

**Post-Hearing Questions for the Record
Submitted to Hubert Sparks
From Senator Claire McCaskill**

**“Oversight of Small Agencies”
April 10, 2014**

Q. Do you believe that there is an inherent conflict of interest when an IG is appointed by—and must ultimately answer to—the head of a federal entity, over whom the IG is supposed to be providing oversight?

A. Not necessarily. All IGs, in my opinion, have an inherent conflict of interest in that they are overseeing and reporting to the Head of the Agency or Department for which they have oversight responsibilities. Former GAO Director David Walker has noted, and I agree, that the IG integrity is the key to independence. Although the Presidentially appointed IGs may, on paper, report to the President as a matter of practice they report and answer to the Agency Head and are subject to the same appearance of lack of independence and potential impropriety as IGs appointed by the Agency Head. In practice, the Presidential IG is probably more susceptible to pressure than a DFE IG many of whom are career employees who cannot simply be terminated based on a recommendation by a Department Head to the President. Also, both IG classes have the same IG Act protections with respect to notification in advance to Congress about terminations and although both IG classes are subject to pressure recent indications are that the IGs that have encountered sufficient pressure to influence their decisions were Presidentially appointed IGs.

Presidential appointments certainly could add status to DFE IGs but the process of selection and confirmation with respect to additional Presidential appointments is a practical problem and I do not believe such an appointment adds much to the independence or avoidance of conflict of interest.

Q. Even if no actual conflict exists, is the appearance of impropriety enough to merit reconsideration of this reporting structure for DFEs and their IGs?

A. Since all IGs are part of their parent agency they are all subject to questions about the appearance of impropriety. Congress and GAO have specifically identifies various protections that are intended to assure that all OIGs can operate independently within their parent agency but it still comes down to the integrity of the IG. My ideal IG candidate would probably be someone with the required qualifications who was either eligible for, or had just retired, and thus would be less subject to the normal pressures placed on IGs by the Departments/Agencies they oversight. I realize this is not a practical approach.

Q. Under what circumstance, if any, might IGs feel pressure that affects their ability to conduct oversight? How can this be mitigated?

A. Pressure is part of the position and can be felt whenever there is a significant disagreement between the OIG and Department/Agency officials and as long as the OIG is within the

agency it oversees this will continue. I have said many times there is no such thing as true independence when an agency is within the one it oversees but that the current OIG structure is the best practical Executive Branch approach as opposed to say a super OIG not reporting to or through their particular agency. As an aside, the accepted practice that CPA firms select the auditors to perform their peer reviews makes the term independence rather meaningless in such situations and I believe OIGs are much more independent than this type arrangement. While pressure, due to the OIG role, cannot be mitigated to any great degree a clear understanding of Department/Agency and OIG responsibilities and authorities and implementation of such can help reduce pressure.

Legislation has been proposed that would consolidate some smaller IG offices and ensure that all federal agencies have a statutory IG.

- Q. Do you believe having one regional commission inspector general is a good approach? Why or why not?
- A. I, and the former ARC IG who was my successor and predecessor, have recommended the consolidation of the smaller Economic Development Commissions that are structured as joint Federal/State Partnerships into one OIG office, This would facilitate, in my opinion, a cost-effective method to better assure some effective oversight is provided to these entities. I do not believe a separate OIG at the smallest of these entities is necessary based on the entity workload and one IG for these Commissions would better allow the OIG to conduct the full gamut of OIG responsibilities and have the expertise relative to similar type programs. Assignment of the smallest Commissions to another OIG such as was done with the Denali Commission during its infancy is also a viable option but I also believe a separate IG would have a greater interest in providing effective oversight to these entities.
- Q. Under this proposal, would you envision permanently establishing a satellite office in Alaska or do you think periodic visits would be sufficient?
- A. Since the current budgets of the other small Economic Development Commissions are very small I do not believe a full time presence at these entities is necessary. This, in my opinion which can be disputed, is true of the Denali Commission whose budget has gone from over \$ 100 million to about \$15 million in recent years and of the other Commissions with even smaller budgets, including a couple with almost no appropriations too date. Periodic visits should be sufficient and this could be revised if circumstances change. In today's travel world the travel costs of going to Alaska are not significantly different than going short distances and overall cost relative to a full time staff would be reduced. Risk assessments should also identify which of the Commissions receive priority attention.
- Q. Do you have any suggestions on how the legislation could be improved?
- A. A discussion of needed and effective oversight at smaller entities is a valid subject and the consolidation of smaller OIGs has been discussed in the past. As testified and discussed with Subcommittee staff I agree with the concept of oversight of all federal expenditures. With respect to the oversight of entities without current oversight I

recommend that responsibilities for this oversight be assigned to smaller DFE OIGs. This would, based on my experience, better assure that these entities receive attention as they would become a priority within the smaller OIGs and could alleviate some of the Congressional concerns about smaller DFE OIGs such as availability of resources to conduct the full gamut of OIG responsibilities. Program expertise would not be compromised as the larger OIGs currently designated to oversight these entities also have no prior experience with these entities so the learning curve is the same.

