



*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*

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before the

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

“Safeguarding Inspector General Independence and Integrity”

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

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

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

Congress established the IC to ensure that senior officials—currently about 468—in the IG community “perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.”<sup>1</sup> This self-policing of the IG community is a solemn responsibility that requires the IC to be vigilant, independent, non-partisan, and appropriately transparent to maintain the trust of our key stakeholders: the public, Congress, witnesses and whistleblowers, and those within our

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

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

### ***IC Composition and Process***

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

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

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

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

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

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

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

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

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

### ***IC Improvements***

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

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

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

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

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

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

## ***IC Challenges***

### *Timeliness and Lack of Resources*

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

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

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

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

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

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

### *Impediments to Access*

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

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

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

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

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

### *Conclusion*

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

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