

EMPOWERING THE INSPECTORS GENERAL

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

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EMPOWERING THE INSPECTORS GENERAL

Wednesday, February 1, 2017

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 10:01 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Duncan, Issa, Jordan, Sanford, Gosar, DesJarlais, Farenthold, Meadows, DeSantis, Ross, Blum, Hice, Grothman, Hurd, Palmer, Comer, Mitchell, Cummings, Maloney, Norton, Lynch, Connolly, Kelly, Lawrence, Watson Coleman, Plaskett, and Demings.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order. Without objection, the chair is authorized declare a recess at any time.

I want to thank everybody for being here. This is, as we kick off the 115th Congress, we're doing as we had done in the 114th Congress, and having our first major full committee hearing with our inspectors general. We cannot thank you enough for the great work that you do. In fact, we have a packed audience here. Indulge me here for a moment, while those that are testified to stay seated. But if you're part of that inspector general community, either as staff or the inspector general, if you could please stand for a moment, I'd like to recognize those of you. Oh, very good. Thank you, thank you, thank you, on behalf of all of us that serve here. Thank you for your service and your interest.

And we want you to know how deeply valued you are and the work that you do. One of my greater fears is that you do all this work, and that we're not doing enough to make sure that we're paying attention to it, and that we're actually acting on it.

You know, we're not only the Oversight Committee, but we're also the Government Reform Committee. So we want to be able to take that good work that you do, and translate it into action that actually helps solve the problems, so you're not continuing to look at the same problem year, after year, after year. That should be such a flashing red light for this committee in everything that they do.

The inspectors general are embedded into the Federal Government to protect taxpayers. And they are really the first line of defense against waste, fraud and abuse, nonpartisan, as patriots, to understand what's happening in the bowels of this large bureaucracy.

In the fiscal year 2015, it's estimated that the inspectors general saved roughly \$37 billion annually with just the budget of \$2.7 billion. That's a pretty good rate of return, and a pretty good evidence that the money we spend in the inspector general community is certainly worth the effort.

The—again, this is the first committee, but—the first hearing, and as I kind of get into it the details of some of this, I want to address something that did pop up in the news. There was a mistake that was made where a junior member of the transition team left a message. I'm not sure if it—I know it was on at least one person's voicemail, I don't know if it was on all of your voicemails, saying that you're working on a temporary basis. That was later clarified by a more senior person that that was not the case. I think as Inspector General Horowitz will say, and I want to let you know, that I've spoken with the general counsel at the White House on this topic. I think it is safe to say that that was a mistake. They wish it hadn't happened. It is not their approach. It's not their intention.

As I said to—mentioned in a committee hearing yesterday, I had an opportunity to visit with the President when he visited us in Philadelphia last week. It was a very brief conversation, but he thanked me for the work that we are doing in oversight. He said, Continue to go doing what you're going to do. Even though I'm the President, you need to keep looking at the Federal Government, the bureaucracy. And that's the impression, but that's also literally what they have told me. When I spoke with Don McGahn, who is the White House General Counsel, he assured me that was not the case. And I'm glad that we got that clarified. We would all be concerned on both sides of the aisle if that was the approach that they were taking. And they shouldn't have done that. It was a junior person. And you need to let me know if you're seeing or hearing anything to the contrary, but I've been assured that that is not what they are doing.

This was a mistake that also happened in the Obama administration in 2009, went to fire Mr. Walpin, then the IG for the Corporation of National and Community Service. That firing came without the President giving the legally required notice to Congress, and was the only IG firing by a President in the last 35 years. Mr. Walpin later sued saying the firing was retaliation for an investigation he undertook. There's—with each new administration, I'm sure there is a learning curve, and hopefully, they've learned that lesson.

I also think it's very important for the vacancies that are there that those are filled in a swift manner. Now, we're not in total control of that here in the House. We get more frustrations coming out of the Senate. And you can understand the large amount of people that have to go through that confirmation process from the Supreme Court Justice to cabinet level to others that need to go through the Senate confirmation. I hope that that's swift. I'm not in total control of that here in the House.

Like I said, but I will do everything I can to encourage, and push, and say to the White House and to this administration it is in their best interest, their best interest, to have a vibrant inspector general community. People act best when they are having some-

one look over their shoulder and it protects us all. It protects the taxpayers; it protects the White House; Congress; it protects everybody. So we will take that approach as we do that.

In the year 2014, 47 inspectors general sent a letter to this committee and to the Senate Homeland Security and Government Affairs Committee detailing significant access problems. For example, the Peace Corps inspector general, who is here with us, was being denied access to files related to sexual assault of Peace Corps volunteers and by the Peace Corps general counsel. Denying access to files is something I have fought, Chairman Issa fought before me, and we will continue to fight as a committee.

In another instance, the chemical safety board told the EPA inspector general to not provide documents based on attorney-client privilege, a new creative way to suggest that they didn't have to be open, transparent, or allowing you access to the information you need.

In the last 2 years, we worked closely with Ranking Member Cummings to craft legislation to ensure the inspectors general can do their jobs. I want to thank Mr. Cummings personally for his steadfast support on these issues. I think we've worked well on them. The result of the cooperation was the IG Empowerment Act of 2016, which was signed into law in December. It took a lot of lifting to get there, but not nearly the amount of lifting that you do and the frustration you've been bumping up against for so long.

The bill made clear that the inspectors general can only be denied documents based on explicit statutory prohibitions, not vague privileges or strained readings of other statutes. In addition, the Act streamlined investigation procedures, instituted new reporting requirements to improve transparency, and streamlined the investigation process to make IGs' operations more efficient. We will continue to support the inspectors general in this new Congress as these issues may arise again.

One issue carried over from last Congress that should be addressed, again, is the vacancies. As of 2015, the average duration of an IG vacancy—this is the average—during the past administration, was 613 days, far in excess of the previous administrations. That's unacceptable, and we have got to work to speed that up. I hope the new administration makes it a priority to fill these vacancies and we will push them to do so.

Finally, I'd like it hear from our witnesses on the process of criminal referrals by the inspectors general. Our IGs do great work conducting investigations, and many times, their work culminates in a referral to the Department of Justice for possible prosecution. There is little transparency regarding the volume, evaluation, or outcome of these referrals. Frustratingly, I have been peppering the Department of Justice to provide us such stats, but they are just simply—have stonewalled us for years during the Obama administration.

The IG Empowerment Act attempts to increase the transparency by requiring reports to Congress on the referral data. If I know what is being referred directly to the Department of Justice, I, then, have a better fact pattern to push the Department of Justice to say, Why don't you ever prosecute these people? It's not good enough to say, well, just fire them, if you want a remedy, just fire

them. But the civil service reform, which we're going to go through in this Congress, is so prohibitive on firing people, it is this vicious circle where the bad apples that are there causing the most harm often continue to sit in their seats, take income while harming the rest of the process, their fellow employees, the departments, the agencies, and ultimately, the taxpayers. So we would like to read more about the referral process and what can be done to better expose it and we will do our part to push the Department of Justice, or the local—whatever the appropriate law enforcement is to—actually prosecutors to actually push on this.

I, again, want to thank you all for the great work that you do. You represent literally thousands of people who spend their lives doing this. We can't thank you enough. I appreciate you all attending today and thank the witnesses in particular.

So with that, I'll now recognize the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I thank you for calling this hearing.

Let me say to all of the inspectors general and the staff here today, I want to thank you. As the chairman was talking, I thought it would be appropriate that I share with you a question that has come to me over, and over, and over again. And the question is, is when some of these issues came up, people have asked me about the inspectors general, they say, do you trust the inspectors general? And I say, yes. But the other question they ask is, well, if the inspector generals were replaced, how would you feel about that? I said, first of all, the people who hold these positions are people who are independent. And if they felt that they could not be independent, they would not take the positions.

And so, I would feel comfortable with our inspectors general. And I want to thank you, I echo the words of the chairman. We trust you. We believe in you. We thank you. We realize that so many of you could be doing so many other jobs, probably making a lot more money. But you are doing the job that feeds your souls. And so we thank you.

You do an extraordinary job, and we in Congress rely on you for exactly these reasons. The title of today's hearing is "Empowering the Inspectors General." Our committee has acted in a bipartisan manner under both Democratic and Republican leadership to promote the critical work of IGs. For example, on December 16th, 2016, President Obama signed into law the bipartisan Inspector General Empowerment Act of 2016. However, one thing that disempowers inspectors general is when they are threatened; threatened with retaliation for reporting waste, fraud and abuse, or even worse, threatened with termination. When that happens, it's up to this committee to step in, investigate, and protect our IGs.

Yesterday, I sent a letter, along with vice ranking member of this committee, Mr. Connolly, to the White House counsel, Don McGahn. I raise concerns about disturbing reports that Trump officials threaten to remove numerous, numerous inspectors general after the Inauguration. This all started on Friday, January 13. The Trump team officials assigned to various Federal agencies called to inform their respective IGs that their positions was only, and I quote, "temporary," end of quote.

He also reportedly informed several IGs that they should begin looking for other employment. The inspectors general who were concerned about these calls—anonymous calls, immediately began contacting leaders of their organizing body, the Council of the Inspectors General on Integrity and Efficiency.

As we understand it, after urgent calls all over the weekend, some IGs were informed that higher level officials on the Trump team decided to reverse this misguided action. The IGs were told that these calls were erroneous. They were told they never should have been made. If this indeed occurred, that would be a small relief.

But here is why I remain concerned: You know, a lot of people say, you know, we ought to cross that bridge when we get to it. Well, ladies and gentlemen, we're at the bridge. We have now obtained what we believe is the email that the Trump team sent out to their political officials assigned to the Federal agencies. This email was sent after normal business hours on the evening of Friday, January 13. It directed Trump staffers to make the calls, and I quote, "tonight," end of quote. In all capital letters and later in bold. They were instructed to tell the IGs that they were staying over into the Trump administration only, and I quote, "on a temporary basis," end of quote.

The email also references vetting the IGs, but does not explain on what basis. This email demonstrates that these calls were not isolated incidents. These calls were not isolated incidents. This was a coordinated campaign to target inspectors general that someone in the Trump team planned, approved, organized and executed across multiple agencies. The problem is that we still do not know who. Whoever approved these calls had absolutely horrendous judgment, and should not be allowed anywhere near the reins of power. We also still do not know who ultimately reversed this terrible approach. And we still have no official communication confirming that this reversal, in fact, applies to all the IGs.

So yesterday, we wrote to the White House counsel asking him these questions. Most importantly, we asked for official confirmation that President Trump has no plans, has no plans to fire any IGs now that he has been sworn in.

I ask unanimous consent that our letter be made a part of the official record, Mr. Chairman.

Chairman CHAFFETZ. The letter, without objection, so ordered, but I would like to see the email, which you have not shared with us, I don't believe.

Mr. CUMMINGS. We did share it.

Chairman CHAFFETZ. You just gave it to me.

Mr. CUMMINGS. We shared it with you early this morning.

I also ask the committee staff conduct a transcribed interview of the Trump official who sent this email so that we can investigate this matter. We have several of IGs here today so we can get their accounts of what happened.

At the broadest level, we want to make sure that every single inspector general has been told, in no uncertain terms, that their jobs are safe. Unfortunately, these actions are a part of a troubling pattern of misguided and politically motivated attacks on government watchdogs, ethics experts, law enforcement officials, and career

government employees. And as I said before, they say we should cross the bridge when we get to, we're at the bridge.

In December, the Trump team sent a questionnaire to the Energy—and listen to this—in December, the Trump team sent a questionnaire to the Energy Department, requesting a list of all individuals who took part in international climate talks over the past 5 years. We're at the bridge. In January, White House Chief of Staff Reince Priebus, issued a veiled threat to the Director of the Office of Government Ethics that he, quote, "Ought to be careful," end quote, in his criticism of President Trump's refusal to divest himself of his corporate ownership interests. The Director told members of this committee, including the chairman, that this threat made him feel and his department feel—he said "it was chilling," end of quote.

Just last week, Trump administration officials violated multiple Federal laws by imposing gag orders on the communications of Federal employees, including, in some instances, communications with Congress. We're at the bridge.

Within the past few days, the White House press secretary stated the Trump administration's official position that any State Department employees who disagree with the President's decisions should leave the government rather than voice their dissent. We're at the bridge. And on Monday, after the acting Attorney General concluded that the President's executive order banning Muslims from entering the country may not be legal, the President fired her for saying so.

What we are witnessing, ladies and gentlemen, simply is not normal. This is not normal, and we must never let it become normal. This is the United States of America. We have a Constitution. And we must be the guardians of that Constitution.

And as I close, this has only been a few weeks. These actions cannot be tolerated by those of us who have, as our core mission, rooting out waste, fraud and abuse. And this should be something that concerns all of us. Federal employees fear what is happening and what may be next to come. We will rely on our inspectors general more now than ever.

There was just an article in The Washington Post this morning, I think it was, that talked about the many employees who are now going to inspectors general, because they are afraid. And so, your jobs become very, very, very significant, even more significant than they've ever been, because people see you as the last line of defense. And I hope that all of my Republican and Democratic colleagues will join together in a bipartisan manner to support our inspectors general in their mission.

And let me say this: I thank the chairman, because he has been one of the strongest folks on this committee to make it clear that we will protect whistleblowers, that we will protect Federal employees, that we will protect those who want to make our government the best that it can be. He has also been a strong advocate for marching forward to make sure all of us make this, our great Nation, a more perfect union.

With that, I yield back.

Mr. ISSA. Mr. Chairman. Point of inquiry. I'm looking at the redacted version of this email, and some of the redactions we'd like

to know more about, such as who besides the author it was to be copied to, and, of course, who it was sent to. Is there an unredacted version of this, to your knowledge, or maybe to the minority leader's?

Chairman CHAFFETZ. We'll work with their staff to figure that out.

Mr. ISSA. I'd appreciate being able to see it in camera would be helpful as we try to correct this.

Chairman CHAFFETZ. All right. Let's move on. We will hold the record open for 5 legislative days for any members who would like to submit a written statement.

We will now recognize our panel of witnesses. We are pleased to welcome the Honorable Michael Horowitz, Chair of the Council of the Inspectors General on Integrity, Efficiency, and the Inspector General for the United States Department of Justice. We have worked closely with Mr. Horowitz through the years and enjoy his perspective, professionalism, and what he is does. We appreciate you being here, sir.

The Honorable Kathy Buller, who is the executive chair of the Legislation Committee on the Council of Inspectors General on Integrity and Efficiency, and the Inspector General at the Peace Corps. She has testified here as well. We appreciate you being here.

The Honorable Scott Dahl, Inspector General of the United States Department of Labor. Thank you, sir, for being here, as well as the Honorable John Roth, the Inspector General of the United States Department of Homeland Security, who has also testified a number of times before this committee.

As you know, pursuant to committee rules, all witnesses are to be sworn before they testify. So if you will please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

Thank you.

Let the record reflect that all the witnesses answered in the affirmative. You know the drill. I don't need to explain the rules. As Trey Gowdy likes to say, when you see the yellow button, speed up, that's what we do when we get to a stoplight, that's what you need to do here, too. We will give you great latitude.

Mr. Horowitz, you are now recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF HON. MICHAEL E. HOROWITZ

Mr. HOROWITZ. Thank you, Mr. Chairman, Ranking Member Cummings, members of the committee. Thank you for inviting me to testify today. The IG community sincerely appreciates this committee's steadfast support over the years. And thank you, Mr. Chairman, Ranking Member Cummings, Congressman Meadows for your sponsorship of the landmark IG Empowerment Act, and for the committee's unyielding work in making sure it got passed.

Congress could not have spoken louder or clearer about its bipartisan support for giving IGs the tools we need to do our important

oversight work. IGs are the representatives of the taxpayers, making sure their money is being used efficiently and effectively, and that waste, fraud, abuse and mismanagement are rooted out. The independence of IGs is the foundation of our work, allowing us to conduct nonpartisan objective oversight. That work in fiscal year 2015, as the chairman noted, resulted in the IG community identifying approximately \$26 billion in potential savings with which agency management agreed. And additionally, our criminal and civil cases identifying, or allowing agencies to receive or cover over \$10 billion. Compared to the IG community's aggregate budget of about \$2.7 billion, the recoveries and potential savings represent about a \$14 return on every dollar invested by the OIG—in the OIGs by the Congress.

OIGs also issue recommendations to address fundamental issues of agency management identified in our audits and reviews. We appreciate the committee's interest in these recommendations, and as you are aware, there are, indeed, thousands of open recommendations across the OIG community. We look forward to working with the new administration to address them.

Let me briefly highlight some other key issues for the community. First, there are numerous IG vacancies, as the chairman noted, and it is critical that they be filled promptly. Nine of 36 presidentially appointed, Senate confirmed IG positions are vacant. That's 25 percent of those positions. And the agencies—and the vacancies are at some of our largest agencies.

By law, IGs must be selected without regard to political affiliation, and based solely on the basis of their integrity and demonstrated ability in certain proficiencies. Under the IG Act, the Council of the IGs is responsible for recommending candidates with exemplary qualifications for these positions.

We look forward to continuing to fulfill this role with the new administration, and hope it makes filling IG vacancies a priority.

