020 Federal Information Security Modernization Act Evaluation—An Agency Common System (IG-21-010, December 22, 2020)

Audit of NASA's Fiscal Year 2020 Financial Statements (IG-21-005, November 16, 2020)

Cybersecurity at NASA: Ongoing Challenges and Emerging Issues for Increased Telework during COVID-19. Before the House of Representatives Subcommittee on Space and Aeronautics, Committee on Science, Space, and Technology, 116th Congress (2020) (statement of NASA Inspector General Paul Martin)

Audit of NASA's Policy and Practices Regarding the Use of Non-Agency Information Technology Devices (IG-20-021, August 27, 2020)

Evaluation of NASA's Information Security Program under the Federal Information Security Modernization Act for Fiscal Year 2019 (IG-20-017, June 25, 2020)

NASA's Management of Distributed Active Archive Centers (IG-20-011, March 3, 2020)

Cybersecurity Management and Oversight at the Jet Propulsion Laboratory (IG-19-022, June 18, 2019)

Audit of NASA's Security Operations Center (IG-18-020, May 23, 2018)

NASA's Efforts to Improve the Agency's Information Technology Governance (IG-18-002, October 19, 2017)

Industrial Control System Security within NASA's Critical and Supporting Infrastructure (IG 17-011, February 8, 2017)

Improving Oversight of Contracts, Grants, and Cooperative Agreements

Review of Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding (IG-21-024, August 9, 2021)

NASA's Management of Universities Space Research Association's Cooperative Agreements (IG-21-022, July 14, 2021)

Fiscal Year 2020 Financial Accounting Management Letter, Prepared by CliftonLarsonAllen LLP (IG-21-008, December 14, 2020)

NASA's Management of Its Acquisition Workforce (IG-21-002, October 27, 2020)

NASA's Management of the Stratospheric Observatory for Infrared Astronomy Program (IG-20-022, September 14, 2020)

Management of the Low-Boom Flight Demonstrator Project (IG-20-015, May 6, 2020)

Cybersecurity Management and Oversight at the Jet Propulsion Laboratory (IG-19-022, June 18, 2019)

Ames Research Center Protective Services Contract (IG-19-017, April 25, 2019)

NASA's Strategic Assessment Contract (IG-19-015, March 28, 2019)

NASA's Engineering and Technical Services Contracts (IG-19-014, March 26, 2019)

NASA's Management of the Space Launch System Stages Contract (IG-19-001, October 10, 2018)

Audit of the National Space Biomedical Research Institute (IG-18-012, February 1, 2018)

NASA's Management of the Center for the Advancement of Science in Space (IG-18-010, January 11, 2018)

Attracting and Retaining a Highly Skilled and Diverse Workforce

NASA's Management of Its Acquisition Workforce (IG-21-002, October 27, 2020)

NASA's Planetary Science Portfolio (IG-20-023, September 16, 2020)

Management of the Low-Boom Flight Demonstrator Project (IG-20-015, May 6, 2020)

Management of NASA's Europa Mission (IG-19-019, May 29, 2019)

NASA's Surface Water and Ocean Topography Mission (IG-18-011, January 17, 2018)

NASA's Efforts to "Rightsize" its Workforce, Facilities, and Other Supporting Assets (IG-17-015, March 21, 2017)

NASA's Mars 2020 Project (IG-17-009, January 30, 2017)

Managing NASA's Outdated Infrastructure and Facilities

NASA's Construction of Facilities (IG-21-027, September 8, 2021)

NASA's Management of Hazardous Materials (IG-21-006, December 3, 2020)

Audit of NASA's Development of Its Mobile Launchers (IG-20-013, March 17, 2020)

NASA's Progress with Environmental Remediation Activities at the Santa Susana Field Laboratory (IG-19-013, March 19, 2019)

Audit of NASA's Historic Property (IG-19-002, October 22, 2018)

NASA's Efforts to "Rightsize" its Workforce, Facilities, and Other Supporting Assets (IG-17-015, March 21, 2017)

Managing the Impacts of COVID-19 on NASA's Mission and Workforce

Review of Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding (IG-21-024, August 9, 2021)

COVID-19 Impacts on NASA's Major Programs and Projects (IG-21-016, March 31, 2021)

APPENDIX D: MANAGEMENT'S COMMENTS

National Aeronautics and
Space Administration
Office of the Administrator
Mary W. Jackson NASA Headquarters
Washington, DC 20546-0001

November 9, 2021

TO: Inspector General

FROM: Administrator

SUBJECT: Agency Response to Office of Inspector General Report, "2021 Report on NASA's Top Management and Performance Challenges"

The National Aeronautics and Space Administration (NASA) appreciates the opportunity to review and comment on the Office of Inspector General (OIG) report entitled, "2021 Report on NASA's Top Management and Performance Challenges."

The audits and investigations conducted by your office provide NASA's leadership and management with valuable contributions to the collective effort to provide oversight and gain insight into NASA's broad portfolio of programs, projects, and mission support activities with which it is entrusted. The efforts expended by your office during this past year have furthered the cause of providing the taxpayer with maximum value for each dollar invested in NASA's wide-ranging, ambitious, and challenging portfolio. As an Agency, NASA continues to aggressively pursue the mitigation and remediation of findings related to the audit recommendations issued by your office, including those that underpin your observations as cited in your 2021 Report on NASA's Top Management and Performance Challenges.

While NASA fundamentally agrees that the eight areas outlined in your 2021 report constitute significant challenges for the Agency, this response highlights the following mitigation and remediation efforts relative to each challenge outlined in your report that have either been taken or are currently under way. These efforts substantively demonstrate NASA's commitment to addressing its most significant management and performance challenges faced by the Agency:

Challenge 1: Returning Humans to the Moon by 2024

NASA agrees that landing the first woman and the first person of color on the Moon by 2024 is a significant challenge, but the Agency is still trying to develop this capability in a timely manner to ensure the safety of the crew and meet Artemis objectives. Despite challenges associated with the COVID-19 virus, an extended delay due to the Human Landing System (HLS) protest, and multiple storms severely affecting NASA facilities and workforce, NASA continues to make substantial progress towards the launch of Artemis missions.

NASA continues its preparation for Artemis I, which will be the first test flight of the launch vehicle that will carry astronauts into space for the lunar missions. Simultaneously, the

Agency has met numerous technical and programmatic milestones for Artemis II, which will be the first crewed mission in the Artemis sequence. After the successful completion of the Hot Fire test on the Space Launch System (SLS) Core Stage (CS) in March 2021, during which all four RS-25 engines were ignited to produce 1.6 million pounds of thrust, the CS was transported to Kennedy Space Center for final integration and testing activities. CS mating to the Mobile Launcher (ML) and Solid Rocket Boosters started on June 9, 2021. Since then, most of the remaining major hardware has been integrated in the Vehicle Assembly Building and the full system has been powered up. The Umbilical Release and Retract Test, which validated the ways by which connections between the rocket and the ML will disengage at lift-off, was completed in September 2021. After the Orion Crew Vehicle is stacked, only four key milestone tests—the Integrated Vehicle Interface Verification Test, the Communications End-to-End Test, the Countdown Sequence Test, and the Wet Dress Rehearsal—will stand before the Artemis I launch.

NASA has also made tremendous progress toward the Artemis II launch and forward development for Artemis III missions and beyond. The arrival of the Artemis II European Service Module in October 2021, now positions the Orion program to mate Service and Crew Modules together and complete qualification and testing before delivery to Kennedy Space Center. Work on Core Stages Two, Three, and Four has continued in spite of serious damage to the Michoud Assembly Facility caused by Hurricane Ida. Development on the SLS Block 1B variant and the Mobile Launcher 2 has continued in preparation for a recurring cadence of missions with increasingly complex needs.

While progress and schedules have been impacted due to contract award protests and ongoing litigation, NASA continues to make progress with the HLS program. NASA has awarded a contract for a design, development, and demonstration of a lunar lander which will deliver the first crew to the lunar surface on the Artemis III mission. HLS has also accelerated the HLS services acquisition approach, and in a standalone procurement (Broad Agency Announcement Appendix N), HLS has selected five companies to perform risk reduction activities to advance the industry's proposed content for lunar landing services.

The Gateway Program continues to make significant progress with the completion of Gateway Key Decision Point (KDP)-0. The Program has transitioned focus to the preliminary design and contractual updates across the Program. Element-level Preliminary Design Reviews (PDRs) are nearing completion, and a Program-level PDR-informed sync review is scheduled to occur in the first half of FY 2022. Contracts have been finalized for Gateway's Habitation and Logistics Outpost (HALO), to include Power and Propulsion Element (PPE) integration and launch. Updates to PPE contracts have been made to synchronize requirements. NASA has developed a strategy for competitive procurement of EVA (Extra-Vehicular Activity) suits with the release of the xEVAS (Exploration Extravehicular Services) Request for Proposal (RFP) in September 2021. Meanwhile, NASA has completed in-house builds of xEMU (Exploration Extravehicular Mobility Unit) Development Verification Test (DVT) systems, and the test reports will be used by future partners to reduce development risk.

NASA has also implemented a number of the OIG's key recommendations to improve cost, schedule, and technical performance and is working to complete implementation of the remaining open OIG recommendations.

Challenge 2: Improving Management of Major Projects

NASA sees program management excellence as a core capability, critical for enabling its bold mission of exploration and discovery. NASA's program management discipline includes rigorous processes, encompassing program formulation, approval, implementation, and evaluation. NASA also has guidelines for bringing together the people, resources, and processes necessary to execute the Agency's most challenging and complex programs.

NASA maintains an unwavering commitment to the continued growth of its program and project management disciplines. For example, NASA is focused on improving program planning and control, while increasing transparency for the Agency's external stakeholders. NASA leadership continues to evaluate the considerable progress made to date implementing the initiatives contained in the Agency's High-Risk Corrective Action Plan (CAP). In July 2020, NASA leadership determined that seven of nine CAP initiatives had been fully completed, including the creation of a technology readiness assessment best practices document, an update to the Agency's probabilistic programmatic policy (i.e., Joint Confidence Level (JCL)), and increased transparency by inclusion of original Agency Baseline Commitments in external reporting for re-baselined projects, among other initiatives.

