



**U.S. Department of
Transportation**

The Inspector General

Office of Inspector General
Washington, D.C. 20590

**Office of the Secretary
Of Transportation**

September 1, 2000

The Honorable Susan M. Collins
United States Senate
Washington, DC 20510-1904

Dear Senator Collins:

Thank you for the opportunity to comment on S. 870, your legislation to amend the Inspector General Act. We appreciate your interest in, and longstanding support for, the Inspector General community.

We are pleased to add our support to your bill. Further, we believe it can be strengthened by incorporating recommendations made by the Inspector General community to our PCIE Legislative survey on S. 870. We provided your staff with these section-by-section comments and technical amendments following the Committee's hearing, and enclose them for your reference. We trust you will find this information helpful.

The issue of term limits is central to your bill, and that is where we focus our remarks. Moreover, we wanted to stress the importance of some other key issues facing our community today that we hope can be addressed either through amendments to your bill or by separate legislation. They are: (1) statutory law enforcement authority; (2) application of the Paperwork Reduction Act to Inspector General audits; and, (3) codification of the PCIE.

Term Limits

We support your efforts to enhance the objectivity, independence, and authority of Inspectors General. We understand that this concept is based on two considerations: (1) a desire to provide Inspectors General with some security during changes of Administration and ensure continuity in the oversight of government management; and, (2) an expectation that Inspectors General will serve for a set period of time that allows us to best utilize our knowledge of the agency and its programs in a way that maximizes our effectiveness. As to what the most optimal term might be -- five, seven, or nine years -- we must respectfully defer to Congress.

As you know, under current law, a President may remove an Inspector General with the requirement that the reasons for doing so are communicated to Congress. In

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practice, this may not provide more protection for Inspectors General than if they served "at the pleasure" of the President. A President could merely state that an Inspector General is being removed so they could form their own team. Such a statement would meet present legal requirements.

For these reasons, most Inspectors General support the idea of fixed terms. Your bill would provide even more security to Inspectors General if you were to add a complementary provision providing that Inspectors General could be removed only "for cause." Most term appointments carry this proviso. Usually, the grounds of "for cause" removal are high -- usually acts such as malfeasance or misconduct in office, dereliction of duty, et cetera. Congress would do the Inspector General community a great service by addressing the removal issue in this manner.

Statutory Law Enforcement Authority

For over 20 years, Inspectors General have been working together with Federal, State, and local law enforcement authorities to investigate criminal wrongdoing. Whether it is health care fraud, contractor fraud, or in our case, transporters of hazardous materials or other crimes involving transportation safety, Inspectors General have helped uncover criminal misconduct involving taxpayer funds and enforcing laws protecting public health, safety, and the environment. To have such a productive impact, Inspectors General must work in close cooperation with the Department of Justice, United States Attorneys, and most certainly, the Federal Bureau of Investigation.

We stand at a crucial point in time, but one that it is reflective of the competence, training, and ability demonstrated by our special agents for over 20 years. Our exercise of such authority has evolved from case-by-case deputation to the current "blanket" system, without any evidence of abuse or misuse. The proposal increases our accountability since each Inspector General will be directly responsible and reviewed for how this authority is exercised. It is for these reasons that the Department of Justice also supports this measure.

Application of the Paperwork Reduction Act to IG Surveys and Audits

We also believe Congress should reconsider the application of the Paperwork Reduction Act (PRA) to Inspector General audits and surveys. While we appreciate the need to reduce the burdens associated with collecting information from the public, nonetheless, there are some process and substance implications Congress may want to consider.

By law, the PRA requires that all government information collections from 10 or more persons be subject to review and approval from an agency senior official and then from the Office of Management and Budget (OMB). However, Congress frequently requires Inspectors General, through law or by formal request, to conduct certain audits of agency programs, often with a real-time turnaround. Subjecting our surveys that are needed to carry out this work to the approval process, even in the best cases, could impact our ability to meet the tight deadlines imposed by Congress.