Second, we're concerned about the potential impact of the hiring freeze. As careful stewards of taxpayer money, we fully appreciate and respect the importance of prudently allocating Federal resources. However, given our track record of returning to the Treasury far more money than we are budgeted, we believe careful consideration should be given before impacting our ability to root out waste, fraud, and abuse.

OIGs were hit particularly hard during sequestration, and it had a significant impact on our work. We look forward to working with the incoming OMB Director on these issues.

Finally, I want to discuss the importance of whistleblowers to our work. Whistleblowers perform an invaluable service when they come forward with evidence of waste, fraud, abuse, or mismanagement, and they never should suffer reprisal for doing so. They provide OIGs with critical information, and we want to make sure they are comfortable doing so.

At the Council of IGs, we have created a whistleblower ombudsman working group to consider best practices to help us better address the wide range of issues related to whistleblowers. In my office, we're dedicating ever increasing resources to handle our substantially increasing docket of whistleblower retaliation allegations

involving FBI employees, and employees of contractors and grant recipients.

However, our ability to fulfill the additional responsibilities that recent legislation has placed on us and which we welcomed, requires sufficient staffing, otherwise, it would be difficult for us to maintain and continue our other oversight work as our whistleblower retaliation docket continues to grow.

We look forward to working with the committee, with the incoming administration, the bipartisan House and Senate whistleblower caucuses, to address these whistleblower issues.

Thank you, again, for the committee's strong support and I'd be pleased to answer any questions you may have.

[Prepared statement of Mr. Horowitz follows:]



Statement of Michael E. Horowitz
Chair, Council of the Inspectors General on Integrity and Efficiency
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

"Empowering the Inspectors General"

February 1, 2017

Mr. Chairman, Ranking Member Cummings, and Members of the Committee:

Thank you for inviting me today to discuss the critical role that Offices of the Inspector General (OIG) play in ensuring that taxpayer money is used effectively and efficiently, and that federal government agencies and employees are held accountable for their actions. We sincerely appreciate the steadfast support this Committee has shown to the IG community. In particular, I want to thank the Committee for its efforts in passing the Inspector General Empowerment Act (IG Empowerment Act), which was sponsored by the Chairman, and co-sponsored by the Ranking Member and Congressman Meadows. The bipartisan passage of this critical bill clearly communicates Congress's support for the important oversight work of Inspectors General and its commitment to providing Inspectors General with the tools we need to perform that work on behalf of the American people.

Inspectors General are uniquely positioned in the federal government to identify waste, fraud, and abuse because of our statutory ability to independently conduct audits, inspections, and investigations. This independence is the foundation for OIGs' capacity for non-partisan, objective oversight of federal agencies. We have conducted this crucial oversight work without regard to political parties or ideologies since OIGs were established over 30 years ago.

As Chair of the Council of the Inspectors General on Integrity and Efficiency (Council of IGs) and Inspector General of the Department of Justice (DOJ), I have observed the positive impact of the IG community's audits, inspections, and reviews of federal programs. In FY 2015, the IG community made recommendations with which agency management agreed resulting in approximately \$26 billion in potential savings. Of that total, OIGs identified approximately \$17.7 billion where we found there could be more effective or efficient uses of agency funds, and \$8.5 billion in questionable agency expenditures that violated a law, regulation, contract, or grant; were not adequately documented; or were unnecessary or unreasonable. Additionally, as a result of OIG criminal and civil cases, Federal agencies received or recovered nearly \$10.3 billion in FY 2015. Compared to the IG community's aggregate FY 2015 budget of about \$2.7 billion, these recoveries and potential savings represent about a \$14 return on every dollar of taxpayer money invested by the Congress in OIGs.

Inspectors General also investigate allegations of administrative or criminal misconduct by federal employees, grantees, and contractors. In FY 2015, the OIGs' investigative work resulted in 5,553 successful criminal prosecutions, 1,861 successful civil actions, 7,244 suspensions and debarments, and 4,501 personnel actions.

In addition to identifying wasteful spending, criminal activity, and employee misconduct, OIGs issue recommendations that address fundamental issues of agency management that we have identified in our audits and reviews. We very much appreciate the Committee's interest in these open recommendations through your request to us each year for information about them. As you are aware, there are thousands of open OIG recommendations that address the effective and

efficient operations of the agencies we oversee, and we will continue to press for their prompt implementation.

A particularly valuable document for new agency leadership is the Top Management and Performance Challenges Report that most IGs are required by law to prepare annually for inclusion in their agencies' reports to Congress. This IG document typically provides a description of what the OIG has determined based on its work, experience, and expertise are the main challenges facing the agency and the agency's progress in addressing each challenge, along with a summary of ongoing and completed OIG work that relates to the challenge. For example, the DOJ OIG report, which we released in November, identifies this year's challenges for the Department of Justice as: Safeguarding National Security and Ensuring Privacy and Civil Liberties Protections; Enhancing Cybersecurity in an Era of Increasing Threats; Managing an Overcrowded Federal Prison System in an Era of Limited Budgets and Continuing Security Concerns; Strengthening the Relationships Between Law Enforcement and Local Communities Through Partnership and Oversight; Helping to Address Violent Crime Through Effective Management of Department Anti-Violence Programs; Ensuring Effective Management and Oversight of Law Enforcement Programs and Promoting Public Trust; Monitoring Department Contracts and Grants; Managing Human Capital and Promoting Diversity With a Workforce Increasingly Eligible to Retire; and Using Performance-Based Management To Improve DOJ Programs. Such a list can provide an effective roadmap for the path forward for our federal agencies.

Having highlighted some of the past work of the Inspector General community, let me briefly discuss some of the issues we are facing going forward. The IG Empowerment Act gives the IG community several new and important tools that will enable us to build on our past accomplishments, and we are working on using them in an appropriate and judicious manner. We believe that some additional authorities, such as testimonial subpoena authority, are also necessary for us to be able to fully carry out our mission. My colleague, IG Kathy Buller, addresses those requests in her testimony. I want to mention several other issues on which we are focused in the IG community that impact our work. First, it is critical that vacant IG positions be filled promptly. There are currently 12 IG positions that are vacant – 9 for Presidentially-appointed, Senate-confirmed IG positions; 2 for agency appointed IG positions; and one for the Architect of the Capitol, who is appointed by Congress. During the period of an IG vacancy, acting Inspectors General and career staff carry on the work of their offices, and they do it with the utmost of professionalism. However, a sustained absence of permanent leadership is not healthy for any office, particularly one entrusted with the important and challenging mission of an IG.

By law, Inspectors General must be selected without regard to political affiliation and based solely on the basis of their integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. And, since passage of the Inspector General Reform Act of 2008, the Council of IGs has been responsible for recommending candidates with exemplary qualifications for vacant IG positions to the President for

Presidentially-nominated IGs and to agencies for agency-appointed IGs. We look forward to continuing to fulfill this role with the new Administration. Nominees for IGs at the Office of Personnel Management, Department of Defense, National Security Agency, and Social Security Administration are pending before the Senate, and we hope they will be considered expeditiously.

An area of potential concern to the Inspector General community is the impact of the hiring freeze. As careful stewards of taxpayer money, we fully appreciate and respect the importance of carefully and appropriately allocating federal resources. However, given our track record of returning to the federal treasury far more money than we are budgeted, the increasing responsibilities being placed on us through legislation, and our important role in public safety and national security matters, we believe careful consideration should be given before impacting our main resource – namely our personnel – that enables us to root out waste, fraud, and abuse. OIGs are at the front lines of that effort, and we look forward to working with the incoming Director of the Office of Management and Budget and our agency heads to ensure that the hiring freeze does not inappropriately or counterproductively impact our Offices.

Finally, I want to discuss the importance of whistleblowers to our work, and my particular concern about the potential impact of the hiring freeze on our work related to whistleblower issues. Whistleblowers perform an invaluable service to the public when they come forward with evidence of waste, fraud, abuse, or mismanagement, and they never should suffer reprisal for doing so. Whistleblowers are direct witnesses to potential wrongdoing, and they play a critical role in bringing forward information to the OIG or other appropriate recipients so that it can be looked into and appropriate action taken. Ensuring that whistleblowers are comfortable, informed, and protected in coming forward is entirely consistent with the OIG's core mission of detecting and deterring waste, fraud, abuse, and corruption. The Whistleblower Protection Enhancement Act of 2012 created additional whistleblower responsibilities for IGs, which we welcome, and we anticipate that last year's FBI whistleblower legislation will create substantial additional work for my office specifically, which we also welcome. At the Council of IGs, we have created a Whistleblower Ombudsmen working group to consider best practices that will help us better address the wide range of issues related to whistleblowers and their protections. In my Office, we are dedicating ever increasing resources to handle our substantially increasing docket of whistleblower retaliation cases. However, our ability to fulfill these additional responsibilities and our growing docket of cases in a timely fashion requires sufficient staffing. Many of us were already struggling, even before the hiring freeze, with finding the staffing needed to handle these matters given the growth in the number of complaints we are receiving. Absent the ability to hire staff, and without being provided the budget by Congress to do so, it will be difficult to maintain our other oversight work if we are to carry out these additional whistleblower responsibilities. We look forward to working with this Committee, and the bipartisan House and Senate Whistleblower Caucuses, to address these critical issues impacting critical whistleblower protections.

Thank you again for your strong support for our work, and we look forward to working with the Congress and the Administration as the IG community continues its crucial oversight mission. This concludes my prepared statement, and I would be pleased to answer any questions that you may have.

Chairman CHAFFETZ. Thank you.

Ms. Buller, am I pronouncing it right? I want to make sure. I want to say Bueller, but that's because I have watched that show so many times. You're now recognized for 5 minutes.

STATEMENT OF HON. KATHY A. BULLER

Ms. BULLER. Chairman Chaffetz, Ranking Member Cummings, and distinguished members of committee, thank you for inviting me to appear before you today to discuss the important work of IGs. As chair of the Legislation Committee for the Council of Inspectors General for Integrity and Efficiency, and as one of the IGs whose access was denied by the agency I oversee, my testimony underscores our appreciation for the bipartisan support we receive from this committee and from Congress.

Two years ago, I testified before this committee about the struggles my office faced in obtaining the information we needed to do our job. The former general counsel of the Peace Corps erroneously interpreted a law in a way that effectively kept my office, Congress and the American public in the dark about critical information regarding care provided to Peace Corps volunteers who experience sexual assault.

My office was not alone. Starting in 2010, other agencies began denying or delaying access to information, including the Departments of Justice, Commerce, and Treasury, as well as the Chemical Safety and Hazard Investigation Board. In 2015, DOJ's Office of Legal Counsel issued a legal opinion that threatened the independence of all IGs, and challenged the access that is central to IG oversight. It was clear that congressional action was needed.

Thanks in part to the bipartisan efforts of this committee and its staff, the passage of the Inspector General Empowerment Act restores what Congress intended, that IGs have the right to access all materials and documents necessary to oversee their agencies.

At the Peace Corps, we have begun unwinding the damage caused by the access-denying policies. We are working with the agency to fully restore our access to the records we need to ensure that Peace Corps volunteers who have been sexually assaulted receive the care that they deserve.

The IG Empowerment Act not only restores the IG community's right of unfettered access, but also provided tools to ensure our independence and improve our oversight authority. In particular, exemptions from the Computer Matching Act and Paperwork Reduction Act will ensure IG independence, and will help us more effectively prevent and detect fraud and conduct timely surveys without being subject to the approval from our agencies we oversee. In short, your bipartisan support for IGs has empowered inspectors general across the Federal Government.

In my role as chair of the CIGIE Legislation Committee, I liaise with Congress on legislative matters that affect the IG committee. One role of our committee is to provide assistance to Congress as it considers legislation to improve IGs' ability to carry out the oversight mission that taxpayers and Congress expect.

I want to briefly mention four priority items that the IG community has identified that would improve our ability to oversee the Federal Government: First, our community would like to work with

Congress to protect information that can be used to exploit cybersecurity vulnerabilities. Our reviews, including reviews requested by Congress, identify weaknesses in Federal IT systems. This information could be a roadmap for those who want to do harm. While classified and law enforcement information is protected from public disclosure, there is no single protection that covers all IT security vulnerability information.

Second, the IG community recommends that IGs have the authority to compel testimony of those subject to our oversight. This authority was included in a bill that passed this committee and the House during the last Congress. Our work can be substantially hampered by the inability to compel the testimony of witnesses who have information that cannot be obtained by other means.

While this authority was not included in the bill that became law, we are encouraged by this committee's continued consideration and bipartisan support for testimony and subpoena authority for IGs.

Third, removal of IG requires congressional notification at least 30 days before removal, providing a crucial safeguard to protect our independence. This safeguard can be defeated if an IG is placed in a paid or unpaid non-duty status, effectively silencing IGs without notifying Congress. The IG community supports additional legislative protections to IG independence to ensure that such personnel actions involving an IG are not abused.

Finally, legislative reforms have the potential to make the Program Fraud Civil Remedies Act a significant tool to recover fraudulent expenditures for the benefit of the taxpayers. This act allows for recoveries in cases of small dollar fraud, or in cases DOJ does not accept for prosecution. If used to its full potential, the recoveries could be significant.

To conclude, the IG community is grateful for the steadfast bipartisan support it has received from Congress and from this committee. We look forward to our future cooperation to ensure integrity and efficiency in the Federal Government.

I would be happy to answer any questions you may have.

[Prepared statement of Ms. Buller follows:]



PEACE CORPS
Office of Inspector General



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Statement of Kathy A. Buller

Inspector General, Peace Corps
Chair, Legislation Committee
Council of Inspectors General for Integrity and Efficiency

before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

"Empowering the Inspectors General"

February 1, 2017

Introduction

Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee:

Thank you for inviting me to appear before you today to discuss the work of inspectors general to promote integrity and efficiency. I am here to share my perspective as both the Inspector General for the Peace Corps and the Chair of the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I want to express our appreciation for the years of bipartisan effort this Committee put toward passing the Inspector General Empowerment Act¹, and I look forward to our continued collaboration to help ensure that the Federal government operates free from fraud, waste, abuse, and mismanagement.

Inspectors general were created with the vision of a better, more efficient government. Our common mission is to detect and prevent waste, fraud, and abuse in the agencies we oversee, and to promote integrity and efficiency in government programs and operations. Our staff work to keep federal agencies accountable, protect whistleblowers, and shine a light on corruption and mismanagement within the Federal government and those that do business with it. In fiscal year 2015 alone, we identified over \$17 billion taxpayer dollars that could be put to better use and recovered over \$10 billion dollars.²

The CIGIE Legislation Committee is made up of 21 IGs and is responsible for providing regular communication on legislative issues and other matters of common interest between Congress and the CIGIE. We are dedicated to providing helpful and timely information about congressional initiatives to the IG community and soliciting the views and concerns of the community in response to congressional initiatives and requests. We also present CIGIE's views to Congress, the Government Accountability Office, and the Office of Management and Budget (OMB) on legislative issues that affect the IG community. We have enjoyed years of bipartisan support from Congress in our common effort to improve the operations that we oversee. The Inspector General Empowerment Act, which was passed in the last session of Congress and originated with this Committee, is a tremendous example of that support and collaboration.

Inspector General Empowerment Act of 2016

The Inspector General Empowerment Act was the most significant legislation to affect the Inspector General community since 2008. It was passed largely due to the notable bipartisan efforts of this Committee and its hardworking staff. This Act restored our right of unfettered access by reinforcing a core tenet of the Inspector General Act of 1978 (IG Act): that IGs have the right to access all materials and documents necessary to our oversight work. In addition, the Inspector General Empowerment Act provided several tools to ensure IG independence, help prevent and detect fraud and improper payments, and enhance our capacity to perform reviews that help the government work better.

Access

As I noted in my testimony before this Committee in 2015, members of the IG community found our work impeded by agencies blocking or delaying access to documents and other information that we needed to perform our oversight. A bedrock principle of the IG Act is that an Inspector General must have access to "all" agency records and information which relate to the programs and operations of the

¹ Inspector General Empowerment Act of 2016, Pub. L. No. 114-317 (Dec. 16, 2016).

² CIGIE Progress Report to the President for Fiscal Year 2015, *available at*:

https://www.ignet.gov/sites/default/files/files/FY15_Progress_Report_to_the_President.pdf

agencies we oversee. This language had been seen as clear and unqualified. However, beginning in 2010, a number of Federal agencies, including the Department of Justice (DOJ), the Peace Corps, the Department of Commerce, the Chemical Safety and Hazard Investigation Board, and the Department of the Treasury challenged their respective IGs' right to access "all" such agency information.

During my testimony, I discussed the struggles my office faced in obtaining the information we needed to do our job. My office was unnecessarily compelled to confront this issue because the former General Counsel of the Peace Corps erroneously interpreted the law in a manner that effectively kept OIG, Congress, and the American public in the dark about the program to address sexual assault in the Peace Corps. I felt I had no choice but to enter into a memorandum of understanding with my own agency to avoid a blackout of critical information regarding the care that the agency provided to Peace Corps Volunteers who had experienced sexual assault. After years of arguments, congressional hearings, negative press, and a hold on the Senate confirmation of the former Peace Corps Director, we were at an impasse.

