

**Testimony of Danielle Brian, Executive Director,
Project On Government Oversight,
before the Senate Homeland Security and Governmental Affairs Committee regarding
“Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years”
June 3, 2015**

Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me to testify today and for your ongoing oversight of the Inspector General (IG) system.

My name is Danielle Brian and I am the Executive Director of the Project On Government Oversight (POGO). Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO’s investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.

At their best, Offices of Inspector General (OIG) are essential to a well-functioning federal government. IG offices recover billions of dollars in wasted taxpayer funds and make improvements to federal programs that keep us healthy, safe, and secure.¹ IGs wear two hats, reporting to their agency heads and to Congress. As a result of this dual-reporting structure, IGs are uniquely positioned to serve as your eyes and ears within the executive branch, giving you the information you need to conduct effective oversight and pass meaningful legislation.

POGO has worked for years to study and improve the IG system, and we have supported legislation to make IGs more independent and accountable.² As such, we are deeply troubled to find that many senior IG officials are allegedly currying favor with the very agency leaders they’re supposed to oversee, and taking other inappropriate actions that would cause any reasonable person to question the IG’s independence.

Among the most pervasive threats to IG independence and effectiveness are the long-standing vacancies that have languished at IG offices throughout the federal government. POGO believes it is no coincidence that so many long-time acting IGs have found their independence called into question on front pages of newspapers across the country—especially when those acting officials make it known they are auditioning for the role of permanent IG.

¹ In fiscal year 2013 alone, IG offices collected \$14.8 billion in investigative receivables and recoveries. Council of the Inspectors General on Integrity and Efficiency, *Progress Report to the President, Fiscal Year 2013*. <https://www.ignet.gov/sites/default/files/files/CIGIE%202013%20Progress%20Report.pdf> (Downloaded May 29, 2015)

² Project On Government Oversight, *Inspectors General: Many Lack Essential Tools for Independence*, February 26, 2008. <http://www.pogo.org/our-work/reports/2008/go-ig-20080226.html>; Project On Government Oversight, *Inspectors General: Accountability is a Balancing Act*, March 20, 2009. <http://www.pogo.org/our-work/reports/2009/go-igi-20090320.html>; and Project On Government Oversight, *Watching the Watchdogs: The Good, the Bad, and What We Need from the Inspectors General*, January 14, 2014. <http://www.pogo.org/our-work/reports/2014/watching-the-watchdogs-the-good-the-bad-and-what-we-need.html>

At the same time, it is important to keep in mind that the opening of an IG vacancy can occur for a perfectly appropriate reason—such as removing a permanent IG who fails to uphold her office’s mission.

BACKGROUND

POGO first testified about IG vacancies at a May 2012 hearing before the House Oversight and Government Reform Committee.³ As we stated at the time, some acting IGs are experienced and competent leaders, and IG professional staffers often have no problem carrying on their day-to-day work under acting leadership. Some IG offices conduct the same number of investigations and audits under both acting and permanent officials.

Nonetheless, a long-term vacancy often does great harm to an IG’s independence and effectiveness. One OIG staffer told POGO the situation is akin to a plant that is left unwatered for years, observing that the viability of the office can suffer in the same way the plant would.

Generally speaking, permanent IGs enjoy several advantages over their acting counterparts.

Credibility

Permanent IGs—especially those nominated by the President and confirmed by the Senate—undergo a rigorous vetting process, and are required under the Inspector General Act to be selected “without regard to political affiliation and solely on the basis of integrity and demonstrated ability.”⁴ A nominee who survives this process will typically be more credible in the eyes of agency leaders and employees, congressional overseers, and members of the public.

Independence

Acting IGs are temporary by nature, and can easily be removed without the protections afforded to permanent IGs under the Inspector General Act and related laws. When an acting IG broadcasts that he wants the permanent job, it creates an inherent conflict: the thoroughness or aggressiveness of his office’s work can weaken his chance of being appointed to the permanent slot. It means the acting IG’s job prospects are dependent on the goodwill of the very administration he’s charged with overseeing.

According to a report on Quality Standards published by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), OIG independence is important both in fact and in appearance, so that “opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.”⁵ Even the slightest appearance of partiality could mean, for instance, that an IG office will lose the trust of a would-be

³ Testimony of Jake Wiens, Investigator, Project On Government Oversight, before the House Committee on Oversight and Government Reform on “Where Are All the Watchdogs? Addressing Inspector General Vacancies,” May 10, 2012. <http://www.pogo.org/our-work/testimony/2012/go-ig-20120510-inspector-general-testimony.html>

⁴ Inspector General Act of 1978, §3(a), Appendix to U.S.C. Title 5. <http://www.gpo.gov/fdsys/pkg/USCODE-2013-title5/pdf/USCODE-2013-title5-app-inspector.pdf> (Downloaded May 29, 2015)

⁵ Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Federal Offices of Inspector General*, August 2012, p. 10. <https://www.ignet.gov/sites/default/files/files/Silver%20Book%20Revision%20-%208-20-12r.pdf> (Downloaded May 29, 2015)

whistleblower who is debating whether or not to tell the office about systemic agency malfeasance.

Strategy

A permanent IG who enjoys the protections of the Inspector General Act and related laws can devise a long-term strategy to address the most important and, at times, embarrassing problems that confront her agency. Rather than initiating ambitious projects, current and former IG staff have told POGO, acting IGs are more likely to favor short-term projects that do not rock the boat, essentially serving as a caretaker until a permanent IG takes over.