While we recognize that OMB has a wealth of knowledge in this area, and Inspectors General may wish to consult with them for technical advice, there is a more substantive issue involved. That is, whether Congress intended agency officials or OMB to have final approval authority over the content of the survey itself. While we are engaged in discussions with OMB on this very issue, as it stands now, there is a fundamental conflict between the Inspector General Act and the Paperwork Reduction Act, one that could implicate the statutory independence and affect the non-partisan nature of the Offices of Inspectors General.

Codification of the President's Council on Integrity and Efficiency (PCIE)

By law, Inspectors General must report to both their agency heads in the Executive Branch and to Congress. However, the Council overseeing the activities of Inspectors General was created through Executive Order. By comparison, when your Committee established the positions of Chief Financial Officers (CFO) and Chief Information Officers (CIO) throughout government, the Acts also mandated creation of their own respective Councils. Thus, Congress authorized the CFO and CIO Councils by law and specified duties for each of them perform. They also have the ability to use Federal funds, such as government credit card rebates, to carry out certain activities.

Let me be very clear. The present OMB Deputy Director for Management and the OMB Controller have been very dedicated, proactive, and responsive in their approach to the PCIE. Under their leadership, and that of the Honorable Gaston Gianni as Vice Chair, the PCIE is enhancing its organization and productivity to better face the numerous management challenges of today. However, we believe statutory codification of PCIE would further augment the role our Council can play in addressing these cross-cutting challenges. Moreover, by grounding PCIE in law, Congress -- and the President -- can also delineate its overall mission and mandate specific duties for it to perform.

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One particular function that should be explicitly tasked to the PCIE is the provision of training to our auditors, through the authorization of the Inspector General Auditors Training Institute, known as IGATI, and to our Special Agents, through the Inspector General Criminal Investigators Academy. Auditors must have a concrete foundation in methodologies, quantitative analysis, economics, and other multi-disciplinary bodies of expertise if we are to maintain our edge given the heightened complexity of our work. Likewise, our Agents face new challenges as well, like the area of computer crimes, that require special, and frequent, training to keep up with technology. Statutory codification would permanently authorize these two bodies and place their oversight and management directly under the PCIE. This would be an important step for ensuring the quality of our workforce.

If I can answer any questions or be of further assistance, please feel free to contact me at (202) 366-1959, or Brian Dettelbach, Senior Counsel for Legislative and External Affairs, at (202) 366-6872.

Best regards,



Kenneth M. Mead
Inspector General

Enclosure

cc: Rena Johnson, Acting Chief Counsel and Staff Director
Claire Barnard, Professional Staff Member

**OIG VIEWS AND COMMENTS
ON
SENATOR COLLINS LEGISLATION**

At the request of the Committee and Senator Collins, the PCIE Legislative Committee conducted a survey of the bill Senator Collins introduced during the 105th Congress, S. 2167. A summary was included in the Committee's Hearing Record on IG Oversight issues in September of 1998. We recently conducted an updated survey on Senator Collins current bill (S. 870) that is similar to her previous legislation, with some modifications.

Our survey found there was a general consensus in support of the language and intent of the major provisions, with the exception of DFE consolidation. There were, however, distinct minority viewpoints on most issues, which reflects the vibrancy of the community and also the varied background and experiences of IGs.

This presents a capsule summary of each provision, along with a synthesis of views and comments as expressed by Inspectors General. We have noted a few items the Committee may want to consider for modification. In addition, we have attached more specific and technical amendments provided by the OIG community on each of the bill's provisions, with views and comments from individual IGs on the issue of DFE consolidation.

TERM LIMITS

(Section 2)

Establishes a renewable 9-year term of office for PAS IGs.

Goal: To enhance IG independence from agency heads, encourage longer tenures in office, and provide Congress a statutory framework to review IG performance.

- Most IGs supported, though there was no consensus on the most desirable term length.
- Some were concerned over the IG's role at the end of their terms, through a "lame duck" effect or currying favor in hopes of reappointment. Others believed that a fixed term might cause an agency head to ignore or be unresponsive to OIG recommendations at the end of an IG's tenure.
- Several IGs who favored term limits also thought it important to add a complementary removal only "for cause" provision, such as malfeasance in office. It was noted that most term appointments have this protection, and even though a President must notify Congress when he/she removes an IG, in effect, IGs would still serve at the "pleasure" of the President. IGs felt a removal for cause provision would further enhance their independence and provide continuity, especially during changes of Administration.