In August 2014, 47 Inspectors General signed a letter to Congress noting that meaningful oversight depends on complete and timely access to all agency materials and data, and that agency actions that limit, condition, or delay access thus have profoundly negative consequences for our work. The letter noted how such actions make OIGs less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

The issue of access came to a head for the IG community in July 2015, when DOJ's Office of Legal Counsel (OLC) issued a legal opinion that threatened the independence of all Inspectors General and challenged our collective ability to have timely and independent access. The 2015 OLC opinion turned a decades long understanding of that bedrock principle of access on its head by allowing officials whose agencies are under review to decide what documents an IG can and cannot have. It became clear to the IG community that only an act of Congress could restore the Inspector General's broad right of access. The Inspector General Empowerment Act did just that. The act further strengthened the access provision and reiterated Congress's intent for Inspectors General: that our access to "all" agency records really means "all." Further, the IG Empowerment Act made clear that such access must be provided in a timely fashion.

The IG Empowerment Act finally resolved this matter by making clear that only an explicit act of Congress can limit an IG's right of access to information. In the Peace Corps, the Inspector General Empowerment Act has had an immediate impact. We are now working with the Agency to fully restore our access to the agency's sexual assault risk reduction and response program, and hope this outcome will further a culture of openness and transparency between agency staff and my office. This not only ensures that my office receives the unfiltered information we need to provide effective oversight, it also supports whistleblowers, promotes an open and transparent Peace Corps for the American taxpayer, and ensures that Congress is fully informed of the programs and operations of the Peace Corps.

Computer Matching Act

The Inspector General Empowerment Act also exempted IGs and agencies working in a matching program with us from the requirements of the Computer Matching and Privacy Protection Act of 1998 (CMPPA).

The CMPPA generally prevents unregulated access to personal records for purposes unrelated to the reasons for which the records were collected. However, computerized matching of data from two or more information systems is a proven method of data analysis that can detect and prevent fraud, waste, and

abuse in government programs. Computer matching of data sets is commonly used to identify improper payments and potential fraud, especially in Federal benefit programs and activities.

CMPPA had required OIGs to obtain the approval of the agency's data integrity board to implement a computer matching agreement, potentially undermining IG independence. Though IGs are represented on the board, agency officials on the board could decide whether to prevent the match or to impose undue restrictions on the match. The board approval process also risked providing agency officials not on the board advance notice in cases where the IG was conducting sensitive work.

Further, the CMPPA required IGs to submit to a protracted review process that could take more than a year to complete. The time and effort associated with appealing a data integrity board decision to OMB in some cases effectively precluded IGs from carrying out a match in a timely fashion.

By exempting IGs from the CMPPA, Congress has ensured that our computer matching activities will be performed more efficiently, independent from potential undue burdens or restrictions by agencies.

Paperwork Reduction Act

The Inspector General Empowerment Act similarly exempted the IG community from the Paperwork Reduction Act (PRA), a reform which the IG community had recommended for over a decade.

The IG community expressed concern that the PRA required that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. This conflicted with our statutory mission to be independent. Furthermore, the PRA also requires a lengthy and burdensome approval process for the collection of information by a Federal agency. The protracted approval process affected our ability to carry out work required by members of Congress, through law or by request, in a timely and effective manner. In many cases, by the time the survey was approved, the character of the issue under review had changed. In some cases IGs discontinued using surveys and gathering information that would enhance the effectiveness and quality of a review.

Providing this exemption ensures that IGs will be able to conduct surveys and other information collection with the requisite independence, and to do so without unnecessary delay or burdens.

Legislative Priorities

The IG community looks forward to working with Congress to further improve our ability to perform the oversight mission that Congress and taxpayers expect from us. We are interested in engaging Congress on a range of issues. While not an exhaustive list, four of the issues the IG community has expressed particular interest in are:

- Protecting cybersecurity vulnerability information from public disclosure
- The appropriate use of paid or unpaid, non-duty status in cases involving an IG
- Testimonial Subpoena Authority for those IGs who do not already possess the authority
- Amendments to the Program Fraud Civil Remedies Act (PFCRA)

Protecting Cybersecurity Vulnerability Information from Disclosure

The IG community appreciates the need to keep the public and Congress informed about the programs and operations we oversee. That being said, since 2011, we have raised serious concerns that information related to our agencies' information security may be unprotected from disclosure. Without adequate protection, such information can be a roadmap for someone attempting to exploit agency cybersecurity vulnerabilities. Although classified information and documents compiled for law enforcement purposes can be protected from public disclosure, no single exemption specifically addresses protection of detailed information on the security vulnerabilities of Federal agencies. As cybersecurity threats become ever more present, the need to protect information that can be used to exploit identified weaknesses is greater than ever.

Appropriate Use of Paid or Unpaid, Non-duty Status in Cases Involving an IG

The IG Act provides specific processes for removing or transferring an IG, and requires congressional notification not later than 30 days before any such removal. These standards provide a critical safeguard to protect the independence of IGs to carry out our work. However, this safeguard does not apply when an IG is placed in a paid or unpaid, non-duty status.

The IG community supports an amendment to the IG Act to establish a congressional notification requirement for use of either paid or unpaid, non-duty personnel actions involving an IG, as well as a framework for the use of the authority.

Testimonial Subpoena Authority

An authority which was included in the predecessor version of the IG Empowerment Act that was also passed by the House of Representatives³ would have authorized those IGs that do not already have such authority to subpoena the attendance and testimony by certain witnesses, including any former Federal employee, as necessary in the performance of oversight functions described in the IG Act. While the final version of the Inspector General Empowerment Act did not include that authority, we are encouraged by this Committee's consideration and bipartisan support of the benefits to OIG oversight that this authority would bring.

In the absence of such authority, the resignation of Federal employees has in some instances substantially hampered an audit, investigation, or other review into matters within the scope of that individual's responsibilities. This authority would also allow an IG to access information during the course of an inquiry into entities with whom the Federal government does business. Examples include where subcontractors or subgrantees have no direct contractual relationship with the Federal government, with employees of contractors who refuse to provide information to the IG, or interviewees who have destroyed important documents and have knowledge of the matter they tried to cover-up.

The new authority would be most effective if it mirrored the existing documentary subpoena authority set forth in the IG Act.

Program Fraud Civil Remedies Act Amendments

The PFCRA⁴ is often referred to as the "mini False Claims Act" because it provides administrative civil remedies for false claims of \$150,000 or less and for false statements in cases DOJ does not accept for prosecution. PFCRA cases are adjudicated before Administrative Law Judges. Unlike False Claims Act cases, only double damages are available under the PFCRA. The PFCRA permits a \$5,000 recovery for

³ Inspector General Empowerment Act, H.R. 2395, 114th Congress (2015).

⁴ 31 U.S.C. Chapter 38.

each false claim. PFCRA also authorizes civil money penalties for false statements even if there has been no claim for payment of money. Though individual recoveries may seem low, when taken together, PFCRA reform promises to make this a significant tool to recover fraudulent expenditures for the benefit of taxpayers.

Use of Administrative Law Judges can make the PFCRA a potentially faster and lower-cost alternative to recovering damages in smaller dollar fraud cases. However, the statute remains a relatively underutilized tool as noted in a 2012 report from the Government Accountability Office (GAO).⁵ According to the report, many agencies were not using the PFCRA for reasons including: a lack of familiarity with the statute; insufficient resources; cumbersome and time-consuming procedures; availability of alternate remedies; and the absence of Administrative Law Judges in certain agencies that could hear PFCRA cases. A subsequent CIGIE-conducted survey of the IG community revealed that a number of the GAO concerns remain, thus underscoring the continuing challenges that inhibit widespread use of the PFCRA to combat fraud.

Since then, CIGIE has proposed several statutory changes developed in consultation with key stakeholders such as the Armed Services Board of Contract Appeals and Boards of Contract Appeals. We look forward to pursuing how this authority can be reformed to provide the IG community a more effective tool in combatting fraud, waste, and abuse.

Conclusion

The Inspector General community is grateful for the steadfast, bipartisan support it has received from Congress, and looks forward to our future cooperation in ensuring the integrity and efficiency in the Federal programs and operations that we oversee. The confirmation of our broad right of access has had a tremendous impact on our community, as has our additional authorities to more independently and effectively undertake IG surveys and participate in computer matching activities. We also look forward to continuing our collaboration with this Committee on future legislative proposals to enhance our oversight authorities and the operations of the agencies we oversee.

⁵ *Program Fraud Civil Remedies Act: Observations on Implementation*, "GAO-12-275R (January 27, 2012).

Chairman CHAFFETZ. Thank you. Mr. Dahl, you're now recognized for 5 minutes.

STATEMENT OF HON. SCOTT S. DAHL

Mr. DAHL. Thank you. Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. Thank you for inviting me to testify today on the work of OIGs.

Let me begin by highlighting a stark example of the value of our work and the importance of OIG access to the information we need. In 2015, two students were killed at different Department of Labor Job Corps centers, both allegedly by their fellow students. In one case, the student was shot and killed in his dorm room at the St. Louis Center. In the other case, the student was brutally killed next to the Florida homestead center, resulting in the need to transfer or relocate more than 350 students. These tragic cases, and other serious incidents, make clear why we have identified the safety and security at Job Corps centers as the top management challenge for the Department. Our auditors had previously analyzed Job Corps data that revealed some centers had failed to report and investigate serious misconduct, including assaults and drug abuse.

Our current review has identified additional concerns such as problems with the centers interacting with law enforcement, inadequate camera monitoring and security staffing, and very limited use of employee background checks.

Mr. Chairman, this is just one of many examples that show the significant impact from the work of OIG staff who demonstrate daily their dedication to the OIG mission of promoting efficiency and effectiveness in government programs, and of combating fraud, waste, and abuse.

I also express our appreciation as Michael and Kathy have for the committee's strong support of the efforts of all OIGs and for addressing the barriers that exist in our work. In that vein, we commend the committee's bipartisan efforts towards the passage of the IG Empowerment Act. We are pleased that Congress has reaffirmed the authority of OIGs to have unfettered access to records. This access is essential to our work.

Mr. Chairman, another example of the value of OIG oversight is in our work on the abuse and rising costs of compounding drug medications in the Federal Employees' Compensation Act, or FECA program. The cost of compounded drugs in FECA have skyrocketed from approximately \$2 million in 2011 to nearly \$240 million in 2016, more than a hundredfold increase substantially surpassing the costs of all other drugs combined.

Our current investigations in this area have focused on fraud schemes involving collusion between prescribing physicians and dispensing pharmacies. In one case alone, the OIG special agents have identified potential fraud that involves nearly \$100 million. We are also conducting a review of the Department's management of pharmaceuticals and all of its workers' compensation programs, with a particular emphasis on compounded drugs as well as the use of opioids.

In addition, my office is collaborating with the IGs of other agencies who have faced similar problems with compounded drugs to identify potential fraud and how we can change the programs. Another area of significant concern is with the fraud in DOL's foreign labor certification programs, in particular, the H-1B program that allows for nonimmigrant employment and foreign workers and specialized occupations. Our agents are investigating schemes involving employers filing fraudulent applications with DOL, like owners of a New York health care staffing company that pled guilty last year to fraudulently using the program to staff medical centers with foreign nurses. These fraud schemes often deprive U.S. workers of available work opportunities.

We also partnered with DOJ and other law enforcement agencies to investigate labor trafficking as part of human trafficking. For example, our agents investigated a Texas employer who was convicted last year for underpaying foreign workers and housing them in dangerous conditions.

Finally, Mr. Chairman, timely access to the Department's data systems is an area of significant concern for my office, especially for systems managed by contractors. We've encountered lengthy delays in gaining access to these data systems and the Department has incurred significant increased costs from outsourcing this data management.

These challenges we have identified underscore the importance of the committee's support for the work of the OIGs. We look forward to continuing our productive relationship with this committee and the Department and our shared goal of improving efficiency and effectiveness in the Department's programs and operations.

I request that my full statement be entered in the record. And I would be pleased to answer any questions that you or members of the committee may have.

[Prepared statement of Mr. Dahl follows:]

**WRITTEN TESTIMONY OF
SCOTT S. DAHL
INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF LABOR
BEFORE THE HOUSE COMMITTEE ON
OVERSIGHT AND GOVERNMENT REFORM
FEBRUARY 1, 2017**

Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. Thank you for inviting me to testify today on the Office of Inspector General's (OIG) oversight work of the U.S. Department of Labor (DOL). The views expressed in my testimony are based upon the independent and objective work of the OIG and are not intended to reflect the Department's position.

Mr. Chairman, I appreciate the opportunity to highlight some of the top management and performance challenges facing the Department. My testimony today will also focus on OIG issues relating to our oversight of the Department.

I would like to begin by commending the committee's bipartisan efforts toward the passage of the Inspector General Empowerment Act of 2016. Undoubtedly, the additional authorities and clarifications provided by the Act will greatly assist our oversight work. In particular, we are pleased with Congress' reaffirmation of OIG's authority to have unfettered access to records and information, which is essential to the independent work of OIGs.

I also want to take this opportunity to publicly highlight and commend the OIG staff who on a daily basis demonstrate the highest levels of professionalism and dedication to the OIG mission of promoting the efficiency and effectiveness of government programs; and of combating fraud, waste and abuse. Indeed, we see as one of our primary missions to ensure taxpayer value in the Department's programs. This high level of commitment and professionalism can be seen throughout the Inspector General community, and I appreciate the committee's interest in highlighting their efforts and in identifying any barriers that may exist in their work.

Providing a Safe Learning Environment at Job Corps Centers

Mr. Chairman, the first challenge I would like to highlight relates to one of the most important programs administered by the Department of Labor – the Job Corps program. The Job Corps program provides both residential and nonresidential education, training,

and support services to approximately 50,000 disadvantaged, at-risk youth, ages 16-24, at 126 Job Corps centers nationwide. As we have reported, Job Corps centers have been troubled by violence and other criminal behavior for years, and the program remains challenged in its efforts to provide a safe learning environment at its centers. In 2015, two students were killed at different Job Corps centers, allegedly by fellow students. In one case, a student was shot and killed in his dormitory room at the St. Louis (Missouri) Job Corps center. In the other case, a student was brutally killed next to the Homestead Job Corps center in South Florida, resulting in the center suspending operations and transferring students to other centers.

Prior to these serious incidents, our audits demonstrated that some Job Corps centers failed to report and investigate serious misconduct, including drug abuse and assaults, or downgraded incidents of violence to lesser infractions to keep students enrolled, creating an unsafe environment for students and staff. Our current review of safety and security throughout the Job Corps program has revealed additional concerns across the program. We found continuing problems with centers properly reporting serious misconduct to Job Corps and potentially criminal misconduct to law enforcement. In visits to 12 centers, we observed physical security weaknesses including inadequate security camera monitoring and security staffing.

Our work in this area has also revealed inconsistencies in Job Corps centers' interactions with law enforcement organizations at the federal, state, and local level. For 102 of 129 center locations, Job Corps had not determined which law enforcement organization had jurisdiction to enforce criminal laws and had not established policies to ensure center agreements with law enforcement adequately defined roles and responsibilities in areas such as collecting evidence and conducting strip searches. Confusion in these areas can result in delayed or compromised investigations and negatively affect necessary actions. Finally, Job Corps only required employee background checks for a small number of positions and had not considered background checks for many other positions that involve contact with students or how the results should be evaluated. We are completing our review and expect to issue our final report soon.

Monitoring and Managing Compounded Drug Medications in the FECA Program

Another issue of concern for the OIG is the Department's challenges in monitoring and managing the use and costs of pharmaceuticals, particularly compounded drug medications in the Federal Employees' Compensation Act (FECA) program. Compounded drug medications are drugs created by combining, mixing, or altering the ingredients of drugs to tailor them to individual patients. The FECA program, along with

other Federal government workers' compensation programs, has experienced a dramatic increase in the abuse and cost of compounded drug medications, particularly pain relief creams. We recognize that certain compounded drug medications can be beneficial and necessary for some patients. However, there is concern that these medications are not subject to approval by the Food and Drug Administration (FDA), and the FDA has repeatedly reported and testified on the unsafe practices associated with the manufacturing of some compounded drug medications.

Costs for compounded drug medications in the FECA program rose from approximately \$2 million in fiscal year (FY) 2011 to \$239 million in FY 2016, more than a hundredfold increase. During FY 2015 alone, compounded drug costs jumped from \$80 million to \$214 million, surpassing the costs of all other drugs billed to FECA (\$199 million). Our current investigations focus on significant fraud generally involving collusion between prescribing physicians and dispensing pharmacies. In one case alone we have identified potential fraud that involves nearly \$100 million.

We believe the Department needs to take a proactive approach in working with the FDA and other federal benefit programs to ensure only compounded drug medications that are medically necessary, effective, and safe are approved, and that the program pays a fair and reasonable price.

In addition to our work with the Department, my office is collaborating with other OIGs who have faced similar problems with compounded drug medications in an effort to identify best practices and programmatic changes that reduce susceptibility to fraud. Inspectors General and senior OIG officials from the Department of Defense, Department of Health and Human Services, the Department of Veterans Affairs and the U.S. Postal Service formed a working group last year to share effective methodologies in reducing risks and costs related to compounded drug medications. We are also currently conducting an audit to assess the adequacy of the Department's management of pharmaceuticals in all of its health benefit programs, with a particular emphasis on compounded drug medications and the use of opioids. The Computer Matching Act exemption included in the Inspector General Empowerment Act of 2016 should assist in both of these efforts.