NASA leadership also added four initiatives to a renewed CAP in July 2020. New initiatives under way include a full implementation of a Schedule Repository, an Exploration Systems Development Mission Directorate (ESDMD)/Space Operations Missions Directorate (SOMD) Exploration Systems Development (ESD)/Advanced Exploration Systems(AES) cost and schedule transparency effort, enhancements to the Cost *Analysis Data* Requirement (CADRe) data collection for Category 3 Class D projects, and the adoption of a risk assessment and financial evaluation of contractors' activity. The 2020 CAP is accessible via the NASA Reports and Transcripts Web page[1]. NASA's progress on and renewal of the CAP is evidence that the Agency is committed to pursuing the most critical changes to increase transparency, improve cost and schedule estimation, and maintain focus on accountability. Several of these changes can be found in the Agency's most recent revision to its formal Space Flight Program and Project Management Requirements document (NPR 7120.5F), which was released in August 2021.

NASA also continues to make substantial progress in the implementation of the Program Management Improvement and Accountability Act (PMIAA). As part of PMIAA implementation, the Agency appointed a Program Management Improvement Officer (PMIO) within the Office of the NASA Associate Administrator (AA). The PMIO has convened an Agency stakeholder team to lead the implementation of PMIAA and has conducted three rounds of annual NASA portfolio reviews focused on the identification,

[1] https://www.nasa.gov/sites/default/files/atoms/files/nasa_high_risk_corrective_action_plan_2020.pdf

capture, and improvement of Project Management (PM) practices. Practices that have been addressed include improvements to schedule analyses, improvements to life-cycle reviews, and furthering implementation of tailoring approaches. The NASA PMIO is also implementing a program management integration function on behalf of the NASA AA with support from the Office of the Chief Financial Officer (OCFO), the Office of the Chief Engineer (OCE), and in partnership with the Mission Directorates and field Centers. This integration will promote overall synergy and integration of PM practices and capabilities across the Agency to further enhance PM performance and mission success.

NASA's missions will tackle activities that have never been done before, incorporating the leading edge of technology, as the Agency pursues the challenging goals that can only be accomplished in the hostile environment of space. This requires NASA to develop one-of-a-kind spacecraft and new technologies. The Agency cannot do this without taking on considerable risks. While doing so, NASA aggressively works to understand and manage those risks, while also communicating them to the Agency's stakeholders. One of the key ways the Agency attempts to manage expectations with external stakeholders is by waiting until KDP-C to make cost and schedule commitments. Only by KDP-C are technical designs and risk assessments mature enough to make these important commitments. Two of the cost growth examples cited by the OIG (the Europa Clipper and the Nancy Grace Roman Space Telescope) are measured against early estimates of cost instead of cost commitments. The Science Mission Directorate (SMD) has made substantial investment in pre-formulation mission studies and technology development in order to address some of the concerns identified by the OIG and continues to study large missions to identify best practices for future flagships[2]. Moreover, Independent Review Boards are being formed prior to KDP-B to identify cost risks and reduce "requirement creep," leading to improved early cost estimation. When cost performance is assessed against KDP-C baselines established since the implementation of the 70 percent JCL requirement, major SMD missions have, on average, cost two percent less than the NASA commitment. Due to the nature of NASA's mission, some projects will exceed cost or schedule commitments; however, by adopting the 70 percent JCL methodology, NASA is able to effectively manage the overall portfolio, including the occasional large overruns. Agency missions will employ technologies that must be developed and tested on Earth but can only be demonstrated in space. Innovation must remain at the core of everything NASA does and, thus, cannot encourage innovation and discovery without accepting some risk and some uncertainty.

NASA has institutionalized senior-level reviews to understand and address the ongoing risks that its portfolio of challenging missions faces. NASA's ongoing monthly internal Baseline Performance Review (BPR), chaired by the NASA AA, has continued to evolve and refine to better reflect portfolio performance against external commitments, focusing discussion on issues requiring leadership awareness, and the identification of solutions to challenges as they arise. NASA also maintains a variety of additional formal councils to ensure the right people and resources are brought together on a regularly occurring basis. These include the

[2] The SMD Large Mission Study recommends ways of improving SMD's cost and schedule performance on very large, multi-billion-dollar science missions. The study draws on the collected experiences of a diverse team of experts from the civil, commercial, and defense space communities. Recommendations are being applied to future large SMD missions such as Mars Sample Return and others.

recently formed NASA Acquisition Strategy Council, which addresses acquisition decisions holistically under a single Decision Authority. NASA's renewed emphasis on strategic acquisitions will improve the Agency's efficacy in intelligently moving forward on large acquisitions and making data-driven decisions, ensuring a universal view of the aerospace industrial base, international partners, and NASA in-house performance and capacity.

As NASA strives to return humans to the surface of the Moon, and beyond, the Agency will continue to foster a culture where leaders and staff are incentivized to develop realistic cost and schedule estimates; take steps to recognize, mitigate, and communicate the risks that inform those estimates; and demonstrate progress in program management improvement efforts. As an example, NASA will establish production and operations cost reporting for SLS and Exploration Ground Systems (EGS) with a completion of a KDP-E milestone in early FY 2022. Additionally, the SLS Block 1B Exploration Upper Stage + capabilities and ML-2 Agency Baseline Commitments are also scheduled to be established by spring 2022. Both the production and operations estimates, as well as baseline cost commitments, will be reported to external stakeholders through established processes.

NASA takes its commitment to Congress and the American people seriously, and with stabilization of the Artemis manifest will be able to ensure exploration goals are achievable with better cost estimates, schedules, plans, and acquisition strategies that leverage public/private partnerships and international contributions. To this end, the EGS, SLS, and Orion programs are implementing a series of affordability initiatives that align with the ongoing transition from development to operations.

Challenge 3: Sustaining a Human Presence in Low Earth Orbit

NASA agrees with this challenge. The International Space Station (ISS) is now entering its third and most productive decade of utilization, including research advancement, commercial value, and global partnership. The first decade of ISS was dedicated to assembly, and the second was devoted to research and technology development and learning how to conduct these activities most effectively in space. The third decade is one of results, in which exploration and human research technologies will be verified to support deep space exploration, medical and environmental benefits will continue to be returned to humanity, and the groundwork will be laid for a commercial future in space. ISS continues to support cutting-edge research that benefits humanity, including in-space manufacturing of novel materials; life-saving medical products; understanding Earth's climate; and Science, Technology, Engineering, and Mathematics (STEM) engagement. NASA's leadership of ISS ensures it will remain the preeminent destination in low-Earth orbit (LEO) until commercially owned and operated platforms are available.

Today, with commercial crew and cargo transportation systems online, the ISS is busier than ever. The ISS National Laboratory (ISSNL), responsible for utilizing 50 percent of NASA's resources aboard the ISS, hosts hundreds of experiments from other Government agencies, academia, and commercial users to return benefits to people and industry on the ground. Meanwhile, NASA's research and development activities aboard are advancing the technologies and procedures that will be necessary to send the first woman and first person of color to the Moon and the first humans to Mars.

The ISS is also now entering an era of robust commercial use, taking advantage of the utilities it provides to develop the capabilities industry needs to move from being dependent on NASA for access to space to providing the access NASA will need to continue its mission in LEO after the lifetime of the ISS. Commercial crew and cargo transportation are well known examples, and today they provide the vital lifeline from Earth to the ISS. There are over 20 commercial facilities operating aboard ISS today–including a 3D printer, a bioprinter, external Earth observation and materials platforms, and an airlock–that are available for use by both NASA and other paying customers. NASA awarded the use of an ISS docking port to Axiom Space, which plans to attach a series of commercial modules that will eventually detach to become a LEO free-flying destination. In addition, NASA issued a solicitation for proposals that were due in August 2021, for the formulation and design of Commercial LEO Destinations (CLDs) project capabilities, which will stimulate U.S. private industry development of free-flying orbital destination capabilities and create a market environment in which commercial LEO destination services are available to both Government and private-sector customers. It is NASA's goal to be one of many customers purchasing only the goods and services the Agency needs. CLDs, along with commercial crew and cargo transportation, will provide the backbone of the LEO economy after the ISS retires.

To give future commercial providers a business model to work toward, NASA is refining its white paper on "Forecasting Future NASA Demand in Low-Earth Orbit: Quantifying Demand,"[3] which will define NASA's anticipated service requirements for future CLD providers. These forecasts will include not only the anticipated NASA demand for crew accommodation, technology testing, human research, and science, but also capture the future needs of LEONL (Low-Earth Orbit National Laboratory) and potential international partner users. The intent of this activity is to allow future CLD and launch providers to scale their activities to meet the future needs of the U.S. Government, while also allowing them to design for private use of the capabilities. Given the unique barriers of access to space, NASA and the ISSNL are partnering to support and incubate promising commercial in-space manufacturing applications, such as advanced materials, regenerative medicine, and tissue engineering through the ISSNL, with the goal of creating sustained, self-sufficient demand for future CLD services. Other demand-enabling initiatives include allocating a portion of ISS resources for commercial-use activities and private astronaut missions on a reimbursable basis.

NASA's Commercial Crew Program (CCP) is delivering its goal of safe, reliable, and cost-effective transportation to and from the ISS from the U.S. through a partnership with American private industry. This partnership is changing the arc of human spaceflight history by opening access to LEO and the ISS to more people, more science, and more commercial opportunities. The space station remains the springboard to NASA's next great leap in space exploration, including future astronaut missions to the Moon and, eventually, to Mars.

[3] https://www.nasa.gov/sites/default/files/atoms/files/forecasting_future_nasa_demand_in_low-earth_orbit_revision_two_-_quantifying_demand.pdf

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In the time since NASA certified the SpaceX crew transportation system last year, the company has launched three operational missions to the ISS, Crew-1, Crew-2, and Crew-3. Also, SpaceX recently flew the Inspiration4 mission, a commercial mission consisting of a full crew of private astronauts. In addition, NASA has contracted with Axiom Space for a private astronaut mission to the ISS early next year.

NASA's other CCP partner, Boeing, is making good progress on characterizing and correcting the issue associated with the spacecraft valves that was identified prior to the Orbital Flight Test-2 (OFT-2) mission. Once that analysis and corrective action is in place, NASA and Boeing plan to launch OFT-2 and then the Crewed Flight Test (CFT). If those flights go well, NASA will be able to certify the Boeing system for operational crewed flights, and, for the first time in history, the U.S. will have independent, redundant human access to space.

NASA and its CCP partners need to remain vigilant moving forward, but all indications are that the U.S. commercial human space transportation capability envisioned by NASA a decade ago is coming to fruition.