Suggestions for the Committee's Consideration

- Include a "removal only for good cause" provision.
- Consider applying the concept to DFE IGs.

CASH BONUSES AND AWARDS

(Section 3)

Prohibits IGs (both PAS & DFE) from accepting any cash awards or cash bonus.

Goal: To eliminate any appearance of impropriety by acceptance of a performance bonus from an agency head the IG is required to audit and investigate.

- Strong support within IG community to avoid even the potential appearance of a conflict of interest.
- The Clinton Administration has implemented guidance (but not a statutory ban) to request PAS IGs drawn from the SES ranks to waive their rights to cash bonuses/awards determined by their agency head.
- Trickier issue for DFE IGs who do not get PAS level pay and generally are SES or GS-15 levels.

Suggestions for the Committee's Consideration

- Many felt there should a mechanism for the Executive Branch and Congress to recognize outstanding performance within the IG community, particularly for DFE OIGs who are not SES level. One alternative might could be to authorize an independent Board to consider and make determinations on cash awards/bonuses to such Inspectors General. The Board could be comprised of representatives from OMB, Congress, and others outside the agency employing the individual Inspector General.
- This provision, or its legislative history, should make clear that the prohibition applies only to performance-based awards and not to other non-performance payments employees may be eligible for, such as moving expenses, per diem, locality pay, shift-differential, etc.

EXTERNAL REVIEWS (Section 4)

Requires all IG Offices to be evaluated every 3 years (either by GAO or an appropriate private entity) for their management and controls regarding contracts, appropriated funds, and personnel actions.

Goal: To provide more systemic oversight and accountability for IG operations and management of resources, given that IGs employ over 10,000 FTE's with a combined budget of more than \$1 billion/yr.

- General support, but IGs were concerned about overlap with the other reviews IGs already undergo, such as the 3-year reviews performed by other OIGs in accordance with applicable Government Auditing Standards. Several IGs noted that, as part of reviews of agency-wide programs, OIG offices also are periodically reviewed by OPM for personnel practices, OGE for adherence to ethics requirements and programs, and agency CFOs for travel voucher audits.
- Many IGs believed it would be best to incorporate this requirement into the current peer review process.
- Some wondered whether it is effective to have a private sector entity, hired by an OIG, to perform this particular review. Concern was expressed that, no matter how professional the review, an inherent appearance of a conflict of interest existed with respect to the contractor's objectivity and independence.
- One paramount issue was to ensure that OIG criminal investigative operations and procedures were specifically exempted from this review.

Suggestions for the Committee's Consideration

- Exempt OIG criminal investigations, operations, and procedures from this type of review.

ANNUAL REPORTS (Section 5)

Changes the SAR to an annual report and revamps the current reporting requirements in the areas of summaries, statistics, and explanations. Allows Congressional Committees and the Comptroller General to request semiannual, rather than annual, reports.

Goal: To reduce burden on OIG resources, free up staff to root out fraud and abuse, and provide more useful information to Congress.

- Most IGs favored moving to annual reports, citing time and staff costs.
- A vocal minority wants to ensure that the SAR option is preserved subject to the IG's discretion. The fear is that an annual report will be even less timely and useful than the SAR is now.
- Many IGs offered specific suggestions for SAR content and reporting requirements.

Suggestions for the Committee's Consideration

- Simply require that IGs report to Congress on at least an annual basis and provide flexibility to report more frequently at the IGs discretion.
- The Committee should ensure that there still is a mechanism to correlate this report with the companion report also required to be submitted by agency management under section 5(b) of the IG Act. Having some symmetry enables a reader to quickly and easily compare OIG recommendations with agency actions.
- Section 5(a)(4)(B) of the bill seemingly would require the *Inspector General* to report on corrective actions taken in response to OIG findings and recommendations. However, the information on management implementation of OIG recommendations is in the control of *agency management* and not the OIG. Therefore, we recommend that the bill assign to agency management responsibility for reporting on collections of disallowances and other corrective actions. We note that this separation of functions was established in the 1988 Amendments to the IG Act, and we believe that it should be continued.