Reducing Improper Payments

Another concern for the OIG is the Department's ability to prevent or mitigate improper payments, particularly in the Unemployment Insurance (UI) program. As the Department has reported to the Office of Management and Budget (OMB), in 2015 the UI program had the seventh-highest amount of reported improper payments (\$3.5 billion) among all

federal programs. For FY 2016, the UI improper payment rate increased to 11.65 percent from 10.7 percent in FY 2015 and remained above OMB's threshold of 10 percent. While the biggest cause for improper payment in FY 2016 was work search at 37 percent, fraud continues to be a significant threat to the integrity of the UI program, as identity thieves and organized criminal groups have found ways to exploit program weaknesses.

As we have reported, the Department needs to employ cost benefit and return on investment analyses to evaluate the impact of its improper payment reduction strategies for UI. The OIG has also made several recommendations on actions the Department should take to address systemic weaknesses that make the UI program more susceptible to fraudulent activity. In addition, the Department needs to continue pursuing legislation to allow states to use a percentage of recovered UI overpayments to invest in prevention, detection, and recovery strategies.

The OIG continues to conduct audits to examine efforts to prevent or mitigate improper UI payments, such as examining how states verify unemployment eligibility at the initiation of a claim, and how they subsequently determine when a claimant has returned to work.

Additional Significant Concerns

Mr. Chairman, I want to briefly mention other significant concerns relating to the Department of Labor. One concern relates to the Department's progress in implementing the Digital Accountability and Transparency Act of 2014 (DATA Act). As you know, the DATA Act requires federal agencies to report financial and spending data in accordance with data standards established by the Treasury and OMB and make the data available on a public website developed by the Treasury by May 2017. Based on our assessment in September 2016, we reported concern that the Department was not on track to effectively implement the DATA Act requirements by May 2017 because it could not demonstrate that key tasks have been completed.

We also remain concerned with the foreign labor certification program, which is intended to permit U.S. businesses to hire foreign workers when necessary to meet their workforce needs while protecting the jobs and wages of U.S. workers. DOL is statutorily required to certify H-1B applications unless it determines them to be "incomplete or obviously inaccurate." Given this fact, it is not surprising that OIG investigations have shown the H-1B program to be susceptible to significant fraud and abuse, particularly by dishonest immigration attorneys, labor brokers, employers, and organized criminal enterprises. Our investigations have revealed schemes in which

fraudulent applications were filed with DOL on behalf of individuals and fictitious companies, and unscrupulous businesses seeking to acquire foreign workers.

Finally, we are concerned about labor trafficking. As part of our foreign labor certification investigations, we have seen numerous instances of unscrupulous employers misusing foreign labor certification programs administered by the Department to engage in labor trafficking. The victims are often exploited for economic gain. The fear of losing their job and deportation allows employers to force workers to work for far less than the appropriate prevailing wage, and to sometimes house these workers in inadequate conditions. This causes significant harm to U.S. workers as the payment of proper prevailing wages is vital to ensuring that U.S. workers are not displaced by foreign workers.

To better combat labor trafficking, the OIG has partnered with the Department of Justice and other law enforcement agencies on Anti-Trafficking Coordination Teams (ACTeams). I believe that a multi-agency approach is vital in combating human trafficking. We have also received authority via a special deputation agreement with the Department of Justice Civil Rights Division and the FBI to provide our agents with expanded authority to conduct labor trafficking investigations when they relate to a DOL program and ACTeams. This expanded authority ensures that we are able to fully investigate labor trafficking offenses related to DOL programs.

Providing Access to Electronic Data

Mr. Chairman, with regards to OIG access to data, one area of significant concern for my office relates to the Department's ability to provide timely access to its many electronic data systems. This challenge has been particularly acute for systems managed by contractors. We have encountered delays gaining access to data from contractors and the Department has incurred increased costs from outsourcing data management. The Department needs to ensure that contracting for third-party systems specifically provides for the Department, along with the OIG, to have timely access to those systems and the data they contain.

Last year, we signed a memorandum of understanding (MOU) with the Department which establishes a comprehensive framework for OIG access to electronic data systems. Pursuant to this MOU, we have entered into agreements with the Office of Workers' Compensation Programs to obtain FECA data, and we plan to enter into additional agreements with other DOL agencies this year.

Providing access to electronic data is also an area where additional congressional action could enhance the OIG's ability to combat improper payments. Current law does not permit the OIG to directly obtain data from the National Directory of New Hires (NDNH), and the OIG cannot use its subpoena authority to obtain NDNH records. Granting the OIG statutory access to NDNH data would provide the OIG with a valuable tool for both audits and investigations. For example, OIG auditors could use these records to verify the eligibility of Workforce Innovation and Opportunity Act participants and verify reported outcomes. In addition, OIG investigators could use these records to investigate employer fraud schemes in the UI program, claimant fraud in the FECA program, and prevailing wage violations by federal contractors and employers of temporary foreign workers under foreign labor certification programs administered by the Department.

Conclusion

Mr. Chairman, thank you for calling this hearing and for the committee's continued support for the work of OIGs. This concludes my prepared statement. I look forward to continuing our productive relationship with this committee and the Department in our shared goal of improving the efficiency and effectiveness of the Department of Labor's programs and operations.

I would be pleased to answer any questions you or the other members of the committee may have.

Chairman CHAFFETZ. Thank you. All of your full statements, written statements will be entered into the record, of course.

The inspector general for the Department of Homeland Security, Mr. Roth, you're now recognized for 5 minutes.

STATEMENT OF HON. JOHN ROTH

Mr. ROTH. Thank you. Chairman Chaffetz, Ranking Member Cummings and members of the committee, thank you for inviting me to testify about inspector general challenges and recent legislative changes enacted by the Inspector General Empowerment Act of 2016.

No government agency, no matter how dysfunctional, will change of its own accord. During my tenure as inspector general for DHS, I witnessed three agencies, FEMA, TSA and the Secret Service that have had to confront the necessity of change in the manner in which they do business. It is a wrenching process that no agency would undergo voluntarily. Change in a bureaucracy happens as a result of three things: a dramatic, intervening event, followed by intense scrutiny of agency programs and operations, and a result in leadership commitment to change.

Independent oversight by both the inspector general and Congress is critical and necessary ingredient to positive constructive change. For example, FEMA's approach to disaster response changed only after Hurricane Katrina revealed the shortfalls in its operations; consistent IG and congressional scrutiny brought further analysis to the problem; and the administration and FEMA leadership committed to change the manner in which FEMA responded to these events. As we saw in the Superstorm Sandy response, FEMA has dramatically improved its response operation as a result.

TSA was likely confronted with the need to change as a result of dramatic and troubling shortfalls discovered by our covert testing program, as well as other OIG reports about deficiencies in TSA's judgment of risk in relation to expedited screening, vetting airport employees, and managing the access badge program.

It was only through IG oversight, oversight by this and other committees, and TSA's new leadership strongly embracing the message that TSA, at last, publicly acknowledged the need for change, and started the long road to becoming a more effective organization.

Finally, as this committee well knows, the well-publicized protective failures by the Secret Service resulted in hearings and investigations by this committee, by my office, and by the independent protective mission panel. This oversight resulted in excruciating process for the examination and self-examination, which is, by no means, over, about the manner in which the Secret Service does business. As a result, the Secret Service has taken steps to fix some of the systemic issues that have plagued the agency over time.

Oversight makes the government better and fosters positive change. The critical and skeptical review of programs and operations acts as the disinfectant of sunlight to ensure a more efficient government. It works in conjunction with the Inspector General's

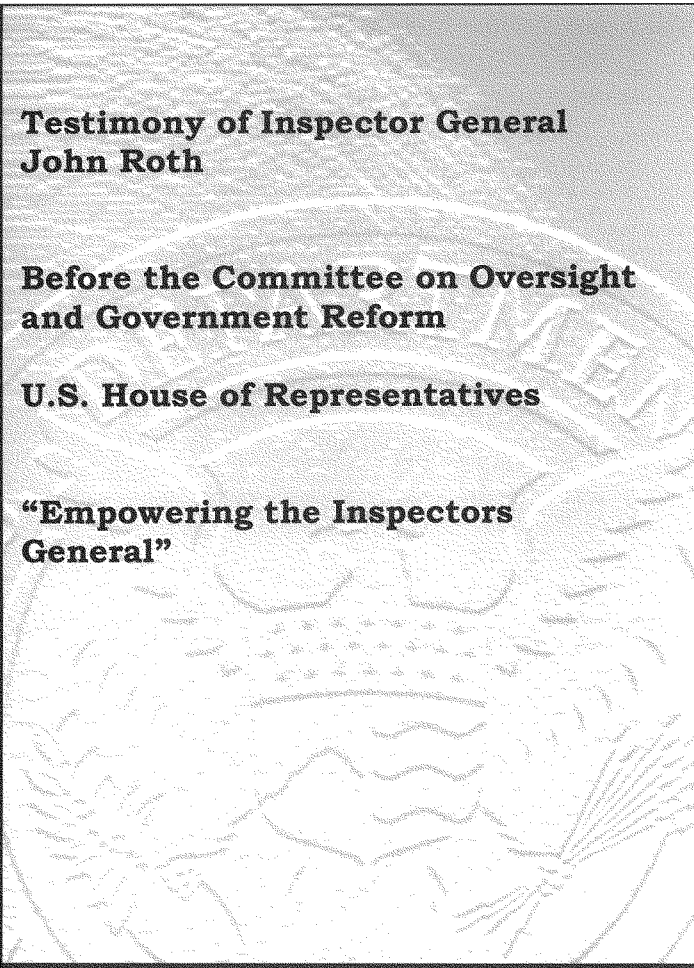
Act requirement that IGs keep Congress fully and currently informed of problems, abuses, and deficiencies within the Department. I thank the committee for its leadership in championing the IG Empowerment Act, it supported the inspector general community, and the cause of vigorous and independent oversight.

I would also take a moment to thank my staff, who is creative, energetic, and I am proud to lead in this effort. My office will continue to conduct independent oversight over DHS's programs and operations. Although significant progress has been made, the Department continues to face longstanding persistent challenges in overseeing and managing the homeland security mission. These challenges affect every aspect of the mission, from preventing terrorism and protecting our borders, transportation systems, to enforcing our immigration laws, ensuring disaster resiliency and securing cyberspace.

The Department is continually tested to work this one entity to achieve its complex mission. The key to sustained games made thus far is a leadership commitment by the new administration and continued thoughtful but vigorous oversight by the Congress and my office.

Mr. Chairman, this concludes my testimony. I'm happy to answer any questions of you or other members of the committee. Thank you.

[Prepared statement of Mr. Roth follows:]



OFFICE OF INSPECTOR GENERAL

**Testimony of Inspector General
John Roth**

**Before the Committee on Oversight
and Government Reform**

U.S. House of Representatives

**“Empowering the Inspectors
General”**



Homeland
Security

**February 1, 2017
10:00 AM**



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Department of Homeland Security

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee, thank you for inviting me here today to discuss Inspector General challenges and recent legislative changes enacted by the *Inspector General Empowerment Act of 2016*.

The Value of Independent Oversight in Improving Government Operations

No government agency, no matter how dysfunctional, will change of its own accord. During my tenure as Inspector General for DHS, I have witnessed three agencies – FEMA, TSA, and the Secret Service – that have had to confront the necessity of changing the manner in which they do business. It is a wrenching process that no agency would undergo voluntarily. Change in a bureaucracy happens as a result of three things: a dramatic intervening event, followed by intense scrutiny of agency programs and operations, and a resultant leadership commitment to change. Independent oversight by both the Inspector General and Congress is a critical and necessary ingredient to positive, constructive change.

For example, FEMA's approach to disaster response changed only after Hurricane Katrina revealed the shortfalls in its operations, consistent IG and congressional scrutiny brought further analysis to the problem, and the administration and FEMA leadership committed to change the manner in which FEMA responded. Over time, FEMA evolved its way of doing business as evidenced by the effective and efficient response to Superstorm Sandy, as we noted in our report on the matter. It did so by proactively preparing for the storm, overcoming staffing challenges, making well-informed resource decisions, and effectively coordinating its response with other stakeholders.¹

TSA was confronted with the need to change as a result of dramatic and troubling shortfalls discovered by our covert testing program, as well as other OIG reports about deficiencies in TSA's judgment of risk in relation to expedited screening, vetting airport employees, and managing the access badge program.² It was only through our oversight, oversight by this and other congressional committees, and TSA's then-new leadership strongly embracing the message, that TSA at last publicly acknowledged the need for change and

¹ *FEMA's Initial Response in New York to Hurricane Sandy*, OIG-13-124 (September 2013).

² *Vulnerabilities Exist in TSA's Checked Baggage Screening Operations*, OIG-14-142 (September 2014); *Security Enhancements Needed to the TSA PreCheck Initiative*, OIG-15-29 (January 2015); *TSA Can Improve Aviation Worker Vetting*, OIG-15-98 (June 2015); *Use of Risk Assessment within Secure Flight*, OIG-14-153 (June 2015); *Covert Testing of TSA's Passenger Screening Technologies and Processes at Airport Security Checkpoints*, OIG-15-150 (September 2015); *TWIC Background Checks Not as Reliable as They Could Be*, OIG-16-128 (September 2016); *TSA Could Improve Its Oversight of Airport Controls over Access Media Badges*, OIG-17-04 (October 2016).



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started the long road to becoming a more effective organization. While there is much work to be done at TSA — and the change in TSA leadership risks stalling the momentum — as an agency it is in a far better place than it was two years ago.

As this Committee well knows, the well-publicized protective failures by the Secret Service resulted in hearings and investigations by this Committee, by my office, and by the independent Protective Mission Panel (PMP). This oversight resulted in an excruciating process of examination and self-examination, which is by no means over, about the manner in which the Secret Service does business. As a result, the Secret Service has taken steps to fix some of the systemic issues that have plagued the agency over time. As we noted in our most recent report:

The Secret Service has clearly taken the PMP's recommendations seriously, which it has demonstrated by making a number of significant changes. However, fully implementing many of the PMP's recommendations will require long-term financial planning, further staff increases, consistent re-evaluation of the initiated actions' effectiveness, and a multi-year commitment by Secret Service and Department of Homeland Security leadership.³

The key to sustaining the gains made thus far is a leadership commitment by the new Administration and continued thoughtful oversight.

Oversight makes government better and fosters positive change. The critical and skeptical review of programs and operations, both by the Inspectors General and by congressional oversight committees, acts as the "disinfectant of sunlight" to ensure a more efficient government. It works in conjunction with the *Inspector General Act's* requirement that IGs keep Congress fully and currently informed of problems, abuses and deficiencies within the Department.

IG Empowerment Act Will Bring More Emphasis on Big Data

Thanks to the authorities contained within the newly enacted *Inspector General Empowerment Act (IGEA)*, we are planning more audits using "big data." DHS and the rest of the government hold vast repositories of data. Matching two disparate databases can yield valuable insights. For example, we matched a database of disaster victims who claimed not to have insurance, and thus were eligible for taxpayer relief, against a private insurance database. Using this

³ *The Secret Service Has Taken Action to Address the Recommendations of the Protective Mission Panel*, OIG-17-10 (November 2016).



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system, we identified 29,763 records where FEMA paid approximately \$250 million in homeowners' assistance to Hurricane Sandy applicants whom the private insurance database identified as having made private homeowners' or automobile insurance claims. Of the 29,763 records, there were 2,289 where applicants self-certified during the FEMA application process that they had no property insurance, a claim that was demonstrably false. Those records may have the highest probability of being fraudulent. This exercise demonstrated the weakness in FEMA's benefit process for weeding out fraudulent claims.⁴

Previously, the *Computer Matching Act* interposed significant barriers to us matching DHS data against data contained in other government databases. For example, we compared TSA's database of SIDA badge holders, who have unrestricted access to secure areas within airports and aircraft, against the National Counterterrorism Center's Terrorist Identities Datamart Environment (TIDE) database. In matching the data, we found that there were 73 individuals with links to terrorism who were holding SIDA badges. This occurred because TSA did not have access to the complete database, which it recognized was a risk to national security, and a weakness in its system. Such data matching creates powerful insights not otherwise available, and as a result of this audit, TSA was able to successfully petition the Intelligence Community for access to the entire TIDE database.⁵

We found that actually matching the data was a relatively simple exercise, but that getting the approvals and other permissions under the *Computer Matching Act* took over 18 months to accomplish. Now, thanks to the IGEA, IG offices are no longer subject to the *Computer Matching Act* and can match data far more quickly.

Having this exemption presents an opportunity for us to plan new and creative audits and we are in the process of ramping up our capabilities in this area. The Recovery Accountability and Transparency Board (RATB), which previously provided DHS OIG with analytic support for audits and investigations, officially closed on September 30, 2015. Since June 2015, we have been proactive in leveraging our successful experience with the RATB to establish a similar analytics capacity within DHS OIG. We hired an analyst and are looking to recruit a data architect and additional data analytics personnel. We made substantial progress testing and installing the state-of-the-art suite of hardware and software needed to analyze structured and unstructured data, perform link analysis, and examine geospatial information. Further, we implemented processes and procedures to vet Disaster Relief Fund (DRF)

⁴ *FEMA Faces Challenges in Verifying Applicants' Insurance Policies for the Individuals and Households Program*, OIG-16-01-D (October 2015).

⁵ *TSA Can Improve Aviation Worker Vetting*, OIG-15-98 (June 2015).