ISSNL Status:

NASA is pleased to report that the bulk of the actions from the 2020 ISSNL Independent Review Team (IRT) have been completed successfully. NASA and the Center for the Advancement of Science in Space (CASIS) are now in better alignment than ever and are prepared to lead new advances in space research and development and cutting-edge science on the ISS. The following is a list of the actions and a summary of the progress NASA and CASIS have made over the last year:

- Work with CASIS on the best roles and composition of the CASIS board of directors and leadership. Progress: The CASIS board of directors has a majority of new members, along with a new board chair, Dr. Elizabeth Cantwell. The current board composition is well suited to manage the unique challenges and complexities associated with CASIS.
- Support CASIS' establishment of a User Advisory Committee to provide input to the organization about how best to manage resources. Progress: The new CASIS User Advisory Committee, along with five subcommittees, has been established, members and chairs for each subcommittee have been selected, and the committee's first meeting was held on February 26, 2021.
- Create transparent project and program evaluation and prioritization processes. Progress: Six new peer-reviewed CASIS solicitations have been announced along with new project evaluation processes, based on NASA best practices. CASIS will continue to refine its payload prioritization process for better transparency.
- Identify an ISSNL program executive at NASA Headquarters as the primary liaison to CASIS. Progress: Dr. Alex Macdonald, NASA Chief Economist in the Office of the Administrator, served as the ISSNL program executive this last year and has transitioned this role to Ms. Robyn Gatens, ISS Director at NASA Headquarters, who will be the primary liaison going forward.

- Update strategic priorities for the ISSNL on an annual basis. Progress: NASA and CASIS jointly agreed to and documented new CASIS annual performance goals for 2021 and are assessing those goals annually.
- Work with CASIS to optimize the allocation of ISSNL resources to meet strategic priorities. Progress: New ISSNL programmatic goals and operating principles have been agreed to with the CASIS board and will be incorporated into an update to the CASIS Cooperative Agreement, which is in work. CASIS will continue to refine its payload prioritization process.

Overall, the ISS Program is realizing its full potential in accomplishing NASA's and the Nation's goals in exploration, commercial development, international leadership, and extending human presence beyond LEO.

Challenge 4: Managing and Mitigating Cybersecurity Risk

The Office of the Chief Information Officer (OCIO) agrees that managing and mitigating cybersecurity risk is a profoundly difficult challenge and agrees with all of the reasoning in the summary paragraphs in the OIG report. The OCIO Cybersecurity and Privacy Division (CSPD) continues to improve NASA's cybersecurity posture within all Information Technology (IT) domains of NASA's infrastructure, including Corporate IT, Mission IT, and Physical IT. In addition to progress noted by the OIG, NASA has also accomplished the following to manage and mitigate specifically identified challenges:

1. Improper Use Incidents
    - OCIO agrees that technical and policy enforcement to control Improper Use is an ongoing challenge. However, OCIO does not agree that the referenced jump in Improper Use metrics represents a true escalation in risk. The increase, primarily comprised of a 301 percent jump in incident reports from FY 2018 to FY 2019, reflects improved detection and reporting provided by automated Data Loss Prevention (DLP) capabilities implemented by OCIO within the O365 environment. Additionally, increased awareness of Sensitive But Unclassified (SBU) (now Controlled Unclassified Information (CUI)) issues due to more focused staff training is another contributing factor for increased Improper Use metrics. The increase in Improper Use reporting represents improved OCIO identification and data protection capabilities, not an increase in cybersecurity risk to the Agency.

2. Mobile Device Security
    - OCIO agrees that evolving technology and increased usage patterns contribute to the challenge of managing the security of mobile devices and remote access. OCIO projects and initiatives are under way to help mitigate this challenge.

    - Network Access Control (NAC) enforcement on unauthorized devices has improved since the referenced IG report (IG-20-021), and progress continues in this area. NAC is now deployed at all NASA Centers, and closure of the corresponding IG audit finding has been requested.

- OCIO believes that e-mail access via a Mobile Device Management (MDM) solution on worker-owned mobile devices represents a greater benefit to NASA than the relative risk accepted. Benefits include enhanced connectivity and worker productivity at a low cost compared to alternative controls. The OIG's own assessment found the solution largely compliant except for three specific criteria:
    - Assertion of user need for the service, which is implied by the user request and confirmed by annual user validation of need for the service (E-mail is considered to be a Basic-Level Entitlement (BLE) for all NASA workers with logical access).
    - End-user device supply chain concerns, which are mitigated by compartmentalization of NASA data on the device by the MDM software as well as the ability to remotely wipe the device. Additionally, the NASA Security Operations Center (SOC) proactively identifies mobile connections from outside the United States and reports outside connections to the responsible Agency incident response manager if the connection source is an unauthorized traveler.
    - The possibility of operation of the mobile device outside of the United States, which is an edge case that is mitigated by instructing the user that this is not permitted. Additionally, the NASA SOC is now performing proactive monitoring for Government-Furnished Equipment (GFE) and Personally Furnished Equipment (PFE) mobile devices connecting outside the United States.

3. Assessment and Authorization Process
    - The OCIO agrees that Assessment and Authorization (A&A) is a major challenge within a diverse IT environment such as NASA and that the current state of A&A is lacking consistent rigor in its application. However, OCIO does not agree that this specific challenge should be directed towards OCIO as sole owner to mitigate. The cause for inconsistent implementation of policy cannot be blamed on the policy itself. Rather, the overall risk acceptance and authorization actions, or lack thereof, must be examined to identify and address these A&A challenges. As noted by the OIG in draft report Q-21-005-00, "we reported that NASA is inconsistent and ineffective with its A&A process because of its decades-long decentralized approach to cybersecurity." System owners are responsible for the proper execution of defined A&A policy, and the challenges pertaining to A&A must be mitigated by the responsible parties defined within the process, including NASA's missions, not solely by those responsible for developing and maintaining the process itself.

      To aid in mitigating this challenge, NASA OCIO intends to leverage the upcoming Cybersecurity and Privacy Enterprise Solutions and Services (CyPrESS) contract to provide a standardized internal security assessment team and process. This will provide a "level playing field" baseline assessment for all NASA systems, as well as realize significant cost savings for the Agency.

While the Agency continues to enhance its cybersecurity policies, processes, and governance in FY 2021, NASA recognizes there is still progress to be made, specifically in addressing Mobile Device Security and A&A. The Agency remains committed to tackling these issues and to building an even stronger, more proactive risk-based cybersecurity program that safeguards NASA's IT assets, data, and its users.

Challenge 5: Improving Oversight of Contracts, Grants, and Cooperative Agreements

The NASA Office of Procurement (OP) is committed to making meaningful progress in addressing contract oversight challenges and continues to strengthen its overall procurement processes and policy. In response to an OIG recommendation, OP is pursuing the ability to link contract assignments to acquisition workforce personnel and is continuously monitoring closeout performance across the Agency. An annual closeout target metric of 6,000 contracts has been approved by Agency leadership, with quarterly reporting provided at the BPR. In FY 2021, 8,926 contracts were closed.

Challenge 6: Attracting and Retaining a Highly Skilled and Diverse Workforce

NASA agrees with the challenges identified in this section of the report. As the OIG has acknowledged in their report, within the last few years, NASA implemented several approaches and tools to increase agility within the workforce. To address NASA's dilemma created by low attrition and a need for new skills, the Office of the Chief Human Capital Officer (OCHCO) focused on expanding usage of time-limited appointments. Time-limited appointments do not currently count against NASA's permanent Full-Time Equivalent (FTE) "ceilings" and can be used in conjunction with the Agency's NASA-unique Direct Hire Authority to quickly recruit and hire people with new and critical skills. NASA is working with the Office of Personnel Management (OPM) to update the Government-wide time-limited appointment definition to "up to ten years" (rather than four) for STEM. Civil service employees on time-limited appointments can be part of the pipeline to permanent roles as retirements occur or they can end when the project or program is completed.

To promote workforce mobility and enable talented people to move to critical tasks, NASA launched its Talent Marketplace (TM). The Agency-wide TM gives NASA's civil service employees access to non-competitive development and/or lateral opportunities (e.g., internal detail opportunities, short-term/part-time assignments, lateral reassignments, etc.) across NASA. Managers are now able to look for talent across a wider pool than just their unit or Center, and employees are getting more diverse work experiences as a result. Through TM, NASA is embracing transparency, inclusion, and access by offering more and more opportunities remotely which enables additional cross-Agency talent to gain desirable experiences without relocation costs or personal move barriers.

Additionally, as the OIG states, "to maintain a world-class workforce, NASA must fill current critical workforce gaps and prepare for those yet to emerge." NASA has been moving to a more "demand-driven" workforce planning model/process in order to accomplish this goal. The Agency no longer employs a "back-fill only" way of performing the mission, since NASA must understand where the mission is going, Administration and Congressional priorities, what is going to be done by partners (e.g., private sector versus in-

house), what aspects of work will be performed by technology, and how technology will impact NASA's various work roles (e.g., digital transformation). OCHCO is looking at the degree to which reshaping the workforce size and skills will be possible through the use of the Agency workforce master planning process. An element of the master planning process includes projecting loss rates and the extent to which past patterns of employee tenure beyond retirement eligibility dates may change, providing opportunity for workforce reshaping.

Although not mentioned in this report, NASA is still reliant on an antiquated personnel system that does not match the complex and dynamic work NASA is required to perform. The current position-based, mid-century personnel system defines work as static and repeatable, requires lengthy hiring processes, is agnostic to the external labor market, rewards workers for longevity, disincentivizes mobility, and is overly complicated. This rigid, outdated personnel system has an impact on the Agency's ability to compete for talent in a very tight talent market and to retain talented individuals who are motivated by very different careers than in the past. NASA continues to seek workforce flexibilities for hiring, development, and other modern personnel practices. For example, NASA is seeking legislation that would allow engagement in talent exchange programs with the private sector.

Challenge 7: Managing NASA's Outdated Infrastructure and Facilities

NASA agrees with the challenges identified in the *"Managing NASA's Outdated Infrastructure and Facilities"* section of the OIG report. To address the challenges with outdated infrastructure and facilities, NASA is implementing a top-down mission-driven Agency Master Plan (AMP). This plan ensures that the required infrastructure is available and affordable, guides Agency investments to mission-critical assets, reduces the risk of unplanned failures, and guides divestment of assets not needed for the Agency's missions. The AMP will establish a 20-year vision for physical infrastructure and real property assets that aligns with current, evolving, and future mission requirements. NASA will use this process to identify critical capabilities and areas for asset sustainment, investment, or divestment of infrastructure. To alleviate the maintenance burden, NASA will continue to increase its funding for demolition of unneeded facilities.