TRACKING IG VACANCIES

Several years ago, POGO created a special web page, “Where Are All the Watchdogs?” to keep track of ongoing vacancies in the IG system. Our vacancy tracker shows how long IG offices have been headed by an acting official, and, in the case of IGs appointed by the President, how long a nominee has been waiting for Senate confirmation.⁶

As of today, there are seven vacancies at presidentially appointed IG positions, one vacancy at an agency-appointed position, and three nominees awaiting confirmation. The shortest vacancy is at the Central Intelligence Agency, which has gone 123 days without a permanent IG or a nominee. The longest vacancy is at the Interior Department, which has now gone almost 2,300 days without a permanent IG, making it the longest IG vacancy of the Obama Administration.

Table 1 lists the vacancies as of today’s hearing, counts how long the positions have been vacant, and shows if a nominee is pending for a presidentially appointed position.

⁶ Project On Government Oversight, “Where Are All the Watchdogs?” <http://www.pogo.org/tools-and-data/ig-watchdogs/go-igi-20120208-where-are-all-the-watchdogs-inspector-general-vacancies1.html>

TABLE 1: CURRENT INSPECTOR GENERAL VACANCIES AS OF JUNE 3, 2015

Department/ Agency	Vacancy Date	Nominee	Nomination Date	Days Since Nomination	Total Days Vacant	Who Nominates
DOI	2/23/2009*	-	-	-	2,291 days	President
USAID	10/15/2011	Ann C. Barr	5/11/2015	23 days	1,327 days	President
FDIC	9/25/2013	Jay N. Lerner	11/12/2014	203 days	616 days	President
Denali	12/28/2013	-	-	-	522 days	Agency
VA	12/31/2013	-	-	-	519 days	President
GSA	4/20/2014	Carol F. Ochoa	3/11/2015	84 days	409 days	President
Ex-Im	6/27/2014	-	-	-	341 days	President
CIA	1/31/2015	-	-	-	123 days	President

Notes and Sources: POGO defines the start of a vacancy as the last date on which a permanent IG served in that capacity. The initial list of vacancies was obtained from a directory of IGs maintained by CIGIE: <https://www.ignet.gov/content/inspectors-general-directory>. Vacancy dates for IG positions that require a presidential nomination were obtained from a database maintained by the Government Accountability Office (GAO): <http://www.gao.gov/legal/fedvac/vacancies.html>. Vacancy dates for IG positions not listed in the GAO database were obtained from a variety of sources, including IG resignation letters, semiannual reports to Congress, and agency press releases. Information regarding presidential nominations was obtained from White House and congressional records: <http://www.whitehouse.gov/briefing-room/nominations-and-appointments>, http://www.senate.gov/pagelayout/legislative/one_item_and_teasers/nom_cmtec.htm

*Earl Devaney, the most recent permanent Inspector General at the Department of the Interior, was appointed Chair of the Recovery Accountability and Transparency Board on February 23, 2009. Devaney took a leave of absence from his position at Interior at that point, leaving Acting IG Mary Kendall responsible for running the office. Devaney resigned from federal service in December 2011. POGO considers the position effectively vacant at the time Devaney was appointed Chair of the RAT Board. However, it should be noted that the Obama Administration could not appoint a permanent IG until Devaney resigned.

Table 2 shows how long it took the Obama Administration to fill those presidentially appointed IG positions that were vacant at some point during his Administration but that are now filled. Previous IG vacancies under President Obama have lasted an average of 613 days. The average time between the beginning of an IG vacancy and the selection of a nominee (nomination lag) has been 504 days. The average time between presidential nomination and Senate confirmation (confirmation lag) has been 116 days.

TABLE 2: LENGTH OF NOW-FILLED INSPECTOR GENERAL VACANCIES IN THE OBAMA ADMINISTRATION

Position	Vacancy Date	Nominee	Nomination Date	Nomination Lag in Obama Administration	Confirmation Date	Confirmation Lag	Days Vacant in Obama Administration
State IG	1/16/2008	Steve A. Linick	6/27/2013	1,619 days	9/17/2013	82 days	1,701 days
DOL IG	7/14/2009	Scott S. Dahl	7/18/2013	1,465 days	10/16/2013	90 days	1,555 days
CNCS IG	6/11/2009	Deborah J. Jeffrey	11/15/2011	887 days	6/29/2012	227 days	1,114 days
DHS IG	2/27/2011	John Roth	11/21/2013	998 days	3/6/2014	105 days	1,103 days
DoD IG	12/24/2011	Jon T. Rymer	6/24/2013	548 days	9/17/2013	85 days	633 days
FHFA IG	7/30/2008	Steve A. Linick	4/12/2010	447 days	9/29/2010	170 days	617 days
CIA IG	3/14/2009	David B. Buckley	8/5/2010	509 days	9/29/2010	55 days	564 days
EPA IG	3/3/2006	Arthur A. Elkins, Jr.	11/18/2009	302 days	6/22/2010	216 days	518 days
SIGAR*	2/4/2011	John F. Sopko	-	-	5/23/2012	-	474 days
DOJ IG	1/28/2011	Michael E. Horowitz	7/29/2011	182 days	3/29/2012	244 days	426 days
ED IG	7/1/2008	Kathleen S. Tighe	11/20/2009	304 days	3/10/2010	110 days	414 days
HUD IG	10/12/2010	David A. Montoya	7/18/2011	279 days	11/18/2011	123 days	402 days
IC IG**	10/7/2010	Irvin C. McCullough, III	8/2/2011	299 days	11/7/2011	97 days	396 days
SIGTARP	3/31/2011	Christy L. Romero	2/1/2012	307 days	3/29/2012	57 days	364 days