EXECUTIVE SCHEDULE LEVEL III
(Section 6)

Raises PAS IG salary from Level IV (\$122,400) to Level III (\$130,200).

Goal: Designed to address the imbalances whereby a Deputy IG, AIGA, and AIGI may earn more on an annual basis-- with eligibility for performance bonuses, locality pay/COLAs, and cash awards-- than their PAS IG boss.

- IGs strongly supported this provision.
- Several IGs recommended that some allowance be made for PAS IGs from non-Title 5 Executive and Legislative branch agencies to receive the same salary and benefits, particularly the locality pay differential, afforded to career civil servants. There have been instances where a PAS IG is earning less than what he/she would take home as a senior-level SES career employee.
- Many DFE IGs noted this section does not affect their pay, and strongly urged the Committee to consider ensuring that the compensation level of DFE IGs be made comparable to other positions within the entity reporting directly to the entity head. In their view, it was important for all IGs to be at a salary level sufficient to ensure independence

Suggestions for the Committee's Consideration

- Include language in 5 USC 3392(c)(1) and 5 USC 3593(b) so it covers GAO Senior Executives who move directly from their GAO Senior Executive Service appointments to a Presidential appointment. Modify the blanket exclusion in 5 USC 3132(a)(1) so it does not preclude the GAO inclusions in 5 USC 3392(c)(1) and 5 USC 3593(b).
- At § 6(b), the Inspector General for Tax Administration should be included in the list; currently, the list includes only the Inspector General, Department of the Treasury. We suggest adding the Inspector General for Tax Administration between the IGs for Justice and Treasury.
- Designated Federal Entity IGs should be graded at the same level as other senior staff reporting to the Agency Head (i.e. General Counsel, Executive Director etc.).

CONSOLIDATION OF OIGs
(Section 7)

FLRA OIG transferred into OPM OIG;
Federal Maritime Commission OIG transferred into DOT OIG;
PBGC OIG transferred into Labor OIG;
NEA OIG merged with NEH OIG.

Goal: To make several smaller OIGs more efficient and effective by transferring functions to PAS OIGs, or by consolidation into a single OIG.

- Most controversial portion of the proposal.
- Those in favor agreed that it would enhance IG independence over these agencies.
- Those opposed believed it important to have an IG physical presence in the smaller agencies and that the size of an OIG is not determinative of either their effectiveness or results.
- The ECIE has met with Committee staff and distributed a "White Paper" on DFE consolidation issues. (Attached)

Other Suggestions for the Committee's Consideration

- It was noted that the Legislative Branch Appropriations Bill currently being drafted in the Senate Appropriations Committee merges the police forces of the Library of Congress (LOC), and the Government Printing Office (GPO), with the Capitol Police. The Committee may want to consider consolidating the OIGs at the Library of Congress, the GPO, and the U.S. House of Representatives.

OTHER TECHNICAL AMENDMENTS FOR CONSIDERATION

Term Limits

- A point of interest with respect to the Peace Corps IG: Under section 8G(c) of the IG Act, appointment of DFE IGs is made “in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.” The Peace Corps Act limits appointments to five years; the director may grant an extension of one year and, under special circumstances and for not more than 15 percent of all employees, an extension up to 30 months. See Peace Corps Act, 22 U.S.C. 2501, 2506(a)(5). Peace Corps regulations and practice also limit initial appointments to 30 months, with the usual practice being contract renewal for a second 30 months so as to reach the five-year limit. Sealing this rule is the parallel rule that one cannot be rehired until the amount of time of one’s prior employment has elapsed. *Id.* at 2506(a)(2)(B). These term limit provisions also apply to OIG staff and are one reason for frequent IG and staff turnover in the Peace Corps.

Cash Bonuses/Awards

- Section 3(e)- should be edited to correct the citation of “8G(a)(2)(6)” to 8G(a)(2) through (6).