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contractors and assess DRF audit risks, similar to services that the RATB previously provided. In the long term, we expect to expand this in-house capability to support data analytic needs across DHS OIG on audits addressing a range of issues including border and transportation security, immigration and citizenship, budget and contract management, cybersecurity, customs enforcement, and research and development.

I thank this Committee for its leadership in championing the IGEA, and the cause of vigorous and independent oversight.

Focusing on the Right Things

DHS is a massive organization, consisting of over 230,000 employees and an equal number of contractors engaged in a broad spectrum of activities across the globe, the improper execution of which could have grave consequences to our homeland security.

By contrast, my office is very small. We represent about 0.25% of the DHS budget; in a typical budget year, DHS returns as unspent more money than our entire annual budget. We have one criminal investigator for every 2,000 employees and contractors. Our audit reach is likewise very small. In the disaster relief area, for example, we are able to audit about 70 disaster grants issued to local communities and other organizations per year. In contrast, FEMA currently manages grants for approximately 100,000 such sub-grantees.

Making the right choices about what we audit and inspect is critical. To assist in doing this, we have created a process to assess risk within the agency – something the Department itself has not yet done. In October, we established the Office of Enterprise Risk Identification and Management (OERIM) to enhance the OIG's capacity to focus its limited resources on the areas of greatest risk and impact to the U.S. public and to the Department. The office benchmarked risk-based planning with other federal agencies and developed rigorous risk identification and analysis techniques to conduct major studies across the Department.

Specifically, OERIM will:

- Build an online comprehensive knowledge library in key risk focus areas for DHS OIG auditors, inspectors, and investigators;
- Produce risk assessments in key focus areas that quantify risk and identify cross-cutting themes and trends;
- Contribute relevant data to the OIG annual planning process for prioritizing audits, inspections, and investigations based on risk; and



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- Ensure the OIG itself evaluates risk in our own operations and reports our highest risks to OMB by June 2, 2017, as required by the recently revised OMB Circular A-123.

We are taking a more holistic view of DHS and are developing a rigorous process to prioritize reviews in the OIG's annual plan based on risk. If we better understand the Department's risks, particularly cross-cutting or shared risks, our office can issue high impact Department-wide recommendations to save taxpayer dollars, enhance unity of effort initiatives, and direct resources to where they will do the most good.

Priorities and Challenges

Homeland Security faces many challenges, and we at OIG have focused our energy on the major management and performance challenges. We have listed six:

- creating a unified department
- employee morale and engagement
- acquisition management
- grants management
- cybersecurity, and
- improving management fundamentals.⁶

Today, I will focus on the challenges the Department faces in acquisition management and grants management.

Acquisition Management

Acquisition management, which is critical to fulfilling all DHS missions, is inherently complex, high risk, and challenging. Since its inception in 2003, the Department has spent tens of billions of dollars annually on a broad range of assets and services — from ships, aircraft, surveillance towers, and nuclear detection equipment to IT systems for financial management and human resources. DHS' yearly spending on contractual services and supplies, along with acquisition of assets, exceeds \$25 billion. There continue to be DHS major acquisition programs that cost more than expected, take longer to deploy than planned, or deliver less capability than promised. The Department was established very quickly by combining many legacy and new agencies, so DHS' earliest acquisition processes were imperfect and slow to mature. Initially, DHS operated in disparate silos focused on purchasing goods and services with minimal management of requirements. In their

⁶ *Major Management and Performance Challenges Facing the Department of Homeland Security*, OIG-17-08 (November 2016).



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transition to DHS, seven agencies, including the U.S. Coast Guard, FEMA, and TSA retained their own procurement functions. The expertise and capability of the seven procurement offices mirrored their pre-DHS expertise and capability, with staff sizes ranging from 21 to 346.

Although DHS has made much progress since then, it has not yet coalesced into one entity working toward a common goal. The Department still lacks uniform policies and procedures, a dedicated core of acquisition professionals, as well as component commitment to adhere to departmental acquisition guidance, adequately define requirements, develop performance measures, and dedicate sufficient resources to contract oversight.

A good example of the challenges faced can be seen in the U.S. Citizenship and Immigration Services (USCIS) efforts to automate immigration benefits. USCIS still uses a paper file system to process immigration benefits and spends \$300 million per year just to store and move its 20 million immigrant paper files. USCIS has been attempting to automate this process since 2005, but has made little progress. Notwithstanding spending more than \$500 million on the technology program between FYs 2008 and 2012, little progress has been made. Past automation attempts have been hampered by ineffective planning, multiple changes in direction, and inconsistent stakeholder involvement. USCIS deployed the Electronic Immigration System (ELIS) in May 2012, but to date, customers can apply online for only 2 of about 90 types of immigration benefits and services. USCIS now estimates that it will take 3 more years—more than 4 years longer than estimated—and an additional \$1 billion to automate all benefit types as expected.⁷

These failures have a real impact on our national security. Because of processing errors resulting from premature release of ELIS software, USCIS received over 200,000 reports from approved applicants about missing green cards. The number of cards sent to wrong addresses has incrementally increased since 2013 due in part to complex processes for updating addresses, ELIS limitations, and factors beyond the agency's control. USCIS produced at least 19,000 cards that included incorrect information or were issued in duplicate. Most card issuance errors were due to design and functionality problems in ELIS. USCIS' efforts to address the errors have been inadequate. Although USCIS conducted a number of efforts to recover the inappropriately issued cards, these efforts also were not fully successful and lacked consistency and a sense of urgency. Errors can result in approved applicants unable to obtain benefits, maintain employment, or prove lawful immigration

⁷ *USCIS Automation of Immigration Benefits Processing Remains Ineffective*, OIG-16-48 (March 2016).



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status. In the wrong hands, Green Cards may enable terrorists, criminals, and illegal aliens to remain in the United States and access immigrant benefits.⁸

Finally, we issued a management alert as it related to the USCIS rollout of the N-400 form on ELIS in April of last year. The use of ELIS has impaired the ability of USCIS Immigration Services Officers and field personnel to conduct naturalization processing. In the course of our audit work, we discovered significant deficiencies in background and security checks for applicants, including 175 applicants who were granted citizenship with incomplete or inaccurate background checks.⁹

DHS has instituted major reforms to the acquisition process and has exerted significant leadership to gain control of an unruly and wasteful process. However, we worry that these reforms, if not continuously supported and enforced, could be undone. As DHS continues to build its acquisition management capabilities, it will need stronger departmental oversight and authority, increased commitment by the Department and components, as well as skilled personnel to effect real and lasting change.

Congress has previously introduced legislation designed to address DHS' acquisition challenges. We would support legislation that codifies existing policy and relevant offices; provides the necessary authority for key personnel and mechanisms within the Department to effectively manage major acquisition programs; reinforces the importance of key acquisition management practices, such as establishing cost, schedule, and capability parameters; and includes requirements to better identify and address poorly performing acquisition programs.

Grants Management

FEMA manages the Federal response to, and recovery from, major domestic disasters and emergencies of all types. In doing so, FEMA coordinates programs to improve the effectiveness of the whole community and leverages its resources to prevent, protect against, mitigate, respond to, and recover from major disasters, terrorist attacks, and other emergencies. In this role, FEMA awards an average of about \$10 billion each year in disaster assistance grants and preparedness grants.

Based on the work and findings of OIG Emergency Management Oversight teams deployed to disaster sites in nearly a dozen states, we determined that

⁸ *Better Safeguards are Needed in USCIS Green Card Issuance*, OIG-17-11 (November 2016)

⁹ *Management Alert – U.S. Citizenship and Immigration Services' Use of the Electronic Immigration System for Naturalization Benefits Processing*, OIG-17-26-MA (January 2017)



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FEMA generally responds effectively to disasters. For the disaster sites we visited, FEMA responded proactively and overcame a variety of challenges while coordinating activities with other Federal agencies and state and local governments.

However, our body of work over the past few years suggests that FEMA has not managed recovery from disasters well. Although FEMA provides grant management funding to grantees, FEMA has not held them accountable for managing subgrantees, and states and other grantees have not done well in guiding and managing subgrantees. This means the entire layer of oversight intended to monitor the billions of dollars awarded by FEMA in disaster assistance grants is ineffective, inefficient, and vulnerable to fraud, waste, and abuse. Of the \$1.55 billion in disaster grant funds we audited last year, we found \$457 million in questioned costs, such as duplicate payments, unsupported costs, improper procurement practices, and unauthorized expenditures. This equates to a 29 percent questioned-cost rate, which far exceeds industry norms, and it illustrates FEMA's continued failure to adequately manage grants.¹⁰

We also saw examples of inadequate grant management in preparedness grants. In an overarching audit of OIG recommendations related to preparedness grants, we reported that FEMA had not adequately analyzed recurring recommendations to implement changes to improve its oversight of these grants. This occurred because FEMA did not clearly communicate internal roles and responsibilities and did not have policies and procedures to conduct substantive trend analyses of audit recommendations.¹¹

Although FEMA has been responsive to our recommendations for administrative actions and for putting unspent funds to better use, FEMA has not sufficiently held grant recipients financially accountable for improperly spending disaster relief funds. As of September 27, 2016, FEMA had taken sufficient action to close 130 of our 154 FY 2015 disaster grant audit report recommendations. However, the 24 recommendations that remained open contained 90 percent (\$413 million) of the \$457 million we recommended FEMA disallow that grant recipients spent improperly or could not support. Further, in FYs 2009 through 2014, FEMA allowed grant recipients to keep 91 percent of the contract costs we recommended for disallowance for noncompliance with Federal procurement regulations, such as those that

¹⁰ *Summary and Key Findings of Fiscal Year 2015 FEMA Disaster Grant and Program Audits, OIG-17-13-D* (November 2016).

¹¹ *Analysis of Recurring Audit Recommendations Could Improve FEMA's Oversight of HSGP, OIG-16-49* (March 2016).



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require opportunities for disadvantaged firms (e.g., small, minority, and women-owned) to bid on federally funded work.¹²

Based on our recurring audit findings, it is critically important that FEMA officials examine regulations, policies, and procedures and assess the need for more robust changes throughout all grant programs. FEMA should refocus its efforts to identify systemic issues and develop solutions to address the cause and not just the symptoms. FEMA needs to improve its oversight of state grantees and proactively engage with states to improve management and guidance of subgrantees.

Protecting Whistleblowers Against Retaliation

Of course, none of the work we do is possible without the men and women in the DHS workforce, and DHS contractors, coming forward to let us know about significant claims of waste, fraud, abuse, and misconduct. We have raised our profile within DHS as the entity to which these allegations are reported, and with effective results. It is our duty to protect these individuals from being retaliated against as a result of stepping forward. In an average year, we receive about 175 claims of whistleblower retaliation.

DHS OIG investigates allegations of whistleblower reprisal made by uniformed United States Coast Guard members; DHS contractors, subcontractors and grantees; and DHS employees. Our Whistleblower Protection Unit (WPU) conducts investigations under the authority of the *Inspector General Act of 1978*, as amended, and pursuant to the *Military Whistleblower Protection Act*, 10 U.S.C. § 1034, Presidential Policy Directive 19, and the *Pilot Program for Enhancement of Contractor Protection*, 41 U.S.C. § 4712. Investigations under these statutes are mandatory by DHS OIG when a prima facie case of reprisal is alleged. Additionally, in certain cases, DHS OIG conducts investigations pursuant to the *Whistleblower Protection Act*, 5 U.S.C. § 2302.

In the last year, DHS OIG undertook a substantial reorganization and rebuilding of its whistleblower protection function by creating a new and dedicated WPU housed in our Office of Counsel. The WPU consists of the Whistleblower Ombudsman, a supervisory whistleblower investigator and two newly hired whistleblower administrative investigators. The WPU has primarily been responsible for intake and preliminary complaint review during this timeframe, while Special Agents from the DHS OIG Office of Investigations and attorneys from the Office of Counsel jointly conduct all whistleblower investigations that are opened.

¹² *FEMA Can Do More to Improve Public Assistance Grantees' and Subgrantees' Compliance with Federal Procurement Rules*, OIG-16-126-D (September 2016).



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We are confident that these changes will make us more effective; however, we acknowledge that it will take constant vigilance and dedicated effort to ensure that whistleblowers with claims of retaliation are heard and that their claims are fairly and independently investigated.

Mr. Chairman, this concludes my testimony. I am happy to answer any questions you or other members of the committee may have.

Chairman CHAFFETZ. Thank you.

I will recognize myself for 5 minutes.

Mr. Horowitz, let me start with you. The testimonial subpoena authority is something we helped to champion. Did that make it into the bill and why didn't it make it in the bill?

Mr. HOROWITZ. It do not make it into the bill unfortunately, despite the tremendous efforts of yourself and the ranking member in pushing it. My understanding was the Department of Justice continued to object to the very end. And in order to get the bill passed through the Senate, it had to be removed. And we hope and look forward to working with you again, and we will not walk away from the fight easily.

Chairman CHAFFETZ. And, at least personally, I am going to help champion this and we will make another run at it again, but I do believe the inspectors general need the ability to compel testimony. We had a frustrating case where somebody was being approached and then they just, like on a piece of paper, said, I hereby resign, and handed it to somebody. Just thought by leaving the employee—leaving the employment of the Federal Government, they could just simply walk away from all this disaster that they had caused. I do believe that the inspectors general need to have the ability to compel testimony, particularly for those investigations that you're doing.

Does anybody—any of the others wish to shed any light? Mr. Horowitz, if you can shed any light or any personal experiences within your purview that would illuminate this problem further?

Mr. HOROWITZ. I'll just mention the two examples that are public in our reports, and that are of significant programs, are review of the FBI's handling of 702, a high-ranking FBI official that refused to cooperate with us because he had retired, and it would have been an important interview to have in connection with our review of the President's surveillance program.

Back in 2005–2006 time period, the former attorney general and the former deputy AAG refused to speak with us because they also had left at that time. And there are—I could give you innumerable examples where we do our administrative work, and have similar situations that you've just referred to yourself, Mr. Chairman, which is resignations on the eve of testimony, and our inability then to get the evidence we need.

Chairman CHAFFETZ. Yes.

Ms. BULLER. From a Peace Corps perspective, our employees are all term limited, so after 5 years, they time out. And so if we want to speak with them after that period of time, they are no longer a government employee. It makes our job a lot more difficult.

Chairman CHAFFETZ. Very good.

I really do appreciate you bringing up the idea of whistleblowers. In fact, later this afternoon, we have a hearing specifically on whistleblowers, and they do need to have unimpeded access to communicate, not only with the inspectors general, but also Members of Congress, and we take that very, very seriously.

I want to just, in the last minute and a half that I have here, one of things we're deeply concerned about, we heard testimony throughout the last couple of years about sexual misconduct, sexual assault, the varying degrees of table of penalties. One of the more

stark examples I like to use was within the Department of Justice, because if you look at the Department—even within the Department of Justice, they have different tables of penalties, different definitions. I think that is a congressional challenge for this committee, and something we do plan to address.

If you can illuminate or shed any light on challenges on things you've seen that you think we should address as we try to deal with this problem in making sure that we get rid of these bad apples. Does anybody have an example or something they can shed some light on? Go ahead, Mr. Horowitz.

Mr. HOROWITZ. As the committee is obviously aware, from our review on the law enforcement components of the Justice Department, and as the chair mentioned, we found these wide-ranging different uses of the penalties. The terminology, we are about to go forward with a report about how the civil division handles these issues. It will again show a unique approach, different approach by another component of the Justice Department. I think one of the things that's very important as sexual harassment becomes something that needs to be addressed forcefully and clearly is coordinated, high-level approaches. It can't be decentralized within an agency. It can't be left to 30-plus components in the Justice Department to decide what 30 different ways they are going to approach it. Because the memo comes from the leadership on zero tolerance. And so if leadership is the one putting out that policy, and is expecting to create the culture, they need to look at that and drive that throughout the organization equally.

Chairman CHAFFETZ. Thank you. My time has expired. I now recognize the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you all for being here.

Mr. Dahl, you raised two issues that really caused me to pay super attention, when you raised the issue about the Job Corps. Without getting into, you know, any confidential information that you can't disclose, at some point, I would really like to talk to you about that, because that is a serious problem. You may not know it, but I had a nephew who was brutally killed about 5 years ago, shot to death in Norfolk. I would just like to talk to you about the Job Corps, because I would like to know that young people that are going into the Job Corps are going to be safe.

The other thing is the compounded drugs, 5 years now, Bernie Sanders and I and others had been working on the high price of drugs in the fraud schemes. I didn't even know you all got into that kind of stuff. I would really like to follow up on that.

Mr. Roth, we understand that the number of inspectors general received the phone calls from Trump officials on Friday, January 13th, 2017. Some spoke directly with them, while others received voice mails, but the message was the same, the jobs were "temporary." Mr. Roth, I understand that you received one of these phone calls. Can you tell us specifically who called you? Do you know?

Mr. ROTH. Yes, I got a call from the head of DHS transition team about 7:15 that Friday night.

Mr. CUMMINGS. And can you tell us what that person said?

Mr. ROTH. It's along the lines of what it is that you summarized, which was that I would be allowed to stay through the change in

tran—administrations, but that that would be temporary in that he had assumed that I was already in the process of looking for another job.

Mr. CUMMINGS. Did the Trump official indicate they had any concerns about your performance?