NASA has also identified investment strategies using Reliability Centered Maintenance (RCM) principles to stave off the increasing deferred maintenance within the Agency. Condition Based Maintenance and a Tiered Maintenance approach for relevant and critical assets are cornerstones of this strategy. These efforts will lead to improving the condition of important building systems and facilities across the Agency and increasing the reliability of these assets to meet mission needs. Implementation of these RCM principles, with particular focus upon Tiered Maintenance, ensures the right type of maintenance is performed on the most critical assets, at the right time, and for the right reasons. RCM, paired with immediate investments in the replacement of obsolete items associated with the Agency's higher-criticality assets, can provide near-term corrective mitigation for known risks and avoid mission/schedule impacts. These maintenance strategies focus on increasing asset availability and avoiding unplanned repair costs.

These initiatives will mitigate the Agency's ongoing challenge of aging and outdated infrastructure and facilities. Through the implementation of the AMP and the ongoing investments in maintenance, demolition, repair, and recapitalization, NASA continually strives to right-size the Agency's infrastructure towards more modern and efficient facilities that will continue to meet NASA mission objectives.

Challenge 8: Managing the Impacts of COVID-19 on NASA's Mission and Workforce

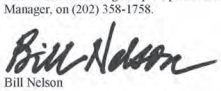
NASA agrees with the OIG that COVID-19 is an unprecedented event and remains a challenge for the Agency mission and its workforce. As the OIG noted, COVID-19 is an unprecedented event, and NASA's understanding of the impact of COVID-19 continues to evolve. NASA agrees with the OIG's assessment that a final accounting of the full impact of COVID-19 on Agency activities will not be available until well after the Agency and its contractors and partners return to "normal." Nevertheless, NASA is proud of the resiliency of its workforce in sustaining critical national missions and for being ranked first among large Federal agencies for the Agency's response to the COVID-19 pandemic.

NASA appreciates the OIG's recognition of the Agency's operational flexibility and adaptability in the face of the COVID-19 pandemic. Of the $2.8 billion in impacts to NASA's programs and projects identified by the OIG, over 95 percent have been absorbed into Agency plans, mostly through a combination of deploying project- and Headquarters-held unallocated future expenses (UFE), program/project replans, and deferral of previously planned content. NASA has emphasized reporting on the impacts of COVID-19 through its Earned Value Management (EVM) activities and is highlighting if COVID-19 is a factor, as was the case with the Nancy Grace Roman Space Telescope and the Plankton, Aerosol, Cloud, ocean Ecosystem (PACE) spacecraft.

NASA is also taking steps to be in full compliance with the Administration's Executive Order requiring vaccination of Federal and contractor employees. The Agency is reviewing its policies for the future of work, including consideration of workforce policies which embrace teleworking and other trends that accelerated under COVID-19, in order to ensure NASA attracts and retains the world-class talent needed to carry out its mission.

Finally, as of the close of FY 2021, NASA had obligated 100 percent of the $60 million in supplemental funding the Agency received as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

If you have any questions regarding NASA's response to the 2021 Top Management and Performance Challenges report, please contact Anthony Mitchell, Audit Liaison Project Manager, on (202) 358-1758.



Bill Nelson

cc:
Chief Financial Officer/Ms. Schaus
Chief Information Officer/Mr. Seaton
Associate Administrator for Exploration Systems Development/Mr. Free
Associate Administrator for Space Operations/Ms. Lueders
Assistant Administrator for Procurement/Ms. Smith Jackson
Assistant Administrator for Strategic Infrastructure/Mr. Carney
Assistant Administrator for Human Capital Management/Ms. Datta

DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

January 31, 2022

The Honorable Gary Peters
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing in response to your letter dated November 10, 2021, in which you forwarded questions for the record following the October 21, 2021, hearing before the Committee entitled "Safeguarding Inspector General Independence and Integrity." Enclosed please find responses to your questions.

Thank you for your support for the OIG's work. If you have further questions, please feel free to contact me or Adam Miles, Senior Counselor to the Inspector General, at (202) 514-3435.

Sincerely,

Michael E. Horowitz
Inspector General

Enclosure

Post-Hearing Questions for the Record
Submitted to the Honorable Michael Horowitz
From Ranking Member Rob Portman

"Safeguarding IG Independence and Integrity"
October 21, 2021

1. The WilmerHale report lists you as one of the witnesses who "refused to be interviewed and could not otherwise be compelled to participate." It goes on to say that:

> *As the Chair of CIGIE, Mr. Horowitz would likely be familiar with CIGIE's interactions with DHS OIG during the relevant time-period as well as his interactions with IG Cuffari and Ms. Costello. In September 2020, WilmerHale contacted Mr. Horowitz to inquire as to whether he would make himself available for an interview. On September 15, 2020, Atticus Reaser (General Counsel of CIGIE) notified WilmerHale that Mr. Horowitz was "not in a position to" sit for an interview related to this investigation.*

Is this accurate? Please explain and include any other information you believe would be helpful in your response.

Response: No, the excerpt in the WilmerHale report referencing Mr. Reaser's interactions with WilmerHale counsel in response to their request to interview me is not accurate. First, at no time did I refuse to be interviewed. In fact, in his September 15, 2020, email that is referenced in the WilmerHale report, Mr. Reaser advised WilmerHale counsel as part of his ongoing discussions about my possible interview, "if you reach the conclusion during your investigation that you are in substantial need of information that you believe Mr. Horowitz or Ms. Lerner possess and that you would be unable to obtain substantially equivalent information by other means, please reach out to me to discuss." In their report, WilmerHale counsel omitted this sentence from Mr. Reaser's September 15 email, thereby misrepresenting me as one of the witnesses who "refused to be interviewed." I have been told that, following Mr. Reaser's September 15 email, there was one additional round of communications between Mr. Reaser and WilmerHale counsel but that at no time during the communications did Mr. Reaser decline an interview on my behalf.

Second, Mr. Reaser never notified WilmerHale that "Mr. Horowitz was 'not in a position to' sit for an interview" as claimed by the WilmerHale report, and the report's reference to the phrase "not in a position" is taken wholly out of context and used entirely inaccurately. As Mr. Reaser detailed in his September 15 email to WilmerHale counsel, WilmerHale was seeking to interview me about three topics: (a) my interactions with IG Cuffari regarding issues he was encountering at the Department of Homeland Security (DHS) OIG, (b) my perceptions of the IG community's knowledge of the ongoing issues at DHS OIG, and (c) the CIGIE Integrity Committee (IC) process so WilmerHale could better understand the IC

process generally and as it specifically pertained to matters submitted by DHS OIG to the IC. As to the first two topics, Mr. Reaser responded as described in the prior paragraph, namely that WilmerHale should contact Mr. Reaser if WilmerHale concluded that it was in substantial need of my and Ms. Lerner's testimony. As to WilmerHale's third topic – information about the IC process – Mr. Reaser told WilmerHale that, because the CIGIE Chairperson (me) and CIGIE Vice Chairperson (Ms. Lerner) have no role in the IC's process and because IC deliberations are independent of the CIGIE Chairperson and Vice Chairperson, Ms. Lerner and I were not the right persons to provide the information that WilmerHale was requesting. Accordingly, Mr. Reaser offered to have WilmerHale speak to the CIGIE lawyer who could help WilmerHale with the information it was seeking. It was in this context that Mr. Reaser wrote the following sentence and used the term "not in a position":

> **Regarding your third area of inquiry, the IC process, that is not an area of inquiry correctly addressed to the CIGIE Chairperson and Vice Chairperson. Pursuant to the Inspector General Act of 1978, while the CIGIE Chairperson appoints the Inspector General members of the IC, the CIGIE Chairperson and Vice Chairperson have no role in the IC's process regarding matters submitted to it and the IC deliberates independently from the CIGIE Chairperson and Vice Chairperson. For that reason, Mr. Horowitz and Ms. Lerner are not in a position to provide you with the assistance that you are seeking; however, I can refer you to [the CIGIE Senior Assistant General Counsel] for assistance in understanding the IC processes.**

Accordingly, the sentence in the WilmerHale report claiming that Mr. Reaser informed WilmerHale on September 15 that I "was 'not in a position to' sit for an interview related to this investigation" is wholly inaccurate and mischaracterizes both Mr. Reaser's response and my willingness to cooperate with its investigation. Indeed, rather than reflecting a lack of cooperation, this quoted portion of Mr. Reaser's email was part of a sentence that actually evidenced an effort by Mr. Reaser to assist the investigation by providing WilmerHale counsel with the information that they were requesting.

Post-Hearing Questions for the Record
Submitted to the Honorable Michael Horowitz
From Senator Ron Johnson

"Safeguarding Inspector General Independence and Integrity"
October 21, 2021

1. You testified that FBI and Justice Department leadership made the ultimate call to redact certain footnotes contained in your office's December 2019 report on Crossfire Hurricane. Who at the FBI and the Justice Department made the decision to redact footnotes 302, 334, 342, and 350? When was your office informed about the redactions? Did the FBI or the Justice Department provide your office with any explanation for those redactions?

   Response: The OIG obtained the Federal Bureau of Investigation's (FBI) final classification markings on Sunday, December 8, 2019, the day prior to the public release of the OIG report. These final markings represented the views of the Department, the FBI, and other government agencies. The Department and the FBI did not provide an explanation to the OIG for their determinations regarding the final classification markings. The cited footnotes were redacted as a result of the classification markings that the OIG had been given.

2. During your office's investigation into Crossfire Hurricane, did your office attempt to interview Michael Sussmann, Rodney Joffe, Mark Elias, or individuals who worked at Georgia Tech or Georgia Institute of Technology? If not, why not?

   Response: The OIG includes in its reports relevant factual information within the scope of our review and identifies the sources of that information, subject to any legal limitations including those found in the Inspector General (IG) Act, federal whistleblower laws, and the Privacy Act. Additionally, subject to any legal limitations, the OIG includes in our reports the identity of any witnesses who we attempted to interview but refused to cooperate with the OIG. We do not disclose, as a matter of practice, the identity of individuals we did not seek to interview because, if we did, an unwillingness to respond to such an inquiry could be construed as confirmation that we interviewed an individual whose identity was not made public in order to comply with federal law. I am, however, able to advise you that, other than as described in our Crossfire Hurricane report, we did not seek to assess the conduct of non-government employees because of the limits to the OIG's jurisdiction.