Ex-Im IG	10/1/2009	Oswaldo L. Gratacos Munet	5/13/2010	224 days	9/29/2010	139 days	363 days
FHFA IG	9/29/2013	Laura S. Wertheimer	5/22/2014	235 days	9/17/2014	118 days	353 days
SBA IG	8/12/2008	Peggy E. Gustafson	7/6/2009	167 days	9/24/2009	80 days	247 days
NASA IG	4/11/2009	Paul K. Martin	10/1/2009	173 days	11/20/2009	50 days	223 days
DoD IG	7/14/2008	Gordon S. Heddell	6/1/2009	132 days	7/10/2009	39 days	171 days
AVERAGE:				504 days		116 days	613 days

Notes and Sources: The initial list of vacancies was obtained from a directory of IGs maintained by CIGIE: <https://www.ignet.gov/content/inspectors-general-directory>. Vacancy dates for IG positions that require a presidential nomination were obtained from a database maintained by the Government Accountability Office (GAO): <http://www.gao.gov/legal/fedvac/vacancies.html>. Vacancy dates for IG positions not listed in the GAO database were obtained from a variety of sources, including IG resignation letters, semiannual reports to Congress, and agency press releases. Information regarding presidential nominations was obtained from White House and congressional records: <http://www.whitehouse.gov/briefing-room/nominations-and-appointments>, http://www.senate.gov/pagelayout/legislative/one_item_and_teasers/nom_cmtec.htm

POGO defines the start of a vacancy as the last date on which a permanent IG served in that capacity. The nomination lag was calculated from the earliest day in the Obama Administration when the vacancy began to the date of nomination (i.e., the nomination lag does not include the time the position was vacant under the previous Administration).

*The Special Inspector General for Afghanistan Reconstruction (SIGAR) requires an appointment by the President, but does not require Senate confirmation.⁷

**The Inspector General of the Intelligence Community (IC) was established in a 2010 law enacted during the Obama Administration. POGO calculated the initial vacancy date for this position on the day the law was enacted.⁸

⁷ National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, § 1229(c), January 28, 2008. <http://www.gpo.gov/fdsys/pkg/PLAW-110publ181/pdf/PLAW-110publ181.pdf> (Downloaded May 29, 2015)

⁸ Intelligence Authorization Act for Fiscal Year 2010, Public Law 111-259, §405, October 7, 2010. <http://www.gpo.gov/fdsys/pkg/PLAW-111publ259/pdf/PLAW-111publ259.pdf> (Downloaded May 29, 2015);

A 2009 study on government vacancies compared the average vacancy length across recent Administrations for at least some presidentially appointed IG positions. The study relied on vacancy data provided by the Office of Personnel Management (OPM). POGO has not been able to validate or replicate the underlying OPM data, and therefore we do not know if it is feasible to use the presently available data to compare IG vacancies from past Administrations to those of the current Administration. Nonetheless, the 2009 study suggests that it took less time on average to fill IG vacancies in past Administrations.⁹

EXAMPLES OF CURRENT AND RECENT IG VACANCIES

While the overall number and length of IG vacancies are important, the true implication of a particular vacancy can only be understood in context.

IG positions can become vacant for a variety of reasons, some of which are troubling, while others are completely appropriate—and in some instances might even be beneficial. For example, it would be extremely troubling if an IG position became vacant because the President removed an aggressive IG without good reason. But it would be completely appropriate—and arguably beneficial—if an IG position became vacant because Members of Congress pushed for the resignation of an IG who lacked integrity or was ineffective, or because a President removed an IG for engaging in serious misconduct.

Likewise, IG vacancies can continue for extended periods of time for a variety of reasons. For example, IG positions can remain vacant simply because the President has not taken action to nominate a candidate, which is a problem. But IG positions can also remain vacant when negative information about a nominee emerges during the confirmation process, raising previously unknown doubts about the qualifications of that nominee. In that situation, the benefits of keeping an unqualified candidate from becoming a permanent IG might outweigh the costs of extending the vacancy.

Whatever the reasons may be for a vacancy to begin or continue, the following examples show what can happen when an IG office languishes for too long under acting leadership.

Department of Veterans Affairs

The Department of Veterans Affairs (VA) has now gone 519 days without a permanent IG, and President Obama still has not offered a nominee. The vacancy began at the end of 2013 when the previous IG, George Opfer, retired from federal service.¹⁰ The IG's office has since been led in an acting capacity by Richard Griffin.¹¹

⁹ Anne Joseph O'Connell, "Vacant Offices: Delays in Staffing Top Agency Positions," *Southern California Law Review*, Volume 82, 2009, p. 957. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411812 (Downloaded May 29, 2015)

¹⁰ Letter from George J. Opfer, Inspector General, Department of Veterans Affairs, to the White House, regarding resignation from federal service, November 6, 2013. <http://www.va.gov/oig/articles/oig-ig-letter.pdf> (Downloaded May 29, 2015)

¹¹ Department of Veterans Affairs, Office of Inspector General, "Richard J. Griffin, Deputy Inspector General." <http://www.va.gov/oig/about/deputy-inspector-general.asp>

Griffin's independence and interactions with Department leaders have repeatedly come under scrutiny during his tenure as Acting IG. Last year, after Griffin conferred with one of the VA's top officials, the IG's office added language to a draft report that undermined a whistleblower's claims about veteran deaths and falsified wait lists, according to an email released by the House Veterans' Affairs Committee. (The whistleblower, Dr. Sam Foote, alleged that 40 veterans died while sitting on a phony list waiting for an appointment through VA's Phoenix health care system. The OIG wrote in its final report that it was "unable to conclusively assert that the absence of timely quality care caused the deaths of these veterans."¹²) In the same email, the VA official questioned why the IG's office didn't even interview a former director of the VA's Phoenix hospital who allegedly ordered the falsification of patient records. (She "has not been interviewed for a number of reasons," Griffin responded. "Best to describe orally.")¹³