Mr. ROTH. No, they did not.

Mr. CUMMINGS. And how long is your current term supposed to go?

Mr. ROTH. Well, I serve at the pleasure of the President, so I can be removed at any time by the President, with obviously 30 days' notice to Congress.

Mr. CUMMINGS. And so, were you surprised by the call? And what was your reaction?

Mr. ROTH. Well, yes, I was surprised by the call given sort of the tradition that inspectors general aren't removed from office typically or historically, so I immediately, of course, called Michael Horowitz and pulled him out of a hockey game on Friday night to report this information.

Mr. CUMMINGS. Was he playing or what?

Mr. ROTH. It was a Capitals game so I certainly hope not.

Mr. HOROWITZ. Certainly not.

Mr. CUMMINGS. We have obtained a transcript from a voicemail left by a Trump official with another inspector general. The voicemail said, and I quote, "I'm calling on behalf of the Presidential transition team to inform you that you are being held over on a temporary basis to continue working in the capacity of the inspector general following the Inauguration," end of quote.

So that is also consistent, telling the IG that his position is only temporary.

Mr. Horowitz, you are the head of the IG organizing body, CIGIE. Is that correct?

Mr. HOROWITZ. That's correct?

Mr. CUMMINGS. Can you please tell us about how you learned about these calls?

Mr. HOROWITZ. The first call I got was from Mr. Roth as I was sitting at the hockey game. Spoke to him from the game, then got word of two other IGs who had received similar, or had received calls that evening, I'm not sure when I knew exactly what they had heard. And we arranged a call for Saturday amongst several of us in the IG community, including the three IGs who got calls. Several additional individuals, Inspector General Buller, myself, vice chair of CIGIE, vice chair of the Leg committee to try to understand who got calls, who didn't get calls, in part, because all three IGs reported that they were told that all IGs were going to be getting the call, but when we got on the call Saturday morning, more of us who were on the call had not gotten calls than had gotten calls.

Mr. CUMMINGS. I see.

Mr. HOROWITZ. So we were trying to figure out what was going on here and different people—the three individuals who got the calls got very—got sort of core information, as well as some other information just from the dialogue back and forth. And so what we really tried to do that weekend, and it was a holiday weekend, it was the Martin Luther King holiday weekend, we set about trying to figure out how could we reach out to transition officials to under-

stand what was going on, given the calls three people got, the fact that the message was all IGs were going to get the call, but not all IGs general had gotten the call, at least at that point. And just trying to better understand where we were.

Mr. CUMMINGS. How were the IGs feeling about these calls, if you know, what was the sense of concern?

Mr. HOROWITZ. I think it is fair to say everybody was concerned if not knowing more as to what was the message here. Was this a message like Mr. Roth got about planning to move on? Was it some misunderstood—we just don't know enough.

Mr. CUMMINGS. Would you tell us—with the chair's indulgence, would you tell us what happened over the next few days, and what did you do? What did others do? And how did you express this concern to the Trump team?

Mr. HOROWITZ. Certainly. To be clear, I learned a lot more Tuesday when we came back to work, because Tuesday morning was the monthly IG meeting, so all IGs got together 10 a.m. On Tuesday morning. I did not talk about what I do it over the weekend, until I got to Tuesday.

Mr. CUMMINGS. Uh-huh.

Mr. HOROWITZ. Until Monday, we learned of only the three calls. We reached out through the various context we each had on the call to people we thought who could try and connect us to other people to get to the Trump transition team. We didn't have any clear lines into higher level Trump transition folks. We had contacts at our agency level transition team, but we were clearly looking to go beyond that.

Mr. CUMMINGS. Sitting here today, can you tell me how many IGs got the call or voicemail?

Mr. HOROWITZ. By Tuesday morning, after the CIGIE meeting, I'm guessing—and I don't have an exact number—I'm guessing it's upwards of six to 10.

Mr. CUMMINGS. Can you survey that and get that information back to us, if you don't mind?

Mr. HOROWITZ. Yeah.

Mr. CUMMINGS. And Mr. Horowitz, as I close, I understand that someone seemed to inform at least some of the IGs that a decision had been overruled by higher-level officials within the Trump team. Who informed you of that? And what were you told? And I'm just curious.

Mr. HOROWITZ. Yeah. So on Monday, I believe it was, we heard back from staff for this committee, majority staff for this committee that they had heard through their contacts with the transition team were their contacts, and the Senate Homeland Security and Governmental Affairs Committee contacts with the transition team that the call shouldn't have been made; it was a lower-level decision that had not been vetted at a higher level. That there was no plan to remove all IGs, and that the IGs would be getting calls—the IGs that got calls would be getting calls to let them know those calls shouldn't have been made.

Mr. CUMMINGS. Do you all have anything in writing saying that?

Mr. HOROWITZ. I don't.

Mr. CUMMINGS. We're going to try to see if we can get you something in writing.

Mr. HOROWITZ. If I could just add.

Mr. CUMMINGS. Please do.

Mr. HOROWITZ. On Tuesday morning, that also on, I think Sunday or Monday, an IG had gotten a call from Mr. McGahn, who is now the White House counsel.

Mr. CUMMINGS. Do you know who that IG was?

Mr. HOROWITZ. The IG of the Federal Election Commission who knew Mr. McGahn, because he had been a member of the Commission at one point, providing her with the same message that we had heard, that I had heard on, I think it was Monday, from majority staff. I then got a call this past Friday from Mr. McGahn consistent with what he had told the IG at the FEC that he would be reaching out to me to essentially say the same thing to me that he had told her on that MLK holiday.

Mr. CUMMINGS. We're going to try to get the IG something in writing, because I think it is very important that they have that document. When you come to people's jobs and their families and their welfare, but more importantly, their morale and their security, I think it is important that they have a document saying that that is simply not the case, and we'll work to make that happen.

Thank you very much, Mr. Chairman, for your indulgence. I really appreciate it.

Chairman CHAFFETZ. The gentleman from Texas, the new subcommittee chairman, Mr. Farenthold.

Mr. FARENTHOLD. Thank you, Chairman Chaffetz.

And I want to shift to a little bit of dollars-and-cents questions here. Mr. Roth, I know that, in your statement, you draw attention to wastefulness in acquisition programs. It's something we hear in Congress all the time, how government spends a whole lot more money than it should acquiring things and takes longer to deploy them and delivers less capability than promised.

And, obviously, you can look within the Department of Homeland Security, the TSA, and their puffer machines, and warehouses full of equipment that either doesn't work, doesn't get deployed, or both. What all are y'all doing to reduce waste in acquisition?

Mr. ROTH. Well, certainly, one of the things we're doing is an increased emphasis on acquisition reform and acquisition auditing. So that's one of the things that we really didn't have a capability of, say, 3 years ago. And thanks to Congress appropriating additional funds for more FTEs, we're able to actually focus on this issue more than we had before. So that's one aspect of what we're doing.

The other aspect of what we are doing is to try to ensure legislation that will put guidelines in place for the Department of Homeland Security as to their major acquisitions, what they have to do, increased reporting, both to the IG as well as to Congress, to ensure that major acquisitions continue on track.

But, really, our emphasis is on further auditing of these programs, including what we call life-cycle auditing, which is we don't wait until all the money is spent and then we say, "Well, you just wasted \$1 billion on an acquisition." Rather, we go in sort of while the requirements, for example, are being developed and then later on during the course of the acquisition to ensure that it's on track.

Mr. FARENTHOLD. You talk about billions of dollars. There has been 11 years and 1.5 billion spent on an IT system for the U.S. Citizenship and Immigration Services, and you're still using a paper system there. And, actually, Homeland Security is one of the more tech-savvy agencies in the government. I mean, we see the same thing with a system—IT system in the VA.

What's the big stumbling block in the government to being able to use computers that every corporation and small business and middle school student are able to do?

Mr. ROTH. Well, a couple things: One, the size and complexity of some of these projects are enormous. So when you're talking about the immigration system, these are, you know, literally millions and millions of files. The tempo, the operational tempo of CIS is just enormous. And I'm certainly not apologizing for them or excusing what it is that they do, because they have a paper-based system that costs—

Mr. FARENTHOLD. You've got the airlines that do billions of transactions. You've got credit card companies that are able to do these transactions. You've got ExxonMobil, a global corporation that has a reasonable IT system, but the government can't do it.

Mr. ROTH. Right. Well, a couple things: One is that there was never a structure in place to do the acquisitions correctly. That was the first issue. Two, the expertise—that is, getting the personnel who actually understand these and have the ability to do the acquisition—I think, has been a challenge. And, thirdly, the acquisition process itself in the government is incredibly burdensome compared to, I think, private industry.

Mr. FARENTHOLD. And I think we need to spend some time, Mr. Chairman, and will continue looking into how we reform that.

And I want to give the other IGs here—I don't think any of you guys' agencies, with the exception of maybe Justice, has anywhere near the acquisition budget Homeland Security does. But are you seeing similar problems within acquisition of your department? I mean, we'll just go down the line. We'll start with you, Mr. Horowitz.

Mr. HOROWITZ. We are doing more and more contract audits, and we have nowhere near the contracting that DHS does, but we are seeing challenges at DOJ. We saw at the FBI when we looked at their efforts to move to a computer-based system for handling all their paperwork.

Mr. FARENTHOLD. Peace Corps, Ms. Buller?

Ms. BULLER. Peace Corps doesn't have a large acquisition program, but the contracting function has always been a problem. It has been a management challenge for the past couple of years. The challenge at Peace Corps is more in line with the staff leaving every 2 to 3, 5 years. We have a 30-percent turnover rate in the Peace Corps per year.

Mr. FARENTHOLD. And Mr. Dahl.

Mr. DAHL. Similar to Mr. Horowitz, we're finding problems with the contracting and the processes they're using for contracting and the approaches they're using. And we've issued an audit that we provided to this committee last year on using a time and materials contract long beyond its time and necessity.

Mr. FARENTHOLD. All right. So, finally, I see I'm just about out of time. Mr. Horowitz, I would challenge you to work within your organization. What is most helpful to us in Congress are some concrete recommendations of what to fix, and I would like to put that on your whiteboard of things to do.

Mr. HOROWITZ. Absolutely, we will get you some.

Mr. FARENTHOLD. Thank you.

I yield back.

Mr. PALMER. [Presiding.] The chair now recognizes the gentleman from New York, Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman.

And I'd like to thank all of the panelists and thank you for all of your hard work. And really to build on what Blake Farenthold was saying, you perform really valuable work in just the contracting area. It's over \$400 billion, the private contracts, and you're overseeing this system and making sure that it works well.

But, recently, the President came out with a hiring freeze, and there's no time limit on it. So I'm just wondering how that is going to impact your ability to do your job, particularly when reports show that your job actually saves taxpayers money.

The Council of the Inspectors General on Integrity and Efficiency released a report to the President in 2015 that provided impressive cost savings that resulted from the work of IGs. For example, for every dollar invested in IGs, the report said the government has a potential saving of \$14. That's an incredible rate of return on investment. And I think that shows that freezing your departments, or freezing all of you, is really going to harm taxpayers.

In 2015, the report explained that the Federal Government spent a total of approximately 2.7 billion on offices of IGs, which means that, from that investment, those offices saved our Federal Government approximately 35 billion.

Mr. Buller, these are impressive numbers, correct?

Or, anybody, do you want to comment on how the IGs have saved money for the taxpayers in the compounds that you have? And, also, what's it going to be like to have this hiring freeze? I mean, do we have vacant IG posts now that are not filled? How many are not filled? Does anyone know? And what is the impact of this hiring freeze?

Mr. HOROWITZ. Just on the vacancies, there are nine vacancies of the 36, so 25 percent of the Presidentially appointed IG positions are vacant. There are two agency-level IG positions vacant, two agency-appointed IG positions that are vacant. And then the Architect of the Capitol position, which is a congressional position, is vacant. So there are 12 total vacancies right now in the IG community.

In terms of the hiring freeze, it is a concern of ours. We were hit very hard during sequestration. It did impact our ability to do our work. We were pleased yesterday to see the guidance issued by OMB and OPM on the hiring freeze in the sense of acknowledging that IGs are agency heads for purposes of evaluating the exemptions, but that doesn't solve the problem entirely, obviously.

And so we're looking forward to working with the incoming OMB Director, the incoming head of OPM, and figure—Congress as we go through the appropriation process, because you're right: ulti-

mately what will happen if we are reducing and cutting staff and limiting our ability to do our audits is the waste, fraud, and abuse that we root out regularly will be impacted.

Mrs. MALONEY. Is there any place where all of the waste, fraud, and abuse is put together in one report of what the IGs have meant to the taxpayer?

Mr. HOROWITZ. We do an annual report to the President of the United States and post it publicly.

Mrs. MALONEY. I'd like to see that annual report.

Mr. HOROWITZ. We will send it to you.

Mrs. MALONEY. And I'd like to really suggest to my colleagues that we might look at some type of two-tiered approach in the hiring freeze; that, if it's an agency that is making the government more efficient saving taxpayers' dollars, as IGs do, then it should have an urgency of being filled and not left vacant.

You mentioned Presidential IGs. What's the difference between a Presidential-appointed IG and another IG? I thought all IGs were treated the same. They're not?

Mr. HOROWITZ. They're the same under the statute in terms of protections. The difference is the 36 of the 73 IGs are nominated by the President and have to be confirmed by the Senate; 37 of the 73 IGs are appointed by their agency heads. They don't go through Senate confirmation.

Mrs. MALONEY. Okay. Is it tied to the agency?

Mr. HOROWITZ. It's tied to the agency.

Mrs. MALONEY. It's tied to the agency. I'd like to see a list of which—

Mr. HOROWITZ. We can do that.

Mrs. MALONEY. —for the committee. I think the committee would like to see which are Presidential and which are not.

My time has expired, and I thank you very much for the work that you do for our country. I love the Peace Corps. Okay.

Mr. PALMER. The chair now recognizes the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

Welcome.

Mr. Horowitz, I know that you've opened up an investigation into the FBI's handling of the Clinton email case. As part of that, are you going to look into aspects of the case such as why a grand jury was never impaneled?

Mr. HOROWITZ. We have announced the initiation. And one thing I do want to make clear, as we tried to make clear in our announcement, it is not—it covers not only what the FBI did but what the Department did as well. And so—

Mr. DESANTIS. Okay. So some of the concerns that have had—and I know there have been concerns on all sides—why a grand jury was never impaneled, the unusual immunity agreements that were generated allowing some of the subjects of the investigation to actually appear for—as lawyers for Secretary Clinton, the Loretta Lynch-Bill Clinton infamous airport meeting, and why the Attorney General didn't recuse herself—so all that could potentially be looked at?

Mr. HOROWITZ. Correct. That was the purpose of trying to—

Mr. DESANTIS. Because I think it was reported that you were only trying to look at the FBI. And so I'm comforted by that because I think they're legitimate questions on all sides, but if you're only going to focus on one thing when there were other questions—so that's good.

Mr. Roth, you've been very upfront about trying to root out some of the bribery and corruption involved in the agency, particularly with regards to immigration and border security. There was a big New York Times article that came out, I think, just at the end of last year. That's going to be a focus of the administration with securing the southern border.

So what is going on right now? Is there any update? Is this still a persistent problem? I know it has been a priority of yours. Is there anything we can do to try to address it? Because we spend all this time on trying to get the policy right, but if there's problems with implementation and then there's incentives for corruption, then that obviously is going to undermine everything we're doing.

Mr. ROTH. Right. I mean, this is definitely a high-risk area. Anytime that you have a Southwest border where you have, you know, the Mexican cartels with the kinds of resources and the kind of creativity that they have, certainly the sort of frontline defense is always going to be vulnerable. So there always has to be watchfulness, both by the agency itself, CBP, as well as Border Patrol and ICE, but also by us to oversee some of the overseers.

We are, candidly, challenged by resources. We have 1 agent for every 2,000 employees and contractors, so it is an enormous challenge to be able to tackle this. I think—

Mr. DESANTIS. So more resources to your office could potentially save the taxpayer a greater amount of resources on the back end if they're being employed successfully?

Mr. ROTH. These individuals have keys to the kingdom. I mean literal keys to the gates that are on the Southwest border, so absolutely.

Mr. DESANTIS. Well, we want to work with you on that because this is important. I want the border secured. But I don't want to get into a situation where we're putting a lot of effort in and then we're being undermined.

Mr. Dahl, you note in your testimony that the unemployment insurance program was the seventh highest amount of improper payments among all Federal—I think it was 3.5 billion, correct? Do you have any idea what the total number of improper payments for Federal Government-wide was for 2015?

Mr. DAHL. For 2016, it was 144 billion, I believe, spread across—

Mr. DESANTIS. I think that's right. My number, I have the 2015 number: 136.7 billion. And then I think, since 2004, the cumulative amount of improper payments has been over \$1 trillion. Does that sound accurate to you?

Mr. DAHL. That's correct.

Mr. DESANTIS. So what tools can Congress provide that could aid in preventing some of these improper payments, because we talk about different waste in the government? There is a lot of waste. But these improper payments, I mean, that's real, real significant

money. And we kind of do oversight over it, but I would like to get to a point where we're doing something so that it doesn't happen to begin with. So do you have any recommendations for us?