Post-Hearing Questions for the Record
Submitted to the Honorable Michael E. Horowitz
From Senator Josh Hawley

"Safeguarding IG Independence and Integrity"
October 21, 2021

1. On December 14, 2020, WilmerHale published a report of an independent investigation into allegations of misconduct by three employees at the Department of Homeland Security (DHS) Office of Inspector General (OIG). This reportedly cost over $1.3 million to produce and consisted of a 108-page report that was the result of 70 interviews and the review of 42,000 documents.

    a. Were you or anyone else at CIGIE aware of any allegations addressed in the report that were referred to CIGIE prior to DHS retaining WilmerHale to conduct this investigation

    Response: Yes, in my role as CIGIE Chair, Inspector General Cuffari contacted me prior to retaining WilmerHale, and we spoke on several occasions regarding some of the allegations subsequently addressed in the WilmerHale report, as well as other matters.

    b. Why did CIGIE decline to investigate these allegations, many of which were ultimately substantiated by the WilmerHale report? Please provide specific case numbers and address the merits of these referrals, with particularity.

    Response: Under the IG Act, the CIGIE Integrity Committee is responsible for determining whether to investigate certain allegations. The Chair of CIGIE is not a member of the CIGIE Integrity Committee and therefore I did not participate in Integrity Committee discussions and had no role in determining what allegations the Integrity Committee should investigate.

    c. Do you agree with the following legal proposition: "[I]t is a misuse of authority for a federal employee to use his or her public office to interfere with a President nomination or the Senate confirmation process for personal gain or any other improper purpose. Additionally, federal employees should not use their government resources, including the email system or access to lawmakers or other government officials, for personal gain or for any other unauthorized purpose"? Report at 24. If not, please explain why with citation to relevant authorities.

    Response: I agree that federal government employees should not improperly interfere with a Presidential nomination or Senate confirmation process or

use their position or government resources for personal gain or an unauthorized purpose.

d. On page 27 of the report, WilmerHale reported its finding that two DHS OIG employees "contacted Allison Lerner, Vice Chair Vice Chairperson of CIGIE, to discuss Dr. Cuffari's nomination. Ms. Costello, in her capacity as Acting IG, wrote to Ms. Lerner that she had 'a sensitive matter related to the DHS IG nominee' to discuss. They agreed to speak on the phone and, following that conversation, Ms. Costello sent Ms. Lerner the link to a report regarding California Coast University. During her interview, [redacted] acknowledged that she and Ms. Costello spoke to Ms. Lerner about Dr. Cuffari's nomination, and state that they were doing so because it was in the best interest of the agency. According to [redacted], Ms. Lerner agreed that Ms. Ouzts and Ms. Costello had an obligation to protect the organization and figure out whether others knew that Dr. Cuffari's degree was issued by 'a diploma mill.' Ms. Lerner declined our request for an interview." Report at 27. Is this portion of the report accurate? If not, please explain your version of the events with particularity, including by reference to relevant documents.

Response: Since I did not participate on the phone call referenced in the question, I am not in a position to assess the accuracy of the WilmerHale report's summary of these events.

e. Has CIGIE opened any investigation into the allegations contained on page 27 of the WilmerHale report? If so, please list all allegations, referrals, and investigations by subject name and case number, as well as their dispositions. Please also produce copies of any investigations.

Response: Please refer to the answer to question 1b.

f. Are there any other findings or conclusions of law in the report that you believe are inaccurate or that you disagree with? Please identify with particularity and provide your version of the events, including by reference to relevant documents.

Response: I have not received an unredacted version of the WilmerHale report. Even if I had access to a complete version of it, I do not have a factual basis from which to assess the accuracy of all of the report's findings or conclusions.

However, as described in my answer to Ranking Member Portman's question, the excerpt in the WilmerHale report claiming that I "refused to be interviewed" is not accurate. At no time did I refuse to be interviewed. In

fact, in his September 15, 2020, email that is referenced in the WilmerHale report, CIGIE General Counsel Atticus Reaser advised WilmerHale counsel as part of his ongoing discussions about my possible interview, "if you reach the conclusion during your investigation that you are in substantial need of information that you believe Mr. Horowitz or Ms. Lerner possess and that you would be unable to obtain substantially equivalent information by other means, please reach out to me to discuss." In their report, WilmerHale counsel omitted this sentence from Mr. Reaser's September 15 email, thereby misrepresenting me as one of the witnesses who "refused to be interviewed." I have been told that, following Mr. Reaser's September 15 email, there was one additional round of communications between Mr. Reaser and WilmerHale counsel but that at no time during the communications did Mr. Reaser decline an interview on my behalf.

In addition, Mr. Reaser never notified WilmerHale that "Mr. Horowitz was 'not in a position to' sit for an interview" as claimed by the WilmerHale report, and the report's reference to the phrase "not in a position" is taken wholly out of context and used entirely inaccurately. As Mr. Reaser detailed in his September 15 email to WilmerHale counsel, WilmerHale was seeking to interview me about three topics: (a) my interactions with IG Cuffari regarding issues he was encountering at the Department of Homeland Security (DHS) OIG, (b) my perceptions of the IG community's knowledge of the ongoing issues at DHS OIG, and (c) the CIGIE Integrity Committee (IC) process so WilmerHale could better understand the IC process generally and as it specifically pertained to matters submitted by DHS OIG to the IC. As to the first two topics, Mr. Reaser responded as described in the prior paragraph, namely that WilmerHale should contact Mr. Reaser if WilmerHale concluded that it was in substantial need of my and Ms. Lerner's testimony. As to WilmerHale's third topic – information about the IC process – Mr. Reaser told WilmerHale that, because the CIGIE Chairperson (me) and CIGIE Vice Chairperson (Ms. Lerner) have no role in the IC's process and because IC deliberations are independent of the CIGIE Chairperson and Vice Chairperson, Ms. Lerner and I were not the right persons to provide the information that WilmerHale was requesting. Accordingly, Mr. Reaser offered to have WilmerHale speak to the CIGIE lawyer who could help WilmerHale with the information it was seeking. It was in this context that Mr. Reaser wrote the following sentence and used the term "not in a position":

> **Regarding your third area of inquiry, the IC process, that is not an area of inquiry correctly addressed to the CIGIE Chairperson and Vice Chairperson. Pursuant to the Inspector General Act of 1978, while the CIGIE Chairperson appoints the Inspector General members of the IC, the CIGIE Chairperson and Vice Chairperson have no role in the IC's process regarding matters submitted to it and the IC deliberates independently from the CIGIE Chairperson and**

Vice Chairperson. For that reason, Mr. Horowitz and Ms. Lerner are not in a position to provide you with the assistance that you are seeking; however, I can refer you to [the CIGIE Senior Assistant General Counsel] for assistance in understanding the IC processes.

Accordingly, the sentence in the WilmerHale report claiming that Mr. Reaser informed WilmerHale on September 15 that I "was 'not in a position to' sit for an interview related to this investigation" is wholly inaccurate and mischaracterizes both Mr. Reaser's response and my willingness to cooperate with its investigation. Indeed, rather than reflecting a lack of cooperation, this quoted portion of Mr. Reaser's email was part of a sentence that actually evidenced an effort by Mr. Reaser to assist the investigation by providing WilmerHale counsel with the information that they were requesting.

g. Do you believe that it is appropriate for individuals to use government resources and their official capacity to lobby against the President's nomination of an individual to a Senate-confirmed position, while that nomination is pending before the Senate?

Response: What is or is not appropriate for a federal employee to do regarding Congressional contact depends on the precise facts and circumstances of a situation. For example, in every federal employee whistleblower law passed since 1978, Congress has stated its clear intent that disclosures of information to Congress are protected. In 2012, Congress further clarified that an employee's motives are not relevant to the determination of whether a disclosure is protected. See 5 U.S.C. § 2302(f)(1)(C). Accordingly, whether such action is permissible would depend on the particular facts involved.

h. What do you think are the appropriate repercussions for career officials using official time and resources to interfere with the Senate's advice-and-consent function?

Response: Discipline for career federal officials who engage in misconduct is subject to agency policy and practice, applicable penalty tables, and Merit Systems Protection Board precedent.

2. Please identify each allegation of wrongdoing that CIGIE or its associated personnel received from January 1, 2019-present, regarding Andrew A. De Mello, Kevin Winters, John Kelly, Jennifer Costello, Karen Ouzts, Diana Shaw, Deborah Jeffries, and/or Allison Lerner; any CIGIE tracking or matter number(s) associated with each; the date that each allegation of wrongdoing was first received (and please produce a copy of each allegation that was received) by CIGIE or its associated personnel; each date that each respective allegation was reviewed (and by whom), all dates each was referred from the Allegation Review Group to the Integrity Committee , all dates that each respective

allegation was referred to the IC Chairperson for investigation, and all dates that each respective allegation was declined for investigation or otherwise closed/disregarded.

Response: As noted previously, as CIGIE Chair, I was not a member of the CIGIE Integrity Committee and therefore did not have access to complaints received by the Integrity Committee and had no role determining what allegations the Integrity Committee should investigate.

3. Please identify whether each allegation identified in response to question #2, above, was fully investigated or for which there is an ongoing investigation. For completed investigations, please produce a copy of each written report. For each allegation that was not fully investigated or is being actively investigated, please identify all reasons each was not investigated. Please also provide all reasons and explanations why CIGIE IC decided to investigate allegations it so identified in response to #2, above, but not other allegations identified in response above.

Response: Please refer to the response to question 2.

4. CIGIE IC's annual report for 2020 identifies that on June 19, 2020, allegation 20-059 was "opened/referred to IC." As of the time the allegation was opened/referred to IC, please identify the allegation of misconduct and describe it with detail and particularity (that is, before it was consolidated with allegations associated with 20-042). Please identify and describe with detail and particularity (1) all reasons why this allegation was not immediately investigated and was instead held in abeyance until at least April 14, 2021; (2) all reasons this matter was consolidated with 20-042, which by March 17, 2021, was already in post investigation review; (3) all reasons why this allegation was not merged in 2020 with 20-042 as envisioned by IC Rule 9(c); (4) how many times in the last 5 years another allegation of misconduct was held open for more than 240 days and thereafter consolidated with another allegation that was already in post investigation review and the matter numbers associated with each; (5) all supplemental material that CIGIE IC acquired or otherwise obtained regarding 20-059 during the period August 18, 2020-April 14, 2021; (6) all evaluations (including the dates thereof) regarding the next steps for the investigation of 20-059 during the period August 18, 2020-April 14, 2021; (7) all the reasons why 20-059 (which by May 14, 2021 had been consolidated with 20-042) was assigned to different investigators than those that investigated many allegations that comprised 20-042 and all meetings (and attendees) where this decision—to assign it to different investigators than those associated with 20-042—was discussed/made; and (8) whether any of CIGIE's associated personnel recommended or suggested that an investigation of Andrew A. De Mello end, during the period September 1, 2020-present.