Griffin and the IG's office have stated that the Department does not dictate the final content of OIG reports, and that any changes made to the Phoenix report were part of the normal agency-OIG dialogue during the editing process.¹⁴ Nonetheless, House Veterans' Affairs Committee Chairman Jeff Miller (R-FL) told the *Washington Examiner* "[t]here is a mountain of evidence related to this situation that in its best light presents the appearance of impropriety and in its worst light indicates a relationship between VA and its inspector general that is too close for comfort."¹⁵

Chairman Johnson, you and other Members of this Committee have rightfully raised your own concerns about the independence of the VA IG's office and the need for permanent leadership. In a letter to the President earlier this year, you noted that the IG's office did not even brief your staff about a March 2014 report concerning the high rate of opioid prescriptions and other alleged problems at the Tomah VA medical center in Wisconsin.¹⁶ These concerns were only amplified when a report by *USA Today* revealed that the IG's office had not publicly released the findings of 140 health care investigations since 2006.¹⁷ The office has since started releasing certain reports, some of which "substantiated complaints of serious harm or death" and showed

¹² Department of Veterans Affairs, Office of Inspector General, *Veterans Health Administration: Review of Alleged Patient Deaths, Patient Wait Times, and Scheduling Practices at the Phoenix VA Health Care System*, August 26, 2014. <http://www.va.gov/oig/pubs/VAOIG-14-02603-267.pdf> (Downloaded May 29, 2015)

¹³ Mark Flatten, "VA inspector general was pressured to change report," *Washington Examiner*, November 3, 2014. <http://www.washingtonexaminer.com/va-inspector-general-urged-to-alter-report/article/2555647> (Downloaded May 29, 2015) (Hereinafter "VA inspector general was pressured to change report")

¹⁴ Testimony of Richard J. Griffin, Acting Inspector General, Department of Veterans Affairs, before the House Committee on Veterans' Affairs on "Scheduling Manipulation and Veteran Deaths in Phoenix: Examination of the OIG's Final Report," September 17, 2014. <https://veterans.house.gov/witness-testimony/richard-j-griffin-0> (Downloaded May 29, 2015)

¹⁵ "VA inspector general was pressured to change report"

¹⁶ Letter from Senator Ron Johnson (R-WI), Chairman, Senate Committee on Homeland Security and Governmental Affairs, to President Barack Obama regarding VA Inspector General nomination, January 22, 2015. <http://www.hsgac.senate.gov/media/majority-media/johnson-to-obama-name-an-inspector-general-for-va> (Downloaded May 29, 2015)

¹⁷ Donovan Slack, "VA doesn't release 140 vet health care probe findings," *USA Today*, March 8, 2015. <http://www.usatoday.com/story/news/politics/2015/03/08/probes-of-veterans-health-care-often-not-released-to-public/24525109/> (Downloaded May 29, 2015)

that the OIG “trusted the VA to correct problems on its own,” according to *USA Today*.¹⁸ But the office continues to defend its original decision to withhold its findings from the public, stating that its reports “were technically available if the public or members of Congress submitted a Freedom of Information Act request.”¹⁹ This posture—which, unfortunately, is all too common among both acting and permanent IGs²⁰—creates the appearance, if not the reality, that the VA’s watchdog is shielding the Department from congressional and public scrutiny.

The perception that an acting IG lacks adequate independence can have a chilling effect on the office’s natural allies: agency employees and other insiders who are in a position to blow the whistle on agency wrongdoing. One former VA employee recently stated that the IG’s office is “not trusted by most employees and usually used in the VA as retaliation,” according to a report obtained by POGO through the Freedom of Information Act.²¹ Rather than taking steps to restore its credibility with whistleblowers, the IG’s office has gone so far as to subpoena POGO for all records provided to us by current and former VA employees about abuses and mismanagement at VA medical facilities.

When the VA IG’s office first contacted us asking for the names of whistleblowers and the documents they provided, we offered to sit down with them and share general trends from the whistleblower tips. But we refused to provide information that could be used to identify whistleblowers, especially since so many whistleblowers expressed concerns about the IG and asked to remain anonymous. As we wrote last year, “[s]ome VA employees who contacted POGO and requested confidentiality said they feared retaliation if their names were divulged,” and some said they did not have confidence in the VA IG’s office.²² We have and will continue to refuse to comply with the IG office’s subpoena in order to protect the identities of those whistleblowers.²³

Despite these and other concerns that have been raised during Griffin’s lengthy tenure as Acting IG, it appears the White House is in no rush to find a permanent replacement. “[T]he administration profoundly respects and admires the work of inspector generals [*sic*] across the administration and throughout various agencies, whether they are Senate-confirmed or not,” a White House spokesperson told reporters.²⁴

¹⁸ Donovan Slack, “Newly released VA reports include cases of veteran harm, death,” *USA Today*, April 29, 2015. <http://www.usatoday.com/story/news/politics/2015/04/29/newly-released-va-reports/26594353/> (Downloaded May 29, 2015) (Hereinafter “Newly released VA reports include cases of veteran harm, death”)

¹⁹ Hereinafter “Newly released VA reports include cases of veteran harm, death”

²⁰ Ray Locker, “‘Catch-22’ lives on with Pentagon inspector general,” *USA Today*, August 15, 2013. <http://www.usatoday.com/story/nation/2013/08/15/catch-22-pentagon-inspector-general-investigative-reports/2658523/> (Downloaded May 29, 2015)

²¹ Department of the Treasury, Office of Inspector General, *Report of Investigation*, March 12, 2015, p. 7.