Mr. DAHL. Certainly. I think one of the tools that we needed you provided us in the IG Empowerment Act, and that is relief from the Computer Matching Act that allows us now to take data in one agency and match it against data in another agency to provide investigative leads or even program integrity leads to the Department. And I think that's going to help us a lot—

Mr. DESANTIS. Have you seen results yet?

Mr. DAHL. Well, we just got the authority, and so we're exploring avenues to do that in my agency, and I know others are doing it as well. And I think that that will assist us.

This is—you know, even for our unemployment insurance, improper payments, the level of improper payments has remained the same for years and even after we've done audits and multiple investigations. And I think sometimes the program fixes are what's necessary, and some of the vulnerabilities in the programs need to be patched. And we've made recommendations to the Department to fix those, and I think with help from Congress in—

Mr. DESANTIS. Do those require legislation, or can they be done by the agencies?

Mr. DAHL. Both.

Mr. DESANTIS. Okay. Well, keep us posted. I'm getting out of time. But keep us posted on the implementation. We want to make sure that's working. And then if the agency is not taking the action, if there's things we can do here, I know the committee would be interested in helping you guys out. Thank you.

Mr. DAHL. Thanks.

Mr. PALMER. Before I go to the next member, I want to recognize myself for a followup on that in regard to the improper payments. Having looked into that—I think it was in 2015 where we had the \$130-something billion in improper payments—60 billion of that were improper payments to hospitals related to Medicare. Are you looking into that? Is that something the IG's Office is looking into?

Mr. DAHL. Yeah. The IG's Office from Health and Human Services, that is a primary mission that they have, and they are working on that. Dan Levinson, the IG, just spoke about that recently and the efforts that he's making to beat down those numbers. And that is the primary driver for the improper payments, and yes.

Mr. PALMER. There's another 17 billion of improper payments related to Medicaid, which would involve the States as well. Are you looking into that?

Mr. DAHL. And he is—his office is looking into that and spending a considerable amount of time on that issue.

Mr. PALMER. The chair now recognizes the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

First of all, I want to thank you for your willingness to testify this morning, and thank you for all the work that you do and the people behind you, the work that they do.

We have obtained what we believe is an email from the Trump team to their political officials ordering them to make a round of calls to their assigned agencies telling the IGs that their jobs are

only temporary. That's up on the board. I don't know if we could blow that up a little bit, but I'll read it anyway for those who can't read it off the screen.

The email was sent on January 13, 2017, at 6:36 p.m. It is from someone on the Presidential transition team, and it is to the transition, quote, "team leads." Mr. Horowitz, do you got any idea who the team leads are?

Mr. HOROWITZ. I am presuming it's the agency teams, given what I understood happened over the weekend, but I'm—obviously don't have any further insights.

Mr. LYNCH. So the people that the transition team assigned to each department, each agency?

Mr. HOROWITZ. That would be my guess.

Mr. LYNCH. Okay. The subject line also quotes "TONIGHT" in capital letters. I don't know if that's blocked out. It might be redacted, huh. Oh, no, no, no, it's up there, on subject line, "TONIGHT," in capital letters.

And then it says this, and I'm going to quote from it, quote: "Thank you for getting us the IG information earlier today so that we could vet. As a critical followup to that, could you please reach out tonight and inform"—and "tonight" again is in bold—"and inform the IGs in your respective agencies that they are being held over on a temporary basis. Please leave a message if you don't reach them."

Has anybody else seen this email before? Anybody?

Mr. HOROWITZ. I did see it sometime during that following week.

Mr. LYNCH. Okay. Mr. Roth, you say—

Mr. ROTH. After the fact, yes.

Mr. DAHL. I did as well, after the fact.

Ms. BULLER. I didn't see it.

Mr. LYNCH. Okay. All right.

Mr. Horowitz, if this email is accurate, it indicates that there was a coordinated campaign to call multiple IGs. And from your previous testimony, this was not some junior rogue employee working out of a sub office. This is really very methodical that 6 to 10 IGs got the call, that this thing went out, and then there's another process in retraction. Do you agree?

Mr. HOROWITZ. I know what, you know, it says here and what—the calls that went out and then got—

Mr. LYNCH. Do you have any idea what the urgency was?

Mr. HOROWITZ. I have no idea. I was not one, by the way, who got a call, just—

Mr. LYNCH. Yeah.

Well, Mr. Roth, do you have any idea what the urgency was?

Mr. ROTH. I do not. I asked the team lead for DHS why this was happening, and he said he was simply passing on a message that he had gotten from his higher-ups.

Mr. LYNCH. Okay. The email mentions vetting the IGs. Any idea what that would require? I mean, under the IG statute, you're required to, you know, have certain skills: accounting, you know, legal background. Any idea what the vetting might require?

Mr. DAHL. No idea.

Mr. LYNCH. Okay. Look, let me just get back to what Mr. Cummings talked about earlier. We've had a pattern of conduct

here on the part of the new administration. First, they try to eliminate the ethics office. They put a gag order on Federal employees. They put a hiring freeze on employees. Energy Department personnel, they want to do an inquisition on anybody who uses science in the conduct of their business. And this ban on all Muslims—now it has been backed off to a few countries. But even, you know, U.S. citizens who are Muslims and people who are here legally also fell under that. And then, after the fact, they go back.

But the problem is that it has this chilling effect. And I know that each of you—and, look, you’ve all been up here before. You’re frequent flyers to this committee. We’ve seen your work. You do a great job. You know, when Mr. Madison and Mr. Hamilton set up this government, they put in checks and balances so that one person couldn’t screw it all up, and we’re going to test that system that they created over the next 4 years.

We need you—look, you each—and a lot of people in the audience today, you each took an oath of office. You took an oath. You took an oath to uphold the Constitution. We need you to do your jobs. We need you to do your jobs, not just when it’s easy, but when you’ve got somebody pushing against you that might want something else. So we just ask you: Do your jobs. Do your jobs. Uphold the Constitution, and we’ll get through this.

Thank you. I yield back.

Mr. PALMER. The chair recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you.

Mr. Horowitz, good to see you again.

Mr. HOROWITZ. Good to see you.

Mr. ISSA. I never had any doubt you’d be held over.

Let me go through this.

And, first, I want to say that I’m concerned that the transition team, now defunct, certainly could’ve done a better job in informing people who are—technically serve at the pleasure of the President that they were, in fact, going to be retained. And there’s plenty of examples of people who got almost to the Inauguration Day and kept saying, “Do I leave or do I stay?” And many of them are people that wanted to stay and the administration wanted to keep.

But I want to be very, very crucial in getting to the bottom of this because it has been alleged that this was done to have some sort of a chilling effect. So I just want to go through a couple of questions to the extent that you know, and anyone else can pipe in if they have better knowledge.

I’ve Google’d this individual, appears to be a very junior person, with nothing—nothing to show anything other than LinkedIn and Facebook, so I can’t find that this is a high-ranking person. Do you have any opinion about whether this was somebody who was to have a major position of authority, or it’s just someone sending this?

Mr. HOROWITZ. To be honest, I have no idea who the person is or what their role was.

Mr. ISSA. Right. And I only know what Google tells me in this case, so it appears as though this is somebody, quite frankly, who was put on the transition team like hundreds of other people.

The date on this is January 13, 2017. So is it fair to say that this person had no authority at that time because no one on the transition team had authority until January 20 legally?

Mr. HOROWITZ. Yeah. Again, part of the issue we had on that Friday night and Saturday and over the weekend was trying to figure out what this was and who it was from because, clearly, there were people giving the message, as you said, "You're staying or you're going."

Mr. ISSA. Right.

Mr. HOROWITZ. And we didn't know what this message was.

Mr. ISSA. Were there any IGs terminated on January 20?

Mr. HOROWITZ. No.

Mr. ISSA. So 100 percent of the IG in place, both permanent and acting, were retained. Is that right?

Mr. HOROWITZ. We're still here.

Mr. ISSA. And that's all tradition, basically. It's not common for mass dismissals or even minor dismissals in the IG community historically, right?

Mr. HOROWITZ. Right, it hasn't happened in the last four transitions.

Mr. ISSA. Okay. So, from an action standpoint, it was business as usual, but technically, there was a question of would you or wouldn't you be held over. Is that correct?

Mr. HOROWITZ. Well, because of these calls, I, again, was not one to get them, so I'll defer to others on that issue.

Mr. ISSA. Right. Did all of you receive confirmation other than this that you would be retained? No. So how did you come to work the next day on January 21?

Mr. HOROWITZ. We just showed up.

Mr. ISSA. Well, the Monday.

Mr. HOROWITZ. Right.

Mr. ISSA. You just showed up, okay.

You know, again, I want to say that we're not going to let this sit here. I do want to know. Unfortunately, the one challenge I think we have is the transition team is now defunct, and we're really looking toward the future. And to that future, have any of you begun working with new political appointees yet to try to listen whether they are going to support the continued work of the IG and perhaps even greater?

Mr. Roth.

Mr. ROTH. Yeah.

Mr. ISSA. You have a boss, so how's it going?

Mr. ROTH. I do have a boss, and, in fact, I met with Secretary Kelly on that Thursday of that first week. And he announced his, you know, firm support of the IG concept and me personally, so—

Mr. ISSA. When he was at Central Command and so on, or Southern Command, he had a long history of using his IGs.

Mr. ROTH. He appreciates the value that we add.

Mr. ISSA. Okay.

Mr. HOROWITZ. We obviously don't have a new Attorney General.

Mr. ISSA. You're so close.

Mr. HOROWITZ. We do have some new leadership positions in the Office of Attorney General, Office of Deputy Attorney General, and I did meet with them last Friday and engaged with them on some

of the issues that were pending and some of the matters they were likely to be seeing soon from us.

Mr. ISSA. Okay. And just for the record and I think not just for you but for all of your colleagues, certainly, I would hope that every IG would feel very free to contact any member of this committee, including obviously the chairman, should there be anything that would resemble interference or inability to do the job.

I have one final closing question. Since the implementation of the act of last year is fairly new, do any of you have current examples where you're still not getting information covered by the "you get everything except" and the exceptions are supposed to be virtually zero?

And I know—Mr. Horowitz—I want all of your answers—but I know you have had a history of being blocked particularly as to attorneys at the Department of Justice.

Mr. HOROWITZ. We have had no issues whatsoever, and there has been a significant change in approach.

Mr. ISSA. Excellent. Glad to hear it.

Anyone else?

Ms. BULLER. At Peace Corps, before the former Director left, she put out a joint communication with me basically saying that we have access to everything now, including—

Mr. ISSA. Especially the assaults and harassments and the actual rapes and so on that historically were a problem for you?

Ms. BULLER. Yes.

Mr. ISSA. Mr. Dahl.

Mr. DAHL. We've made significant progress in overcoming some of the delays that we were experiencing in getting access to records.

Mr. ISSA. Excellent. Well, the committee has done good work.

Thank you, Mr. Chairman.

I yield back.

Mr. PALMER. The chair now recognizes the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman, and welcome to our panel.

My friend from California wants to minimize what just occurred, and I understand that from his point of view. But there's nothing trivial about getting six or seven phone calls to individual inspectors general—including yourself, Mr. Roth—from a transition team on the eve of the inauguration all but warning you you're going to be replaced or could be. And then we saw the redacted document, and I'd love to have some Republican support in making sure that those redactions are removed and we get the actual full document, but—

Mr. ISSA. Would the gentleman—the chairman—or the ranking member indicated he would make it available to us. He has that.

Mr. CONNOLLY. Good.

Mr. Horowitz, you're the head of CIGIE. I assume you took that seriously, and you saw the gravity of the issue. There was nothing minimal or trivial about these communications to your colleagues.

Mr. HOROWITZ. Absolutely took it very seriously. That's why we worked all weekend—

Mr. CONNOLLY. Right.

Mr. HOROWITZ. —on the holiday weekend making calls.

Mr. CONNOLLY. And I assume the source of your alarm wasn't just the personal careers of your colleagues, though that's of concern, but the overall impact of those communications in terms of the potential for politicization of the IG Office itself.

Mr. HOROWITZ. I think it's fair to say that all of us, including those who got the calls, were concerned not just about their own positions but about the institution itself.

Mr. CONNOLLY. Right. And so you saw a potential threat.

Mr. HOROWITZ. Correct.

Mr. CONNOLLY. And although the President has the power, because half of your colleagues serve at-will, in a sense—they serve at the pleasure of the President and subject to Senate confirmation—I will read to you the author of the Inspector General Act of 1978, a former colleague, Representative L.H. Fountain. And he said: "It was never intended, however, that the inspectors general be automatically replaced on a wholesale basis without regard to their individual merits whenever there is a change in administration," unquote.

Now, I know originalists don't want to pay any attention to legislative history, but the rest of us mere mortals, especially those of us who write the laws up here, actually do pay attention to the intent behind legislation and the words accompanying the introduction or passage of legislation, especially by the author of the legislation.

Would you agree with that sentiment? Is that your understanding, Mr. Horowitz, that it was never intended to have a wholesale replacement even though the power technically certainly is there with the President?

Mr. HOROWITZ. I would and would note that the only time that had occurred, which was in 1981—

Mr. CONNOLLY. Ronald Reagan.

Mr. HOROWITZ. —President Reagan removed and then unremoved several IGs, this committee, or the Committee on Government Operations it was then called, issued a unanimous report stating—for almost precisely the words that you've just quoted, Congressman.

Mr. CONNOLLY. Thank you. So there's actually history here, going back to 36 years, in terms of trying to make sure we're not politicizing or wholesale removing and replacing inspectors general because of the concern about perception and about independence of office. Is that correct, Mr. Horowitz?

Mr. HOROWITZ. That's correct.

Mr. CONNOLLY. I didn't mean to stop you. I think you were going to say something.

Mr. HOROWITZ. No. I just note what is important to us on this issue is the bipartisan unanimous support for IG independents—

Mr. CONNOLLY. Yep.

Mr. HOROWITZ. —and that principle. Because everybody, I think, who knows the work we do understands that's the foundation on our work. If we don't have—if we're not independent, we cannot do what we're—

Mr. CONNOLLY. That's right.

Speaking of which, as the head of CIGIE, a terrible acronym—

Mr. HOROWITZ. I use Council of IGs to try and get away from it.

Mr. CONNOLLY. Only the Federal Government could come up with something like that, CIGIE. I go to a CIGIE meeting. We had a cocktail hour at CIGIE. I mean, anyway.

Mr. HOROWITZ. No, no, no, we don't do that.

Mr. CONNOLLY. No, no, I know you don't. I thought I'd give you the opportunity so you could deny that.

So one of the concerns I have, as you know, Mr. Horowitz, is that, exactly this: IGs have to be above partisanship, have to be perceived as independent and objective, cannot be tainted with anything. And when there is a concern it goes, unfortunately, from my point of view, there's very little accountability for anyone other than, I suppose, an agency head or the President with respect to IGs.

And I wonder if you could just comment on, what are we doing to try to make the process when there is a concern or complaint filed, the process more transparent, more thorough, more robust, and people are held accountable?

Mr. HOROWITZ. So, on that point, and I know we've had discussions in the past about the integrity committee and its operations and working on that, many of the changes that are in the IG Empowerment Act address those issues and the concerns that this committee had, other members have, and we are actually right now in the process of trying to make those changes.

And I'll just mention, one of the issues that have come up, in order for some of the responsibilities to be transferred from the FBI, which had been the chair, to the CIGIE and the IG on the committee, which is now the chair, is we need to get certain regulations cleared so that we can create Privacy Act notices and all the things that we have to do. And we're trying to understand how the regulatory freeze will impact our ability to do that.

So we're trying to move forward in that regard and look forward to having further discussions with you about these issues.

Mr. PALMER. The chair now recognizes the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

And thank each of you for your work.

And to the at-large IG community, thank you so much for the work that you do. I can tell you that, from my side of the aisle, I am going to be vigilant in making sure that your work continues on regardless of who is at 1600 Pennsylvania Avenue. We have your back. We believe in your independence, and anything that is out there to the contrary will be fought vigorously in a bipartisan way. And I know that my good friend from Virginia and I both agree on this particular aspect.

That being said, I want to make sure that it is clear that, to my knowledge, we have had no request to replace any IG, that there is a 30-day notice that has to be given to Congress, and there are zero IGs that have been noticed to Congress. Do you understand that, Mr. Horowitz?

Mr. HOROWITZ. I do. And I also appreciated the call I got from Mr. McGahn on Friday making that point to me personally.

Mr. MEADOWS. I'm—at the very highest levels of this administration, I have had a very comforting assurance that the work that the

IGs do and have done—is not to say that the work that you’ve done, whether it’s reports—I’m one of those guys that will stay up late and read your reports and read the footnotes.

And Mr. Roth and I have talked a couple of times on some of the reports that he and his team have done. And so let’s not discount the work that we’ve done in the past, assuming that the recommendations have been there, just because it’s a new administration. I think it’s important that we still follow up on those things.

And so here would be my request of each one of you: As we look at the IP—the IG Empowerment Act, what I would like is, what are the two things that are creating barriers for its full implementation as—and I know we’re very early in the process. But what are the two barriers that you’re seeing either technically or legislatively or administratively in terms of actually implementing that?

And then, as we start to get that, you know, anything that has a good intention also has components that perhaps are a byproduct that were not intended. Two areas that perhaps would be in a followup bill that could maybe either clarify or make life a little easier. Are all of you willing to get with the committee on that? All right.