Response: Please refer to the response to question 2.

5. Did CIGIE ever receive allegations or information that Karen Ouzts unlawfully concealed deadly weapons in her official workplace on federal property?
    a. If so, when were you first made aware of these allegations?
    b. Did CIGIE IC investigate this allegation?

Response: Please refer to the response to question 2.

6. Do you support legislation requiring all agencies to grant inspectors general direct access to agency records?

Response: Based on my experience with OIGs having been denied timely access to agency records in the past, I believe that providing Inspectors General with direct access to agency records, with exceptions in appropriate and necessary situations, could help ensure more timely and effective accountability over government programs for the public. As the current Special Inspector General for Pandemic Recovery and former General Services Administration (GSA) IG Brian Miller noted in Senate testimony in 2015, (as a private citizen, prior to returning to government service, and quoting an article he had written as GSA IG): "Providing IGs with explicit, unrestricted read-only access to agency information systems would remove a current roadblock to effective oversight of agency programs."

Prior to Congressional passage of the Inspector General Empowerment Act (IGEA) in 2016, an effort led by, among others, then-Chairmen Ron Johnson and Charles Grassley in the Senate and then-Chairman Jason Chaffetz in the House of Representatives, several federal agencies were refusing to provide their Inspectors General with timely access to records in the agency's possession despite the provision in Section 6 of the IG Act that IGs were entitled to access "all" records in their agency's possession. My office was among those OIGs being refused access, thereby affecting our then ongoing reviews of the FBI's use of certain national security authorities, Drug Enforcement Administration's (DEA) handling of sexual misconduct and harassment allegations, and Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) conduct of its Operation Fast and Furious. Indeed, without the IGEA's passage, my office likely would have been unable to conduct our recent Crossfire Hurricane review concerning the FBI's use of its Foreign Intelligence Surveillance Act (FISA) authority because one category of documents that the FBI was claiming, prior to 2016, that it could not share with the OIG was its FISA collection information.

Providing direct access would ensure that Inspectors General were not improperly prevented from obtaining documents that we are legally entitled to obtain, as well as enable us to more timely identify waste, fraud, abuse, and gross mismanagement through our oversight work. Nevertheless, I recognize that there might be certain agency databases where direct access might not be appropriate, even though the

Inspector General is entitled to review the information in connection with its oversight work.

a. What is the legal authority for granting inspectors general direct access to agency records?

Response: As noted above, the IGEA amended the IG Act to clearly and unambiguously provide that Inspectors General are entitled to access records in an agency's possession in order to conduct their oversight work unless Congress enacts a law that expressly refers to the Inspector General and limits the right of access of the Inspector General. Whether direct access is provided to a particular database pursuant to that provision is a matter determined after consultation and discussion between an agency and its Inspector General.

b. In particular, is it your judgment that a law requiring direct access for inspectors general is consistent with the separation of powers, given the constitutional nature of executive privilege and the authority of the President and heads of agencies to control access to information?

Response: Given that Inspectors General (unlike employees of the Government Accountability Office) are employed by and work within the agencies that they oversee, I do not believe that allowing an Inspector General access to agency records – directly or indirectly – creates a separation of powers issue. Moreover, to avoid any such issue, my office as a matter of practice (and I believe other Inspectors General do the same) provides the agency with an opportunity to review OIG reports before they are made public or provided to Congress so that the agency can raise any objections to doing so, including for privilege and classification reasons. Similarly, when the OIG receives requests from Congress or third parties for agency records that are not OIG records, we refer the requester to the agency so that the agency can determine how to respond to the request since the records belong to the agency, not the OIG.

c. Would it be legal and/or appropriate to provide inspectors general access to all agency records, including classified materials, grand jury materials, attorney client materials, records subject to executive privilege, investigative files, and records pertaining to ongoing criminal investigations?

Response: The IG Act contains a specific provision regarding access to grand jury materials. As to the remaining categories of records, pursuant to the IG Act, an Inspector General conducting oversight work that requires access to such information would be entitled to access it. Further, the Office

of Legal Counsel (OLC) stated in 2008 that providing an agency Inspector General with access to privileged information does not result in a waiver of applicable privileges. (See Letter from Steven G. Bradbury, Principal Deputy Assistant Attorney General, OLC, to Kathie L. Olsen, Deputy Director, National Science Foundation, November 10, 2008, stating, "In general, the sharing of privileged information within the Executive Branch, including a disclosure of privileged agency information to an agency's Inspector General, does not result in a waiver of applicable privileges.") In connection with my office's reviews over the past three decades, we have received materials in each of the categories referenced in your question.

d. Please provide a list of all agencies that provide their Office of Inspector General direct access agency records within their jurisdiction.

Response: Some DOJ components provide my office with direct access to some of their databases. I am not familiar with arrangements that other OIGs may have with their respective agencies.

7. Do you believe that the Congress could constitutionally impose for-cause removal limitations for Inspector Generals? Please cite to appropriate authorities.

Response: Recent Supreme Court decisions, including *Seila Law v. Consumer Financial Protection Bureau*, raise questions about the constitutionality of for-cause removal limitations on certain Executive Branch officials. However, the *Seila Law* decision left open the question of the constitutionality of certain other for-cause provisions, and I am not prepared to speculate as to how the Supreme Court might interpret a for-cause removal provision for Inspectors General at some future date if Congress were to adopt such a provision and the President were to sign the legislation.

8. Do you believe that Congress should make Deputy Inspectors General Senate-confirmed positions? Why or why not?

Response: In my view, other than the Inspector General, it is unnecessary and would not be efficient to make Deputy IGs, or any other OIG officials, Senate-confirmed positions. Given the lengthy time periods of IG vacancies that we have seen across Administrations, due to the time it has taken for nominations to occur and for the Senate to consider nominations, requiring additional OIG positions to be Senate-confirmed is not something that I would support. Further, I believe it is rare for agency components to have a deputy position require Senate confirmation. For example, at the Justice Department, I am not aware of any DOJ components, including the Solicitor General's Office, the Criminal Division, the FBI, and the DEA, whose deputy position is Senate-confirmed. Finally, given that Inspector

General offices are non-political, do not engage in policy decisions, and have no management role, I further believe that creating additional Senate-confirmed positions is unnecessary.

9. Do you believe that §102 of the latest version of the committee's proposed inspector general legislation, addressing the ability of the President to place an inspector general on administrative leave, is constitutional?
    a. Do you believe such a provision is consistent with the Inspector General Act of 1978, as amended?
    b. Do you believe such a provision is prudent policy?
    c. What are the practical concerns associated with this provision?

Response: I believe the Senate has crafted legislation that ensures greater public accountability for personnel decisions involving Inspectors General while not materially impairing the President's constitutional removal authority or ability to place an Inspector General on administrative leave. I further believe that such a provision is consistent with the IG Act and is prudent policy. With limited exceptions, the public is well-served when there is transparency surrounding important governmental decisions, and Section 102 seeks to ensure greater transparency and accountability concerning a decision to remove or place on administrative leave an Inspector General. The Committee's legislation has addressed the potential practical concerns associated with this provision by, for example, allowing for administrative leave to go into effect if the fired IG is a security risk or could jeopardize legitimate government interests.

10. Do you think it is appropriate for acting Inspectors General, who have not been appointed by the President and confirmed by the Senate, to discipline Inspectors General who have been so appointed and confirmed?

Response: I am not aware of a circumstance where an acting Inspector General has been given authority to discipline a Senate-confirmed Inspector General. With regard to the CIGIE Integrity Committee, the Integrity Committee is authorized by the IG Act to investigate and make factual findings regarding alleged wrongdoing by a Senate-confirmed Inspector General. However, under no circumstances, does the IG Act provide an Inspector General or the Integrity Committee with the authority to discipline an Inspector General.

11. I have co-sponsored S.2973, A Bill to establish an Inspector General of the National Institutes of Health. This follows an oversight letter that I submitted to the Director of the National Institutes of Health and the National Institute of Allergy and Infectious Diseases.[1] Do you support this bill as written? If no, what amendments do you recommend?

[1] https://www.hawley.senate.gov/sites/default/files/2021-06/Hawley-Letter-NIH-COVID.pdf

Response: I have no position on the legislation, and defer to any views held by CIGIE and the Office of the Inspector General for the Department of Health and Human Services.

12. Are you aware of the Department of Justice, Office of Legal Counsel's opinion *Authority of the Special Inspector General for Pandemic Recovery to Oversee Programs Established Under the Cares Act*, 45 Op. O.L.C. __ (April 29, 2021)?
    a. Do you agree with this interpretation of the Special Inspector General for Pandemic Recovery's jurisdiction of the CARES Act?
    b. Did you weigh in on this decision?
    c. The opinion cites to an email from the Executive Office of the President. Did the White House weigh in on this decision in order to reduce oversight of pandemic relief to third party organizations, including Planned Parenthood and airlines?[2]
    d. In your capacity as a leader of the Pandemic Oversight Recovery Panel, have you advocated for SIGPR to receive expanded jurisdiction or further appropriations? Why or why not?
    e. Do you support legislation expanding SIGPR's jurisdiction to cover all Treasury pandemic programs?
    f. Do you support legislation funding SIGPR beyond its initial appropriation provided in the CARES Act?
    g. Do you commit to reviewing whether the White House, Office of Management and Budget, and/or Department of Justice leadership attempted to limit the jurisdiction of SIGPR to prevent that office from conducting investigations into Planned Parenthood and airlines?
    h. How is OLC's opinion consistent with promoting the independence of inspectors general?