²² Project On Government Oversight, “VA Inspector General Issues Subpoena for POGO Whistleblower Records: POGO Says No,” June 9, 2014. <http://www.pogo.org/blog/2014/06/va-inspector-general-issues-subpoena-for-pogo-whistleblower-records.html>

²³ Project On Government Oversight, “POGO’s Response to VA Inspector General’s Subpoena for Whistleblower Records,” June 9, 2014. <http://www.pogo.org/our-work/letters/2014/va-inspector-general-issues-subpoena-for-pogo.html>

²⁴ Susan Crabtree, “Obama fails to name VA watchdog for 437 days,” *Washington Examiner*, March 13, 2015. <http://www.washingtonexaminer.com/article/2561485> (Downloaded May 29, 2015)

Department of Homeland Security

Former Department of Homeland Security (DHS) Inspector General Richard Skinner resigned at the end of February 2011, leaving his position vacant.²⁵ President Obama nominated a candidate to fill the vacancy several months later,²⁶ but withdrew the nomination the following year after Senator Susan Collins (R-ME), then-Ranking Member of this Committee, raised concerns about the nominee's management style.²⁷

As the vacancy lingered, then-Deputy IG Charles Edwards assumed the role of Acting IG. His tenure continues to serve as a shining example of all that can go wrong when an IG office is headed for a long time under acting leadership. As you well know, Chairman Johnson, your bipartisan probe with Senator McCaskill on the Financial and Contracting Oversight Subcommittee found that Edwards "jeopardized the independence of the OIG."²⁸ Among other things, Edwards "did not obtain independent legal advice and directed reports to be altered or delayed to accommodate senior DHS officials," and "also did not recuse himself from audits and inspections that had a conflict of interest related to his wife's employment," according to the Subcommittee's report.²⁹

These problems were only made worse by the fact that Edwards was openly auditioning for the role of permanent IG. Ten OIG employees told the Subcommittee "both that Mr. Edwards wanted to be nominated for a permanent IG position and that they had concerns that he threatened the independence of the OIG office."³⁰ Edwards resigned from his position just days before he was scheduled to appear at a Subcommittee hearing.³¹

²⁵ Government Accountability Office, "Search Federal Vacancies Submissions."

http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=inspector%20general&vacancyActing=&vacancyNominee=&admin=obama&agency=573&subagency=All&status=all&rpp=10&o=0&ssearched=1&order_by=date&Submit=Search&pk=1661 (Downloaded May 29, 2015)

²⁶ The White House, "President Obama Announces More Key Administration Posts," July 19, 2011.

<https://www.whitehouse.gov/the-press-office/2011/07/19/president-obama-announces-more-key-administration-posts> (Downloaded May 29, 2015)

²⁷ Project On Government Oversight, "All Along the Watchtower: One Year Anniversary of DHS Inspector General Vacancy," February 27, 2012. <http://www.pogo.org/blog/2012/02/all-along-the-watchtower-one-year-anniversary-of-dhs-inspector-general-vacancy.html>; The White House, "Presidential Nominations and Withdrawals Sent to the Senate," June 7, 2012. <https://www.whitehouse.gov/the-press-office/2012/06/07/presidential-nominations-and-withdrawals-sent-senate> (Downloaded May 29, 2015)

²⁸ Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Financial and Contracting Oversight, *Investigation into Allegations of Misconduct by the Former Acting and Deputy Inspector General of the Department of Homeland Security*, April 24, 2014, p. 2. <http://www.hsgac.senate.gov/download/letter-and-staff-report-from-chairman-mccaskill-and-ranking-member-johnson-to-cigie-regarding-investigation-into-the-former-acting-dhs-ig> (Downloaded May 29, 2015) (Hereinafter "HSGAC report")

²⁹ "HSGAC report," p. 2

³⁰ "HSGAC report," p. 16

³¹ Carol D. Leonnig, "Homeland Security inspector general who was under probe steps down," *The Washington Post*, December 16, 2013. http://www.washingtonpost.com/politics/homeland-security-inspector-general-who-was-under-probe-steps-down/2013/12/16/0aeac5ae-66c8-11e3-8b5b-a77187b716a3_story.html (Downloaded May 29, 2015)

Once President Obama found a candidate, John Roth, to nominate as permanent IG, it still took the Senate another 105 days to confirm him.³² All told, the vacancy at the DHS IG's office lasted more than 1,100 days before Roth was confirmed in March 2014.

Department of Defense

Former Department of Defense (DoD) IG Gordon Heddell resigned from his post on Christmas Eve of 2011.³³ Lynne M. Halbrooks, then-principal Deputy IG, took on the role of Acting IG the following day.³⁴

In June 2013, while Halbrooks continued to serve as Acting IG, POGO reported that her office had been sitting on a finding that former CIA Director and Defense Secretary Leon Panetta disclosed classified information at a 2011 gathering attended by the filmmakers of *Zero Dark Thirty*.³⁵ The IG's office hadn't released a final report nearly two years after Representative Peter King (R-NY), then-Chairman of the House Homeland Security Committee, asked the office to investigate the possible leak. The week after POGO published the office's draft report, Halbrooks and her colleagues released a final revised version that left out any mention of Panetta's alleged disclosures.³⁶

Several months ago, POGO obtained and posted an OIG timeline showing that there was "[r]emoval of CIA information" from the draft report on the same day Halbrooks met with then-Defense Secretary Panetta. POGO also learned that Halbrooks directed her staff not to interview Panetta himself. "There was a staff recommendation that we make a request to interview Mr. Panetta in order to validate what we had already learned...and it is very unusual not to interview the subject of a serious allegation," a member of the OIG investigative team told POGO.³⁷ During much of this period, Halbrooks was also vying to become permanent IG, lobbying outside stakeholders in her bid for the job.