With respect to consolidation of current smaller OIGs with larger OIGs the overall topic of consolidation should be further discussed and assessed in the context of the value these entities within their parent agencies rather than determinations based on size for example. I have made my position clear that I do not agree with the consolidation of current smaller OIGs with other OIGs for various reasons and will not bore you with repetition of the details. Overall, I believe the value of an on-site presence outweighs other factors with respect to the consolidating of these OIGs with other IGs and should be the primary factor in the decision process.

This does not mean that smaller OIG performance, cannot be improved to address Congressional concerns with respect to programmatic reviews for example. This could be facilitated by Congressional action with respect to annual mandated reviews that are regularly required by all OIGs even if the risk to the particular program at small agencies is very limited. This would free up smaller OIG time to address higher priority and higher risk issues.

I do want to add a new comment with respect to a couple of points relative to the questions referred to CIGIE. The letter to CIGIE indicated that some OIGs do not have Audit Peer Reviews and do not conduct audits. All OIGs are subject to and receive Audit Peer Reviews, although a modified approach is being considered for some smaller OIGs that use inspections and evaluations to conduct more efficient and effective oversight of their agencies. Also, as far as I know, all OIGs contract for audits that are conducted in accordance with GAGAS and I have never seen an OIG Semiannual Report that does not claim these audits as OIG audit products. The Audit Peer Review that all OIGs receive also includes a fairly detailed assessment of the degree of monitoring the OIG provides for contracted audits. I have not been able to find out which OIGs provided incorrect information to the Committee as well as which OIGs provided what I consider incorrect information that OIG size should be a primary criteria in decisions about OIG status or that two auditors are needed for every audit.

With respect to Inspections and Evaluations a peer review guide is now being piloted and will be finalized shortly.

On the issue of shared services there may be an occasional case where shared services are not immediately available, be it legal, investigative, HR or contracting, these cases are few due to the limited needs of smaller OIGs. In reality the same situation occasionally occurs in large OIGs that have staff devoted to these services. Shared services are often the most efficient way to accomplish low volume needs.

A last comment on this issue is clarifying a comment I made at the hearing that could be misconstrued. With respect to consolidations of smaller OIGs my intention was to note that while I disagreed with the proposed OIG consolidations if it was determined to proceed with legislation for such consolidations I would urge that such consolidations involve combining smaller OIGs rather than placing them with large OIGs. This would better assure the impacted agencies would receive priority attention, program expertise would be readily available, the value of continued on-site presence, while now indirect, would be essentially maintained and the OIG would be in a better position to be staffed to directly implement all OIG responsibilities

Another approach to oversight of small agencies would be to create umbrella DFE Agency OIG. Such an office could coexist with existing DFE IG offices but reduce duplication by consolidating administrative and other non-IG functions?

Q. What are your thoughts about this alternative approach?

A. One of the first issues raised when I was asked by CIGIE to establish a smaller OIG group in 2011 to address the challenges of smaller OIGs was how best to address the adjunct OIG responsibilities with respect to contracting, human resources, procurement etc., and the discussion included use of CIGIE to provide such services, The stumbling block was the difficulty in identifying the extent to which these services would be needed in order to give CIGIE a dollar figure they would have confidence in if services were to be provided and CIGIE staffing needed to be increased.. The same issue would arise with respect to an umbrella DFE – OIG to provide such services. In reality, based on smaller OIG staffing, the need for such services is generally very limited and utilization of other OIGs and/or agency staff has been very successful. I would probably favor such services be provided through CIGIE provided CIGIE could provide such services on as needed concept rather than smaller OIGs having to allocate funds for services that might not be needed in a particular year, I recognize this is a concept CIGIE would understandably not accept.

Also, I have heard of very few instances where shared services, be it from other OIGs or Agency staff for non-sensitive issues, has been a problem for smaller OIGs and am not certain that there is a significant need for much change in current arrangements.

I appreciate the efforts to comment on these issues and the consideration the Subcommittee is giving to the subject and particularly the comments of those who would be impacted by the discussion draft potential legislation.