Response: I am aware of the Office of Legal Counsel (OLC) opinion. At the outset, I would note that I was not made aware that the Special Inspector General for Pandemic Oversight (SIGPR) had sought such an opinion from OLC until after the SIGPR had already made the request to OLC. Had the SIGPR informed me of his intent to seek an opinion from OLC on this matter, I would have advised him not to do so, because I do not believe that seeking an OLC opinion on a jurisdictional dispute between two Inspectors General is fully consistent with our independence. The better path for resolving the jurisdictional questions raised by the SIGPR would have been through Congress, and if Congress did not act, through a resolution process guided by CIGIE.

In response to your specific questions, given the intricacies of the CARES Act funding and that the SIGPR sought OLC's legal view on what I believe is a close legal issue, I do not intend to question the opinion and I did not weigh in on the

[2] https://www.hawley.senate.gov/sites/default/files/2020-05/Hawley-Letter-SBA-Administrator-Planned-Parenthood-PPP.pdf; https://www.hawley.senate.gov/sites/default/files/2021-10/2021-10-18%20Letter%20to%20IG%20Miller%20on%20Airlines%20and%20Vaccine%20Mandates%5B1%5D.pdf; https://www.hawley.senate.gov/sites/default/files/2020-05/Hawley-Letter-United-Airlines-Pay-Cuts.pdf.

opinion. I am not aware of an effort by the White House to weigh in on the opinion in order to reduce oversight of pandemic relief to third party organizations. As PRAC Chair, I was supportive of Congress addressing and resolving the jurisdictional issue between the SIGPR and the Treasury IG, but that did not occur. With regard to the SIGPR's jurisdiction or appropriations, in my view it is a decision for Congress whether to have more than one Inspector General oversee various programs, and whether to provide multiple IGs with the additional funding to do so. I do not have the jurisdictional authority to review actions by the White House or the Office of Management and Budget (OMB), including whether they attempted to limit the SIGPR's jurisdiction, and note again that it was the SIGPR that requested the Department of Justice's OLC opinion. As stated above, I do not believe that seeking an opinion from OLC was fully consistent with promoting the independence of IGs, and would have advised the SIGPR against seeking that opinion if I had been asked by the SIGPR.

13. During your tenure on CIGIE, were you ever aware of any investigation referred to CIGIE that was motivated by or influenced in part by political animus? If so, how was the matter handled?

Response: I do not recall an investigation being referred to CIGIE that was motivated by political animus. However, as CIGIE Chair, I did not receive or review allegations submitted to the Integrity Committee and therefore would not know if allegations were submitted for political reasons.

14. Please provide an overview of the history of the Department of Justice's longstanding opposition to granting your office jurisdiction over the Department's attorneys. What is your most charitable understanding of the Department's longstanding objection to your office receiving additional jurisdiction, and what has been your response to these concerns?

Response: DOJ's longstanding opposition dates to 1978, when DOJ successfully avoided having a DOJ Inspector General included in the 1978 legislation by arguing, at least in part, that DOJ did not need an Inspector General because its Office of Professional Responsibility (OPR) was effectively handling misconduct allegations against DOJ lawyers and that the FBI's and DEA's internal affairs offices were effectively handling allegations against their employees. When the IG Act was amended in 1988, a DOJ Inspector General was created but the legislation did not give the DOJ Inspector General jurisdiction to investigate allegations against DOJ lawyers, or FBI or DEA employees, with DOJ again arguing that its OPR effectively handled allegations against DOJ lawyers and that the FBI and DEA effectively handled allegations against their employees. In 2001, following the Aldrich Ames and Robert Hanssen spy scandals, then AG Ashcroft expanded the DOJ Inspector General's jurisdiction to include the FBI and DEA. Congress codified that DOJ OIG jurisdiction in 2002, rejecting arguments that the DOJ OIG

lacked the specialized knowledge, experience, and expertise needed to investigate misconduct allegations against FBI and DEA law enforcement officials.

However, the jurisdictional carve-out for DOJ lawyers remains and as I testified during the hearing, the DOJ OIG is the only Inspector General in the federal government that does not have the authority to investigate alleged misconduct, including professional misconduct, by attorneys who work in the agency it oversees. The Department most recently described its objection to providing the OIG with such jurisdiction by stating in its November 2021 response to the DOJ OIG's Top Management and Performance Challenges Report:

> **The Department continues to support and encourage independent and robust oversight of DOJ employee misconduct to foster accountability and public trust. When it comes to allegations of attorney misconduct, however, oversight and accountability are best pursued through Department's Office of Professional Responsibility. Complex legal and ethical standards apply to Department attorneys conducting investigations, litigating cases, and providing legal advice. OPR has significant experience and expertise, gained over 45 years, in applying those standards in reviewing attorney professional misconduct allegations. Because OPR is independent of the prosecutors whose conduct it reviews and does not conduct criminal investigations, the public can be assured that OPR's investigations are not biased by any relationship with prosecutorial offices. And because OPR maintains an effective system for investigating attorney professional misconduct and conducts its work independently, the Department does not believe that additional legislation is needed.**

As I have repeatedly stated, whatever merits this DOJ argument about experience and expertise may have had in 1978 and 1988, it is an anachronism today. Over the past 30+ years, the OIG has repeatedly demonstrated our ability to handle the most complex and sophisticated matters, several of which involved the conduct of lawyers, including the FISA abuse allegations, the Clinton email and Comey memos investigations, and our review of ATF's Operation Fast and Furious. Indeed, the same arguments about the need for specialized knowledge and experience were made in 2002 by those opposed to giving the DOJ OIG oversight over the FBI and DEA, and as the OIG's oversight work has demonstrated over the past 20 years, those arguments were meritless and the public has been well-served by Congress' decision to reject them at that time. Further, over the past 20 years, there has been widespread questioning by federal judges and public interest groups, ranging from the National Taxpayers Union to the American Civil Liberties Union, about OPR's and DOJ's ability to effectively police prosecutorial misconduct. As I testified during the Committee's hearing, if granted such authority, the OIG would assign only attorneys to review professional misconduct cases, using the same standards

currently used by OPR. The OIG employs dozens of attorneys, many of whom have backgrounds and experiences similar to those of the lawyers in OPR, including as former prosecutors and Department attorneys with experience in attorney ethics, and they would be handling the professional misconduct allegation investigations for the OIG. This group of IG attorneys are from the same OIG division that led the reviews discussed above. They have also handled the numerous ethics issues that have arisen in our reviews and investigations. Moreover, the OIG is committed to adopting the same substantive criteria currently used by OPR to ensure consistency in how professional misconduct allegations are assessed by our offices. DOJ attorneys should be subject to the same independent oversight that all other DOJ employees, including FBI and DEA agents, are subject to and I would be pleased to discuss this issue further with you, your staff, or other Members of the Committee.

15. Please provide relevant examples of former agency employees that you would have issued subpoenas to testify, if you had available the mechanism set out in Title IV of the Inspector General Independence Act of 2021, currently before the Committee?

Response: My office has all too frequently been unable to obtain potentially critical evidence from former federal employees, employees of federal contractors and grant recipients, and other nongovernment witnesses in important investigations because of their refusal to voluntarily agree to be interviewed. The following is a representative sample of investigations where our lack of testimonial subpoena authority impacted our oversight work:

- **Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation:** Two witnesses, Glenn Simpson and Jonathan Winer (a former State Department official), declined our requests for voluntary interviews, and we were unable to compel their testimony. In addition to being able to compel the testimony of the small number of individuals who did not testify voluntarily, the ability to subpoena witnesses would have expedited completion of the review, as multiple individuals only agreed to interviews at a late stage in the review.

- **Investigation and Review of the FBI's handling of allegations of sexual abuse by former USA Gymnastics Physician Lawrence Nassar:** During the course of this review, USA Gymnastics President Steve Penny declined to participate in a follow up interview with the OIG after the OIG learned of his interactions with former Special Agent in Charge Jay Abbott about prospective employment for Abbott. The lack of testimonial subpoena authority negatively impacted our ability to assess the full extent of Abbott's misconduct in this matter.

- **Review of ATF's Operation Fast and Furious and Related Matters:** Numerous witnesses, including the former U.S. Attorney in Arizona declined

requests for interviews or follow-up interviews, undermining our ability to provide Congress and the public with a complete account of the policy's implementation.

- **Investigation of Former Assistant United States Attorney (ASUSA):** An AUSA was alleged to have violated DOJ policies regarding conflicts of interest when he directly participated in a drug investigation and subsequent criminal prosecution in which he was conflicted. In response to an OIG request for an interview with a second, supervisory subject who was aware of the conflict and took no action, the supervisory AUSA responded, "Please note that I decline any further interview because I have retired from [DOJ] and have told you I have no recollection of the circumstances."

- **Investigation of Allegations of False Statements by former FBI Special Agent in Charge (SAC)**: The OIG found that the SAC made two false statements, one each to the FBI and OIG pertaining to a card that grants qualified Separated/Retired Law Enforcement Officers the authority to carry a concealed firearm. The former SAC declined the OIG's request for a voluntary interview but complied with the OIG subpoena for related documents.

- **Investigation of Allegations of Whistleblower Retaliation:** An FBI employee alleged that he was denied a promotion in retaliation for his disclosures to FBI executive management and was threatened with termination if he continued to raise his concerns. The ASAC who allegedly threatened the whistleblower retired after his counsel was notified that OIG investigative interviews were imminent and did not respond to requests for a voluntary interview.

- **Investigation of Allegations of Whistleblower Retaliation:** An employee of a contractor for the U.S. Marshals Service (USMS) alleged that she was retaliated against for reporting to her employer alleged fraud that had been committed in connection with an USMS contract. During its investigation, the OIG sought to interview the complainant's immediate supervisor at the contractor. The supervisor no longer worked for the contractor and declined the OIG's request for a voluntary interview.

Our inability to obtain testimony from former employees, and employees of grantees and contractors, has affected our ability to fully perform our oversight work, to root out waste, fraud, abuse, and mismanagement, and to hold employees accountable for serious misconduct, thereby diminishing the public's trust in its government and harming the taxpayers. Recently, Congress granted this authority to CIGIE's Pandemic Response Accountability Committee, as it had previously done with the Recovery Accountability and Transparency Board in 2009. Further, the Department of Defense IG was granted statutory authority by Congress in 2009 to compel testimony from former agency employees and third party witnesses in its

investigations, and has used that authority sparingly. I would be pleased to discuss this issue further with you, your staff, or other Members of the Committee.