President Obama ultimately decided to nominate Jon T. Rymer, who was confirmed as permanent IG in September 2013, ending a vacancy that lasted more than 630 days.³⁸ Halbrooks recently spun through the revolving door and secured a job with a major law firm, leaving many

³² Department of Homeland Security, Office of Inspector General, "John Roth." <https://www.dhs.gov/person/john-roth> (Downloaded May 29, 2015)

³³ Charles Hoskinson, "DOD's Gordon Heddell resigns," *Politico*, November 23, 2011. <http://www.politico.com/news/stories/1111/69043.html> (Downloaded May 29, 2015)

³⁴ Government Accountability Office, "Search Federal Vacancies Submissions." http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=&vacancyActing=halbrooks&vacancyNominee=&admin=all&agency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=1701 (Downloaded May 29, 2015)

³⁵ Project On Government Oversight, "Unreleased: Probe Finds CIA Honcho Disclosed Top Secret Info to Hollywood," June 4, 2013. <http://www.pogo.org/our-work/articles/2013/unreleased-probe-finds-cia-disclosed-secret-info.html>

³⁶ Project On Government Oversight, "Final Inspector General's Report Cuts References to Panetta's Disclosure of 'TOP SECRET' Info," June 14, 2013. <http://www.pogo.org/blog/2013/06/final-inspector-generals.html>

³⁷ Project On Government Oversight, "Exclusive: New Documents in Zero Dark Thirty Affair Raise Questions of White House-Sanctioned Intelligence Leak and Inspector General Coverup," April 16, 2015. <http://www.pogo.org/our-work/articles/2015/new-documents-in-zero-dark-thirty-affair-raise-questions.html>

³⁸ Department of Defense, Office of Inspector General, "Leaders." http://www.dodig.mil/about_us/leaders.html (Downloaded May 29, 2015)

questions unanswered about her alleged efforts to suppress details of the collaboration between the government and Hollywood on *Zero Dark Thirty*.³⁹

Department of State

A long-standing vacancy at the State Department IG's office started in the last year of the Bush Administration when the former IG, Howard Krongard, resigned amid allegations that he was blocking politically sensitive criminal investigations into contractors operating in Iraq.⁴⁰ Later that year, then-Deputy IG Harold Geisel began leading the office in an acting capacity.⁴¹

In 2010, POGO raised concerns about the relationship between Geisel, a former ambassador and long-time member of the diplomatic corps, and State's Under Secretary for Management, Patrick Kennedy. POGO reported that Geisel had once recused himself from an investigation involving Kennedy because of a perceived conflict of interest. POGO also published an email from 2008 in which Geisel sought direction from Kennedy on the OIG's work in Iraq. "Shall I just call off the inspection or shall I call off the audit?"⁴² Geisel wrote. Despite Geisel's assurances that his office's work was not affected by his ties to an agency official, numerous whistleblowers from the State Department had come to POGO "due to a perception within the Department that employees with knowledge of wrongdoing cannot go to the OIG because they believe it to be captured by management."⁴³

The Department lacked a permanent watchdog for Hillary Clinton's entire four-year tenure as Secretary of State, the longest vacancy since the position was created in 1957. Representative Ed Royce (R-CA), Chairman of the House Foreign Affairs Committee, told *The Wall Street Journal*, a "permanent IG would have objected to her efforts to circumvent congressional oversight by keeping her emails off the books."⁴⁴ The public is also left wondering whether an insider would have felt more comfortable blowing the whistle on the Department's email problems if the IG's office was headed by a permanent leader whose independence was beyond reproach.⁴⁵

³⁹ Project On Government Oversight, "Former Pentagon Acting IG Cashes In with No Accountability," May 14, 2015. <http://www.pogo.org/blog/2015/05/20150514-former-pentagon-acting-ig-cashes-in-with-no-accountability.html>

⁴⁰ Warren P. Strobel, "Embattled State Department inspector general resigns," *McClatchy*, December 7, 2007. <http://www.mcclatchydc.com/2007/12/07/22736/embattled-state-department-inspector.html> (Downloaded May 29, 2015)

⁴¹ Government Accountability Office, "Search Federal Vacancies Submissions." http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=&vacancyActing=geisel&vacancyNominee=&admin=all&agency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=341 (Downloaded May 29, 2015)

⁴² Project On Government Oversight, "POGO Questions the Independence of the State Department's Inspector General," November 18, 2010. <http://www.pogo.org/our-work/letters/2010/go-ig-20101118.html> (Hereinafter "POGO Questions the Independence of the State Department's Inspector General")

⁴³ "POGO Questions the Independence of the State Department's Inspector General"

⁴⁴ Byron Tau and Peter Nicholas, "State Department Lacked Top Watchdog During Hillary Clinton Tenure," *The Wall Street Journal*, March 24, 2015. <http://www.wsj.com/articles/state-department-lacked-top-watchdog-during-hillary-clinton-tenure-1427239813> (Downloaded May 29, 2015)

⁴⁵ Arit John, "One More Question on Hillary Clinton E-Mails: Where Was the Watchdog?" *Bloomberg*, March 24, 2015. <http://www.bloomberg.com/politics/articles/2015-03-24/one-more-question-on-hillary-e-mails-where-was-the-watchdog-> (Downloaded May 29, 2015)

Once his Administration began, it took President Obama more than 1,700 days to nominate a permanent State IG⁴⁶—and only after Members of Congress, including this Committee, pressured the White House to act.⁴⁷ The vacancy at the IG’s office lasted a total of 2,071 days—more than five years—before the President’s nominee, Steve A. Linick, finally took office in September 2013.⁴⁸