External Reviews

- This provision should be amended to require "audits in accordance with generally accepted government auditing standards" rather than "reviews. This change will guarantee the independence of the reviewer/auditor. In that regard, as currently drafted section 4's requirements could be satisfied by a consulting firm that is not subject to any independence or professional standards.
- There may be some overlap with other audit reviews. For example, at HHS, expenditures under the Health Care Fraud and Abuse Control Program are, by law, audited biannually by the General Accounting Office (GAO). Similarly, both the IG Act and GAO’s Government Auditing Standards require periodic external peer review of OIG audit functions. We would suggest that S. 870 (or its legislative history) clarify that no duplication with such reviews is required.

To the extent that an issued is covered by another review, it need not be re-examined in the “external reviews” established by section 4 of this bill.

- The bill provides that an Inspector General may contract with a private entity to conduct an external review of Office of Inspector General operations and controls. The contract must be let in accordance with certain provisions of the Federal Property and Administrative Services Act. Some agencies, like the Federal Deposit Insurance Corporation, operate under statutes that provide for different authorities for entering into contracts. Therefore, in recognition of these differences, add the clause ", or other applicable contracting law," at the end of proposed section 4(e)(1)(C).
- Section 4(e)(B)- should be edited to correct the citation of “8G(5)” to 8(G)(a)(5)

Annual Reports

- Recommend that categories created by Section 5(a)(2) are clearly defined for consistency across the IG community. Traditionally, IGs report on the status of audit reports through the resolution phrase and the Management SAR reports on corrective action. So this requirement would be redundant.
- We also recommend the amendment of subsection (b) to clarify whether semi-annual reports will be issued directly or through the head of the establishment. As currently drafted, existing subsection (b) of the existing section 5 of the IG Act will amended to no longer reference semi-annual reports, and, thus, a plain reading of the amended section 5 would suggest that annual reports will be issued through the head of the establishment, and semi-annual reports will be issued directly. To avoid confusion, clarification appears prudent.
- In regard to the reporting of non-competitive awards at proposed paragraph (a)(7), we think it might be more appropriate for a committee to ask for this kind of information privately; putting it in the annual report could give an impression that there is something wrong with non-competitive awards. Depending on the purpose and scope of the contract, too much disclosure too early could also compromise a sensitive ongoing investigation or audit. If it needs to be in the annual report, perhaps it would be better to report on all contracts over \$100,000. This could have a column coding competitive and non-competitive if desired, but it would not single out non-competitive for special highlighting that might not be warranted.

- It is very important that the bill, in paragraph (2), explicitly includes reporting on evaluations and inspections. The tables in paragraph (4) might also include numbers of evaluation and inspection reports and financial benefits realized. Because there are so many types of corrective actions and program improvements, they might better be described in words rather than in a table as required by paragraph (4)(B). The intent of the parenthetical exclusion is unclear.

- Regarding (5)(B)(ix), "disbarments" should be changed to "debarments".

- Section 5(3)

The reference to 6(b)(2) in subsection (3) is the 1978 IG Act and not section 6(b) of the subject amendments.

- Section 5(a)(4)(B) should be amended as follows:

(2) corrective actions taken and program improvements made on reports issued during the reporting period

- Section 5(a)(5)(B) should be amended as follows:

Delete (ii)

The reason for this deletion is the multitude of reasons that cases are declined and the misleading impression such a number might give. For example, cases having prosecutorial merit are sometimes declined because the case fails to meet the financial threshold set by a particular US Attorney's Office or because of lack of resources or personnel to prosecute the case.

- We recommend that a provision be added, amending section 5(c) of the IG act by changing the reference to "reports of each establishment head" to "reports of each Inspector General" (emphasis added).
- Recommend extending the transmittal date to November 30, which is consistent with the current 60 days, allowed for transmittal

Executive Level III Schedule Salary

- If the Administration is going to support this salary move for IGs, it should also support it for the Special Counsel (SC). Our reasons are:

OSC's jurisdiction is broader than any single IG - it goes across the entire government and investigates and enforces various laws, i.e. whistleblower, PPP, Hatch and Disclosure.

The SC's subordinates are paid more than the SC. [SES salaries are capped at Executive Level III positions, while SC is at Level IV.] The SC sits on a board - the Integrity Committee - with IGs. This Integrity Committee is responsible for investigating and recommending discipline of IGs.