16. Do you believe that the latest version of the IG legislation before HSGAC, if enacted into law, would permit the DOJ IG to investigate matters, conduct, or allegations retrospectively from the date of this bill's enactment?
    a. Is it your interpretation that the bill would only grant DOJ IG jurisdiction over allegations and conduct that postdate the bill's enactment?
    b. Would the legislation prevent the DOJ IG from investigating former political appointees who left office prior to the enactment of this legislation for their conduct while at DOJ?
    c. Do you commit to this Committee that, if this bill is enacted into law, you will not open investigations into prior conduct and allegations that predate the bill's enactment?

Response: If the IG Access Act is passed by Congress, we would recommend that Congress provide a clear statement of intent regarding the effective date and retroactive applicability of the DOJ OIG's authority to investigate allegations of attorney professional misconduct. In the absence of clear congressional intent, the OIG will work with the Attorney General and OPR in our assessment of these questions and, at a minimum, will not investigate any issues that have already been considered by OPR.

17. CIGIE IC recently issued a rule, termed "Addendum A, Integrity Committee Access." The rule reads that "… if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person for failure to cooperate in the IC investigation…". What subsection of the Inspector General's Act gave CIGIE the authority to enact this rule? Please note that for purpose of this question, section 11(d)(7)(B)(i) of the Inspectors General Act of 1978 is merely an enabling provision and not an independent license granting CIGIE unlimited power and dispensation from complying with the Administrative Procedure Act's notice and comment requirements. Please therefore provide a citation another relevant authority granting CIGIE to promulgate this rule.

Response: The provision that you are referencing concerned a modification to the CIGIE Integrity Committee's policies and procedures, and therefore it is my understanding that it did not involve rulemaking or the issuance of a regulation covered by the Administrative Procedure Act (APA). I would respectfully refer you to the CIGIE General Counsel for any further legal questions you may have concerning the applicability of the APA to the Integrity Committee's policies and procedures.

a. If the subject of a CIGIE IC investigation declines to appear at an interview, or declines to answer written questions, does this rule allow CIGIE IC to make a finding of wrongdoing against the subject for failing to cooperate?

Response: I cannot speak on behalf of the CIGIE Integrity Committee, and therefore I would respectfully refer you to the Integrity Committee for a response to this question. It is my personal view, however, that Inspectors General have the same obligations and responsibilities to cooperate with Integrity Committee investigations as agency officials have when they are subject to an investigation by their agency Inspector General. Depending on the particular facts and circumstances, a refusal by an Inspector General to cooperate with a CIGIE Integrity Committee investigation should, in my view, subject the IG to a possible finding of wrongdoing. In correspondence last year to President Biden, Senators Charles Grassley and Ron Johnson reinforced this important principle in calling on the President to remove the then-Federal Housing and Finance Agency (FHFA) IG for, among other things, her "willful actions to impede an investigation into her own alleged misconduct." (See Grassley/Johnson letter to Biden, April 28, 2021, available at: https://www.grassley.senate.gov/news/news-releases/grassley-johnson-call-for-removal-of-fhfa-inspector-general-following-findings-of-misconduct-reprisal.).

b. If the subject of a CIGIE IC investigation asserts privilege, such as the attorney-client privilege, over requested materials, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

c. If the subject of a CIGIE IC investigation asserts that the information requested is classified, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

d. If the subject of a CIGIE IC investigation asserts that the information requested is grand jury material, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

e. If the subject of a CIGIE IC investigation asserts that the information is covered by executive privilege, which is founded in the constitution, may CIGIE "make an

independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

f. If the subject of a CIGIE IC investigation asserts that the information does not belong to the agency's Office of Inspector General but is subject to a memorandum of understanding or other limitations from another agency, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

g. If the subject of a CIGIE IC investigation asserts that he is not authorized to provide the information because it belongs to another entity, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

h. If the subject of a CIGIE IC investigation requests to have his personal counsel present for any interview, would CIGIE object? If so, under what authority?

Response: Please refer to the response to question 17a. It is my personal opinion that, assuming there are no legal or investigative reasons for restricting a particular counsel's attendance at an interview (for example due to a lack of an appropriate security clearance), interviewees should be entitled to have personal counsel present for an interview.

i. If the subject of a CIGIE IC investigation requests to have his personal counsel present for any interview, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

j. If the subject of a CIGIE IC investigation requests to have agency counsel present for any interview, would CIGIE object? If so, under what authority?

Response: Please refer to the response to question 17a.

k. If the subject of a CIGIE IC investigation requests to have agency counsel present for any interview, may CIGIE "make an independent finding of wrongdoing … for failure to cooperate in the IC investigation"?

Response: Please refer to the response to question 17a.

l. Do you commit to ensuring that no individual subject to an investigation by CIGIE will be disciplined or suffer any adverse consequence for making good-faith assertions of privilege or for requesting the presence of counsel during the course of an investigation?

Response: Please refer to the response to question 17a.

m. When this rule was being proposed, were you personally aware of anyone who raised any of these concerns? If so, what was done to ensure that these objections were adequately considered?

Response: As CIGIE Chair at the time, and after discussion with the Integrity Committee, I brought the Integrity Committee's proposed change to its policies and procedures before the entire CIGIE membership (all 75 Inspectors General) for discussion and debate. I recall that while some Inspectors General did not support the provision, almost all of the Inspectors General did support it and agreed with the principle that Inspectors General had to hold themselves to the same standards of conduct and cooperation that we apply to the agency employees that we oversee. The CIGIE membership voted overwhelmingly to support the provision's adoption by the Integrity Committee.

n. According to the WilmerHale report, the investigators found that "Mr. Horowitz would likely be familiar with CIGIE's interactions with DHS OIG during the relevant time-period as well as his interactions with IG Cuffari and Ms. Costello." Appendix B at 5. But it notes that you declined to sit for an interview. *Id.* Do you think it is appropriate for members of CIGIE, including yourself, to decline to be interviewed as part an investigation, while at the same time holding others to the standard that "if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person for failure to cooperate in the IC investigation"?

Response: As I noted in response to question 1f, I did not refuse to be interviewed by WilmerHale and this excerpt from the WilmerHale report is not accurate.

18. Do you believe that members of the CIGIE IC can independently evaluate allegations against a fellow member of CIGIE who nominated or appointed them to their positions on CIGIE?

a. What safeguards are in place to ensure that CIGIE IC never allows an individual to review an allegation against a fellow member of CIGIE who had a substantial role in nominating or appointing the member of the CIGIE IC to that position?
b. Has a member of CIGIE IC ever reviewed an allegation against a member of CIGIE, where the member of CIGIE IC was nominated or appointed to that position by the subject of the allegation?

Response: The Integrity Committee has policies and procedures that address possible recusal, and I would therefore respectfully refer you to the Integrity Committee for a response to this question. It is my personal view, however, that members of the Integrity Committee are fully capable of independently assessing allegations that may be made against the CIGIE Chair who appointed them, but that if there were specific facts or circumstances in a particular matter that warranted recusal, then the Inspector General should recuse himself or herself.

19. Do you think it is appropriate and consistent with the independence IGs require for the head of an agency to require applications for medical and religious exemptions from President Biden's vaccine mandate to be handled by the agency's human resources office, rather than the IG's human resource team?
    a. Do you understand why such a policy could threaten or undermine the independence of such an IG?
    b. Are you aware of any agency head that is requiring IG employees to submit such applications to the agency's human resource team, as opposed to the relevant IG unit?
    c. Do you believe that such an arrangement would chill applications for exemptions?
    d. Do you commit to ensuring that all IGs maintain the ability to consider applications for exemptions from President Biden's vaccine mandate, if that IG office so wishes?

Response: I am not personally aware of an agency head mandating that an Inspector General have the agency's human resources office handle reasonable accommodation requests made by OIG employees. However, I am also aware that a number of OIGs, particularly smaller OIGs, do not have their own human resources offices and rely on the agency's human resources office to manage their human resources issues. Further, even OIGs that have their own human resources office, such as the DOJ OIG, are frequently subject to the provisions of title 5 and Presidential Directives, such as the requirement for OPM review of new appointments to the Senior Executive Service and Executive Orders on personnel matters. Balancing our independence with our position in the Executive Branch, and subject to its rules and laws, is a part of being an Inspector General. We will continue to strike this balance with regard to the Administration's rules on vaccines, as they become available. For example, the OIG intends to review its own employees' applications for exemptions from the vaccine mandate as a reasonable accommodation for medical reasons or religious beliefs,

subject to the guidance and rules issued by the Department and the Administration. I am aware that there is currently a nationwide injunction against enforcement of Executive Order 14043, and therefore the OIG is not taking any actions with respect to processing requested exemptions to the vaccination requirement pursuant to E.O. 14043.

20. Are you aware of any employees at your agency who have applied for a medical or religious exemption to President Biden's vaccine mandate and were denied this exemption?
    a. If so, how were these claims treated?
    b. Has any employee at DOJ been fired because he or she objected to President Biden's vaccine mandate?

Response: The DOJ OIG has not denied any requests by OIG employees for a reasonable accommodation request. I am aware that there is currently a nationwide injunction against enforcement of Executive Order 14043, and therefore the OIG is not taking any actions with respect to processing requested exemptions to the vaccination requirement pursuant to E.O. 14043. I would respectfully refer you to DOJ for questions regarding its handling of reasonable accommodation requests by agency employees.

21. Are you a principal officer within the meaning of U.S. Const. art. II, § 2, cl. 2? Please explain by including appropriate citations to legal authorities.

    Response: I am aware of several Supreme Court decisions, including *Edmond v. United States*, which address the question of whether certain positions are principal officer positions within the meaning of the Appointments Clause. However, as the *Edmond* opinion noted, the Supreme Court "[has] not set forth an exclusive criterion for distinguishing between principal and inferior officers for Appointments Clause purposes." Further, I am unaware of a court decision that has specifically addressed this question as it relates to Inspectors General.

22. Do you actively audit and investigate claims that agency employees experience adverse action based on their political preference?
    a. Are you aware of any employees who experienced such negative treatment, and if so, what remedial action was taken?

    The U.S. Office of Special Counsel has primary jurisdiction to review allegations of discrimination based on political affiliation under 5 U.S.C. § 2302(b)(1)(E). However, there have been a few instances where the OIG has reviewed such allegations. Examples include our reviews of the firing of certain U.S. Attorneys, Honors/SLP hiring program, and Civil Rights Division hiring.

23. Has any workplace training at DOJ, including your office, discussed critical race theory, white guilt, or anti-racism?

Response: The DOJ OIG has not provided any such workplace training. I would respectfully refer you to DOJ for questions regarding its workplace training.

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