U.S. Agency for International Development

The IG’s office at the U.S. Agency for International Development (USAID) became vacant in October 2011 when the former IG, Donald Gambatesa, stepped down from his post. Deputy IG Michael Carroll took control as Acting IG that same month.⁴⁹

Several years later, eight current and former auditors alleged that the IG’s office removed critical findings from audits issued between 2011 and 2013, according to a report last year by *The Washington Post*. “In some cases,” the *Post* reported, “the findings were put into confidential ‘management letters’ and financial documents, which are sent to high-ranking USAID officials but are generally kept from public view.”⁵⁰ The *Post* obtained 12 draft reports prepared between 2011 and 2013, and found that more than 400 negative references were removed between the draft and final versions. Former Senator Tom Coburn (R-OK), then-Ranking Member of this Committee, told the *Post* “[t]his is the worst we’ve seen,” commenting on the number of alterations made to critical findings in draft audits.⁵¹

President Obama nominated Carroll in June 2013 to serve as permanent IG.⁵² “Some auditors said Carroll did not want to create controversy as he awaited Senate confirmation to become the

⁴⁶ The White House, “President Obama Announces More Key Administration Posts,” June 27, 2013. <https://www.whitehouse.gov/the-press-office/2013/06/27/president-obama-announces-more-key-administration-posts> (Downloaded May 29, 2015)

⁴⁷ Senate Committee on Homeland Security and Governmental Affairs, “Homeland Security and Governmental Affairs Committee Senators Urge President to Fill IG Vacancies,” January 24, 2013. <http://www.hsgac.senate.gov/media/homeland-security-and-governmental-affairs-committee-senators-urge-president-to-fill-ig-vacancies->; House Committee on Oversight and Government Reform, “Oversight Committee Makes Bipartisan Call for Appointment of State Department IG,” January 24, 2013. <http://democrats.oversight.house.gov/news/press-releases/oversight-committee-makes-bipartisan-call-for-appointment-of-state-department-ig>; and Office of Senator Ted Cruz (R-TX), “Sen. Cruz to Hold All State Dept. Nominees Until President,” June 26, 2013. http://www.cruz.senate.gov/?p=press_release&id=92 (All downloaded May 29, 2015)

⁴⁸ Department of State, Office of Inspector General, “Steve A. Linick, Inspector General.” <https://oig.state.gov/about/IG> (Downloaded May 29, 2015)

⁴⁹ Government Accountability Office, “Search Federal Vacancies Submissions.” http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=&vacancyActing=Michael%20Carroll&vacancyNominee=&admin=all&agency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=1689 (Downloaded May 29, 2015)

⁵⁰ Scott Higham and Steven Rich, “Whistleblowers say USAID’s IG removed critical details from public reports,” *The Washington Post*, October 22, 2014. http://www.washingtonpost.com/investigations/whistleblowers-say-usaids-ig-removed-critical-details-from-public-reports/2014/10/22/68fbc1a0-4031-11e4-b03f-de718edeb92f_story.html (Downloaded May 29, 2015) (Hereinafter “Whistleblowers say USAID’s IG removed critical details from public reports”)

⁵¹ “Whistleblowers say USAID’s IG removed critical details from public reports”

⁵² The White House, “President Obama Announces More Key Administration Posts,” June 10, 2013. <https://www.whitehouse.gov/the-press-office/2013/06/10/president-obama-announces-more-key-administration-posts> (Downloaded May 29, 2015)

permanent inspector general,” the *Post* reported. Carroll withdrew his nomination on the same day the *Post* published its story.⁵³

As of today, the IG’s office has gone more than 1,320 days without a permanent leader. Last month, President Obama nominated a new nominee to serve in the permanent role.⁵⁴

Department of the Interior

Earl Devaney, the most recent permanent IG at the Interior Department, was appointed Chair of the Recovery Accountability and Transparency Board on February 23, 2009.⁵⁵ Devaney took a leave of absence from his position at Interior at that point, leaving Acting IG Mary Kendall responsible for running the office.⁵⁶

It should be noted that the Obama Administration did not have the power to fill the position until Devaney retired from federal service at the end of 2011. Nonetheless, the IG’s office has now gone almost six years without a permanent leader, making it the longest-lasting IG vacancy of the Obama Administration.

According to a 2013 report by the majority staff of the House Natural Resources Committee, Kendall’s own employees have raised concerns that she was too congenial with the Department’s political appointees to provide effective oversight. Kendall has expressed an interest in the permanent IG position, potentially influencing her relationship with the agency, the Republican staff report said.⁵⁷

Then-Committee Chairman Doc Hastings (R-WA) wrote to President Obama in February 2013 calling on him to appoint a permanent IG and “end the decline in trust” of the IG’s office.⁵⁸ As of today, the President still has not nominated a permanent IG for the position.