Unlike an IG, the SC must be an attorney and we know how much those lawyers can get in the private sector. [SC is now paid less than the typical starting salary for a first-year associate at a major law firm -- \$125,000] The SC is similar to IGs in having the authority to independently investigate agencies (up to the highest levels) but is also empowered to go further and actually prosecute cases in which retaliation occurs.

Other Views and Comments on DFE Consolidation

- We suggest that more study be done on the issue of consolidation of OIGs. There is a need to balance the benefit of having an OIG presence in each entity with the efficiencies that can result from consolidation with larger OIGs. Perhaps, another workable solution would be to have a partnering (or other) relationship between two OIGs. A smaller OIG could request and draw upon the resources of a larger OIG in necessary situations without having inappropriate appropriations augmentations.
- The FLRA is a quasi-judicial agency for Federal Labor Management disputes and appeals. Consolidating its oversight function with a Federal Agency over which it has adjudicatory authority will elicit a conflict of interest.

Small IG staffs do not necessarily equate to small amounts of oversight. All of the DFE Inspector Generals help and support each other if resources become an issue.

Although the consolidation of certain smaller IG offices into larger IG offices may appear economical, it ignores the benefits achieved by having an IG within the DFE (on-site presence, institutional knowledge, proximity to management, etc.).

- The Pension Benefit Guaranty Corporation (PBGC) OIG is against the proposal in S. 870, Section 7, to eliminate a separate Inspector General (IG) for PBGC and transfer those responsibilities to the Department of Labor's IG. We note that when asked to comment on the elimination of the PBGC's OIG, PBGC management stated that it had "serious reservations" and gave the following rationale:

"PBGC is a wholly-owned government corporation created by Title IV of the Employee Retirement Income Security Act (ERISA). PBGC is governed by a Board of Directors, composed of the Secretary of Labor as chairman and the Secretaries of Treasury and Commerce. PBGC is responsible for paying benefits when private sector defined benefit plans fail and cannot fulfill their promised obligations to workers and retirees. Currently, PBGC pays monthly benefits to over 200,000 participants in failed pension plans. It is responsible for paying benefits to an additional 300,000 participants when they become eligible to retire. PBGC currently pays out about \$1 billion a year in benefits.

PBGC receives no general revenues. It is financed through premiums paid by plan sponsors, recoveries from failed plans and investment income. The

single-employer insurance program has assets exceeding \$18 billion and liabilities of over \$11 billion.

Because of the nature of PBGC's responsibilities, we believe a separate IG is necessary. The operations of PBGC are governed by the requirements of ERISA, Title IV and are very complex. Having an IG who understands the unique nature of the Corporation and its specific responsibilities is beneficial. The IG, along with PBGC management, helps to assure that the payment of benefits will not be subject to fraud or abuse and that any misuse of the Corporation's funds will be detected. Further, PBGC has in its databases, privacy-protected information for more than 500,000 individuals and corporate information that is, by law, confidential. The IG helps to assure that this information is not misused.

PBGC is required by law to produce an annual report containing its audited financial statements. The IG is responsible for overseeing PBGC's annual audit. This year, for the seventh time, the Corporation was given a "clean" audit opinion. Prior to 1993, PBGC was not auditable and on both OMB's and GAO's high risk lists.

PBGC management is committed to high level management standards in all of our operations and to assuring public confidence in the integrity of the insurance program. We believe that a separate IG is necessary to achieve these goals."

We agree with PBGC management's comments. An Office of Inspector General within the PBGC, not adjunct to another cabinet level Department, is critical to monitor the agency's operations and resources. Because PBGC manages billions of dollars, there is a high risk for fraud. In addition, over the course of years, the OIG has developed expertise in PBGC's complex statute and its operations, which cannot be matched by another OIG. If oversight of the PBGC were transferred to the DOL OIG, there would be an immediate loss of on-site monitoring. Additionally, the fraud risk would increase because review of PBGC operations would compete with DOL's other programs. Therefore, a separate OIG at PBGC is important for efficient and effective government and to assure public confidence in PBGC's pension programs.