⁵³ “Whistleblowers say USAID’s IG removed critical details from public reports”

⁵⁴ The White House, “President Obama Announces More Key Administration Posts,” May 8, 2015. <https://www.whitehouse.gov/the-press-office/2015/05/08/president-obama-announces-more-key-administration-posts> (Downloaded May 29, 2015)

⁵⁵ The White House, “Vice President Biden to Oversee the Administration’s Implementation of the Recovery Act’s Provisions; President Obama Appoints Earl Devaney as Chair of the Recovery Act Transparency and Accountability Board,” February 23, 2009. <https://www.whitehouse.gov/the-press-office/Vice-President-Biden-to-Oversee-the-Administrations-implementation-of-the-Recovery/> (Downloaded May 29, 2015)

⁵⁶ Department of the Interior, Office of Inspector General, *Semiannual Report to the Congress*, April 2009, p. iii. <http://www.doi.gov/oig/reports/upload/Semiannual-APR2009SAR.pdf> (Downloaded May 29, 2015)

⁵⁷ House Committee on Natural Resources, “Chairman Hastings Calls for President Obama to Appoint Permanent Inspector General for the Department of the Interior,” February 21, 2013. <http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=320559> (Downloaded May 29, 2015) (Hereinafter “Chairman Hastings Calls for President Obama to Appoint Permanent Inspector General for the Department of the Interior”)

⁵⁸ “Chairman Hastings Calls for President Obama to Appoint Permanent Inspector General for the Department of the Interior”

CONCLUSION AND RECOMMENDATIONS

POGO strongly believes that watchdog offices are in a better position to succeed when led by a permanent, rather than acting, official. Questions about an IG's independence and credibility will inevitably arise whenever the IG is serving for a long period of time in an acting capacity while also auditioning for the permanent role.

But we caution that filling IG vacancies should not come at the expense of identifying highly qualified candidates. A recent probe by the House Committee on Science, Space, and Technology revealed that Department of Commerce IG Todd Zinser—a permanent, Senate-confirmed leader—did not disclose during his confirmation process that he was previously found to have retaliated against a whistleblower.⁵⁹ This case highlights the importance of rigorously vetting IG nominees before they take office. It also serves as a reminder that it is sometimes beneficial to initiate a vacancy, especially when it means removing a permanent IG who has abused his position and undermined his office's mission.⁶⁰

We are pleased to see that the number of vacancies at federal IG offices has dropped in recent years. But seven vacancies for presidentially appointed IG positions is still too many—especially when two of those vacancies have languished for more than 1,000 days.

In the early days of the Obama Administration, I was able to speak with senior officials in the White House counsel's office to discuss potential IG nominees. The last time I reached out, it appeared I was dealing with White House interns. My personal experience seems to reflect this Administration's growing ambivalence toward IGs in general.

So what can be done to limit the most harmful effects of IG vacancies?

There have been several legislative proposals in recent years that would force the President to nominate permanent IGs for long-standing vacancies. These proposals may raise concerns about separation of powers, but POGO supports any effort to apply more pressure on the White House to vet and nominate qualified candidates. We were encouraged to see all 16 members of this Committee sign a letter earlier this year calling on President Obama and his agency heads to fill the existing vacancies.⁶¹ Bipartisan oversight, as exemplified by that letter and today's hearing, sends a strong message that Congress wants its watchdogs to be permanent and independent.

⁵⁹ House Committee on Science, Space, and Technology, "Ranking Member Johnson Calls on President to Immediately Remove Commerce Inspector General Todd Zinser," April 1, 2015.

<http://democrats.science.house.gov/press-release/ranking-member-johnson-calls-president-immediately-remove-commerce-inspector-general> (Downloaded May 29, 2015)

⁶⁰ POGO and other groups have joined Representative Eddie Bernice Johnson (D-TX), Ranking Member of the House Committee on Science, Space, and Technology, in calling on President Obama to remove IG Zinser. Project On Government Oversight, "Whistleblower Watchdogs Ask President to Remove Zinser," April 9, 2015.

<http://www.pogo.org/our-work/letters/2015/whistleblower-watchdogs-ask-president-to-remove-zinsler.html>

⁶¹ Senate Committee on Homeland Security and Governmental Affairs, "HSGAC Urges the President and His Agency Heads to Appoint Permanent Inspectors General," March 24, 2015.

<http://www.hsgac.senate.gov/media/majority-media/hsgac-urges-the-president-and-his-agency-heads-to-appoint-permanent-inspectors-general> (Downloaded May 29, 2015)

POGO has issued other recommendations to ensure that both acting and permanent IG watchdogs do not become subservient lapdogs. We supported legislation approved by this Committee that would, among other things, require the Government Accountability Office (GAO) to study the impact of prolonged IG vacancies. The Inspector General Empowerment Act of 2015 (S. 579) would also bolster IG independence and accountability by clarifying the authority of IG offices to access agency records, improving the process for investigating allegations of misconduct by senior OIG officials, and requiring more public disclosure of OIG reports and work products.⁶²

POGO has offered additional reforms that your Committee may wish to consider. One of our biggest concerns is that the Inspector General Act induces many OIGs to spend a significant amount of time chasing “small-window” projects in order to boost their offices’ metrics in semiannual reports (SARs) to Congress. In many cases, if an IG’s office can’t monetize an issue, the office will often turn a blind eye to it, turn against the whistleblowers who brought it to them, or turn it into a criminal case to boost the office’s referral metrics. POGO has started to explore how to revamp these ineffectual reporting requirements so that SARs are more meaningful and reflective of the information that Congress and agencies actually need. Among other things, POGO has also recommended giving the Department of Justice IG’s office more authority to investigate misconduct by DOJ attorneys.⁶³

Thank you for inviting me to testify today. We look forward to working with the Committee to strengthen IG independence and to ensure that these essential offices function as aggressive watchdogs.

⁶² 114th Congress, *Inspector General Empowerment Act of 2015 – Report of the Committee on Homeland Security and Governmental Affairs*, Senate Report 114-36, May 5, 2015. <https://www.congress.gov/114/crpt/srpt36/CRPT-114srpt36.pdf> (Downloaded May 29, 2015)

⁶³ Project On Government Oversight, “POGO’s 2015 Baker’s Dozen of Suggested Congressional Oversight Priorities and Legislative Reforms,” February 11, 2015. <http://www.pogo.org/our-work/reports/2015/suggested-congressional-oversight-priorities-and-legislative-reforms.html>