So if I were to classify the anxiety level for some in the IG community, would you classify it as—on a scale of 1 to 10, with 10 being most anxious, would you say that it’s greater than 5? Mr. Horowitz.

Mr. HOROWITZ. I think it’s fair to say, now having been the chair of the council for a couple years, I think we’re always anxious as a group. It’s a group that has 73 very different opinions on everything, and I think you get 73 people coming up with different numbers.

Mr. MEADOWS. All right. What can Members of Congress do in a bipartisan way to assure the IG community that not only we value their work but that we certainly do not want anything to stand in the way of you doing your work?

Mr. HOROWITZ. I think the key part is a hearing like today for us, coming here and hearing bipartisan support for our work, the efforts to reach out to the incoming administration, including individual agency heads, to make sure they understand, so not just this committee but the other authorizing and oversight committees doing the same with each agency, making them clear.

I think you have my assurance, and I think all of our assurances by coming here, that we stand united in fighting for the underlying principle of independence in this act. And we didn’t spend years—certainly Kathy and I,—fighting our agencies on access issues, the FBI and DEA, testifying probably 15-plus times, taking on those agencies because they weren’t giving us access, to sort of hide and not come forward if there’s efforts to push back. So we’ll continue to let you know if we can’t do our work.

Mr. MEADOWS. So, real quickly, a yes or no answer, do I have your commitment to keep politics out of any analysis that you or your group does? And I’m going to go down the——

Mr. HOROWITZ. Absolutely.

Mr. MEADOWS. Ms. Buller.

Ms. BULLER. Absolutely.

Mr. DAHL. Yes.

Mr. ROTH. Yes.

Mr. MEADOWS. All right. Thank you. I yield back.

Mr. PALMER. Thank you.

The chair now recognizes the gentlewoman from New Jersey, Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. Thank you very much, and good morning to you. And I am sorry that I missed the beginning of the testimony, but I am delighted to see you here. And I want you to know that we support the work that you need to do, the resources that you need to do it, and the independence that you need to do it.

I have a couple of questions. I'd like to actually speak to Mr. Horowitz for a moment. Mr. Horowitz, on November the 4th, Ranking Member Cummings and House Judiciary Committee Ranking Member Conyers sent you a letter after one of President Trump's closest and most vocal campaign advisers, Rudy Giuliani, acknowledged that he had obtained leaked information several days before FBI Director Comey's now infamous letter to Congress about discovering potentially relevant emails.

Two days before Director Comey's letter, Mr. Giuliani stated, and I quote: "We've got a couple of things up our sleeve that should turn this around." He also stated that, and I quote, "a pretty big surprise" was coming in 2 days, previewing when Director Comey sent his letter to Congress.

During a followup interview, Mr. Giuliani confirmed this information and openly bragged about it. He stated, and I quote: "Did I hear about it? You darn right I heard about it."

I understand that you can't speak to the specifics of your ongoing work at this point, but I want to ask some basic questions about the review's parameters. A, there is a review taking place, I guess?

Mr. HOROWITZ. That's correct. We announced it on January 12.

Mrs. WATSON COLEMAN. Thank you.

Can you confirm that this review includes the allegations that the Department of Justice or the FBI personnel provided information directly or indirectly to outside sources?

Mr. HOROWITZ. Our announcement did say that we would look at the allegations that FBI employees and department employees improperly disclosed nonpublic information, and we will further define the scope of that as we now go forward and look at the issues.

Mrs. WATSON COLEMAN. Thank you, Mr. Horowitz.

Now, Mr. Giuliani has subsequently said he did not get any information directly from active agents. But, obviously, as a general matter, if active agents give information to someone who shouldn't have it and those people then transfer it, that's just as bad. If you learn that information about the FBI's investigation was leaked to former FBI agents who then potentially funneled it to others, I assume that you would need to speak with those former FBI agents as well.

So my question to you is, do you have the authority to interview individuals outside the government if you deem that to be necessary? And can you assure us that the review of these allegations in particular will be thorough and follow the facts wherever they lead?

Mr. HOROWITZ. On the latter, I can certainly assure you it will be a thorough and fulsome review. On the former, we do not have

the authority to compel individuals who are no longer Justice Department employees to speak with us. We had hoped to have that authority. The IG Empowerment Act, that the chair, the ranking member, this committee supported, had that authority. It got removed at the last minute, over the objections of the Justice Department, on the Senate side, and the final version did not include that. We do hope to get that authority, but at this point, we do not have that authority.

Mrs. WATSON COLEMAN. So then would you take the information that you have and the need that you would have to interview individuals no longer with government to some other element in the Justice Department and ask that it be pursued there, or is there no other avenue?

Mr. HOROWITZ. The only avenue for us is to make a voluntary request, and if individuals are willing to speak with us, we will have that opportunity; if individuals are unwilling to speak with us, there is no further way for us to compel them to speak with us——

Mrs. WATSON COLEMAN. Thank you.

Mr. HOROWITZ. — even if they have the most relevant information possible.

Mrs. WATSON COLEMAN. Thank you.

Shortly after your announcement, Director Comey stated that he was grateful for the review and that the FBI will cooperate fully. Inspector Horowitz, will you let this committee know immediately if the FBI's cooperation is anything other than full and complete?

Mr. HOROWITZ. Absolutely. And to date, we have gotten very strong cooperation.

Mrs. WATSON COLEMAN. Thank you.

Thank you very much, Mr. Chairman. I yield back.

Mr. PALMER. The chair thanks the gentlewoman.

The chair recognizes the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Chairman.

And I want to thank the panel, as my colleagues on both sides of the aisle have, and recognize you for your dedication, the dignity and objectivity of your work, and hope that we can continue to be very supportive of you.

Mr. Horowitz, to follow up on what my colleague Mrs. Watson Coleman was talking about, with regard to your investigative powers, oversight is so important. But holding oversight accountable is also so important that due process is necessary. And I think what you're speaking of is the deposition or testimony subpoena——

Mr. HOROWITZ. Right.

Mr. ROSS. —power that you do not have.

Mr. HOROWITZ. Right.

Mr. ROSS. So, when you present a case to the DOJ and they say, "Well, there's just insufficient evidence to go before grand jury," or, "We don't think a criminal act has been committed," and yet you know or you feel confident that it may have but you've been shorted, I think, your investigative powers, so, without regard to an appropriation, what would you consider to be the most important tools that you would need to have? Subpoena testimony? Subpoena duces tecum testimony? What other things procedurally would be

necessary in order to complete your case so that due process can ensue?

Mr. HOROWITZ. We have authority to subpoena documents.

Mr. ROSS. Records, right.

Mr. HOROWITZ. The key is getting the subpoena authority to testify individuals who either are former employees or employees of contractors or grant recipients, because we're pursuing various misconduct.

Mr. ROSS. And right now you don't.

Mr. HOROWITZ. And right now we don't.

Mr. ROSS. So they either submit voluntarily to an interview—and once they have counsel, that will never happen—or you just try to build a substantial case through voluntary witnesses who are third and fourth degree in the process. Is that—

Mr. HOROWITZ. That's correct. The only other option is, if it's strong enough and the Justice Department decides to open a grand jury investigation, the prosecutor can then issue grand jury subpoenas, but you need to get to that point.

Mr. ROSS. Right, you need to get to that point.

Okay. Let me ask the panel collectively, and we'll go through here, one of the issues that I've had a big concern about is official time, time spent by Federal workers when they're on the clock, but they're doing union activities. I filed a bill for the last several sessions wanting a report from OPM of official time spent by Federal workers. Is this something that either one of you have done or have had a request to do in your duties? And I'll start with you, Mr. Horowitz.

Mr. HOROWITZ. We have not had that request made of us. The only component in the—I think the only component in the Department with the union, the BOP has a union, but most of the other parts of the Justice Department do not have—are not union.

Mr. ROSS. Is that something that you would do if you were requested to do?

Mr. HOROWITZ. What I'd like to do is consider the issue, talk with my auditors about it, and try and understand better what it would entail for us.

Mr. ROSS. They've done it in the—OPM has produced it in the past, but they don't do it routinely, and so that's my issue.

Ms. Buller.

Ms. BULLER. We've never done one nor have we had a request to do it.

Mr. ROSS. Do you think it's important? Do you think that it's something—I mean, I don't know to what degree do you have union workers with the Peace Corps—

Ms. BULLER. Peace Corps does have a union, but I would have to check once again, as Mr. Horowitz would, to see what—how strong the union is and the number of members and whether or not there would be—

Mr. ROSS. I mean, in some cases, that's their full-time job is to be the union representative, and then they're being paid on official time to be doing that. And I just think that's a significant event that ought to be monitored and reported to the taxpayers.

Mr. Dahl.

Mr. DAHL. We have not received your request specifically to look at that either.

Mr. ROSS. And in order to have you pursue that request, what would—who would it have to come from? Would it have to come from the administration? Would it have to come from this committee? Would it—

Mr. DAHL. Various sources. The committee could ask us to look at it. And it's something that, if we would determine that it's a risk for the Department and it's a problem, we would initiate it on our own.

Mr. ROSS. I appreciate that. Thank you.

Mr. Roth, any—

Mr. ROTH. Same answer. We have not looked at that. I mean, we do have a number of Federal employee unions and Customs and Border Patrol, the Border Patrol—

Mr. ROSS. But nobody has ever made a request on you—

Mr. ROTH. We have not, and we have not looked at it independently.

Mr. ROSS. Okay. I appreciate it.

That's all I have. I yield back. Thank you.

Mrs. DEMINGS. Mr. Chair.

Mr. PALMER. The chair now recognizes the gentlewoman from Florida, Mrs. Demings—

Mrs. DEMINGS. Thank you so much.

Mr. PALMER. —for 5 minutes.

Mrs. DEMINGS. First of all, I want to thank all of you for being here with us. And I apologize if we've already covered this since I was late coming into the room. I believe I heard you say, Mr. Horowitz, that you do not have the subpoena power to require retired FBI agents to come and testify. But could you possibly ask the chairman of this committee to subpoena a retired FBI employee?

Mr. HOROWITZ. We wouldn't—and I don't think—we wouldn't go and do that. But by way of example, when we were unable in our Fast and Furious review to interview the former U.S. attorney who had resigned, we could not get the evidence. We actually came to this committee which had the—had subpoenaed the individual, and the committee agreed to share with us the testimony it had done of the individual's testimony. So that is an avenue we've used. It's obviously not the preferred avenue. And that only occurred because we were on parallel tracks with our investigations. That normally will not be the case.

Mrs. DEMINGS. Okay. Thank you.

Mr. PALMER. The chair now recognizes the gentlewoman from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

I have a question regarding what appear to be violations already of an act that this committee has championed, Whistleblower Protection Act. Indeed, I note, ironically, that, this afternoon, we're having a hearing on 5 years of the Whistleblower Protection Act. That was passed unanimously by this committee, yet I note that there have been disturbing signs of the Trump administration trying to silence dissent among employees of the Federal Government.

Several agencies—I note EPA and HHS in particular—have received gag orders that employees could not communicate with the

public. Amazingly—and I'm going to ask the chairman if this committee would look into reports that employees could not even talk to Congress. Now, these orders appear to clearly violate the whistleblower laws. Are any of you currently investigating or planning to look into nondisclosure policies or directives issued by your agencies?

Mr. ROTH. We are. We've had some issues with whistleblowers, for example, notifying us of potential retaliation as a result of giving us information or giving someone else information. They ultimately settle their case for whatever they get from the agency. The agency then requires basically a gag order, so then we're unable to interview those whistleblowers.

Because, again, our whistleblower retaliation investigations have two purposes: One is, of course, to make the whistleblower whole. But the other is to determine whether discipline needs to be imposed on whoever it was that did the retaliation.

So I think that's a defect in the system that we have at DHS, and we're going to be looking at that and potentially writing a report about that.

Ms. NORTON. Yes.

Any of the rest of you had any such experience?

Mr. Horowitz.

Mr. HOROWITZ. We don't have anything going on now, but obviously, we have authority over FBI whistleblower provisions, and we obviously now, in light of recent legislation, authority over whistleblower retaliation cases involving contractors and grant recipients. And we are seeing more and more of them, and we're handling them as they come in.

And these are important matters, and it's important for new leadership in the agency to understand the scope of the whistleblower protections, the whistleblower laws. I think it's very important for incoming officials, particularly those who haven't been in the government before or have experience with Federal whistleblower laws to understand the impact of the Supreme Court's decision in the MacLean case in 2015 because that was a case that has very—could have a very significant impact. And even after it was released by the court in 2015, we found instances where some components within the Department of Justice didn't appreciate the impact of it, and we had to explain to them why it limited actions they might want to have taken against individuals who spoke out publicly.

Ms. NORTON. Yes, Ms. Buller.

Ms. BULLER. At the Peace Corps, we actively investigate any allegations of whistleblower retaliation. We've had several cases in the past, and we continue to aggressively pursue any allegation of whistleblower—

Ms. NORTON. Can I ask if any of these instances you have indicated are recent?

Mr. HOROWITZ. We continue to get complaints in. I wouldn't say we have anything like what you've mentioned at DOJ at this point that have made news at other agencies.

Ms. NORTON. Yeah. Because the EPA and the HHS got these specific—got these specific orders. Now, they could chill people, and I'm sure there are Federal employees that are chilled to the bone.

But look, for example, there's an official channel at the State Department. It's a dissent channel. It has been there for a very long time. And some State Department officials expressed their dissent on one of the President's executive orders, and the public affairs officer came forward and said they should either get with the program or they should go.

Shouldn't Federal employees be concerned about such comments and their potential impact of using official channels, like whistleblower channels, if these fairly high-level State Department people were essentially told to shut up or get out?

Mr. HOROWITZ. I'll just say: It's certainly a concern for me, and I know for the IG community as a whole, to ensure that there is no chilling effect on whistleblowers coming forward.

Ms. NORTON. So how can you do that? How can you assure? How can you make employees know that—

Mr. HOROWITZ. Well, one of the ways we do it is through our ombuds programs that Congress helped create. It's very important for us to not only train employees within the Department but to train new employees joining the Department on the scope of the whistleblower laws and make sure they understand that individuals are allowed to come forward when they reasonably believe there are violations of laws, rules, or regulations, and they cannot be—there cannot be a personnel action, which is very broadly defined in the law, taken against them. People need to get whistleblower training upon coming into agencies, and the IG community needs to be working with their agencies to make sure that occurs.

Ms. NORTON. Thank you very much.

And thank you, Mr. Chairman.

Mr. PALMER. The chair now recognizes the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. Okay. We'll talk to you, Mr. Dahl, for a second. Is that okay?

The Federal Employees' Compensation Act program spending on compounded drugs rose dramatically from \$2 million, I think, in 2011 to \$200 million in 2016. And I think it's anticipated to double again last year when the final numbers are in. Have you looked into that issue at all?

Mr. DAHL. Yes, we have, Congressman. And we have multiple investigations around the country. We're working with other OIGs, including Postal Service OIG that's been very active on this issue, and VA OIG, HHS OIG, and the Department of Defense OIG. In addition, we have an audit that we're doing right now of the rising cost of compounding and why that occurred and what the Department is doing to manage those costs.

Mr. GROTHMAN. Do you feel you can comment on it now, or you don't want to comment yet? I mean, going up from \$2 million to \$600 million in 5 years is kind of a dramatic thing.

Mr. DAHL. Right. You know, it looks like that it didn't increase as much in 2016 as was expected, but the increase was still substantial enough that we are working with the Department to recommend programmatic fixes. They sent out a letter of medical necessity that require providers to complete now in—before they can prescribe compounded medications, and that appears to have had some ameliorative effect on the cost of compounded drugs.

But we are—this is a very big risk that we're concerned about, and we're also concerned about the fact that the FECA program didn't see this coming until very recently.

Mr. GROTHMAN. Okay. Maybe this is an example of what you were talking about. There's apparently a tube of cream we're paying \$32,000 or—a case for, \$32,000 with a compound found in wine that isn't even approved by the FDA. Do you want to comment on that?

Mr. DAHL. Well, in our investigations, we have found several of these pain creams that are used as topical creams, and the cost that we're getting billed for, that FECA is being billed for, is exorbitant, tens of thousands of dollars for one prescription. And we're finding in many of our investigations that the patients didn't know that they were receiving this, didn't ask for it, or didn't ask for it to be refilled.

Mr. DAHL. And so we are concerned about that, that's one of the avenues we're pursuing in our investigations.

Mr. GROTHMAN. Good. Going to pursue. Do you think there are any kickbacks involved there?

Mr. DAHL. There are. We have found kickback schemes in many of our investigations where the prescribing pharmacies are paying kickbacks to doctors, but the dispensing pharmacies are paying kickbacks to the doctors to prescribe these medications.

Mr. GROTHMAN. Any States that particularly involved in this, or parts of the country which have more sleazy practices going on?

Mr. DAHL. I don't want to comment on what parts of the country might be sleazy, but we—our finding that these are grouped in certain geographic locations. We have investigations around the country, but many concentrated in Texas, in California, in Florida, and other States.

Mr. GROTHMAN. Okay. An example, a tube of cream, what condition would you have that they prescribe this for?

Mr. DAHL. If they had surgery, and they have pain from the surgery, or they have a back disability that they would be going to the doctor for. There are also creams that are prescribed for reducing scar tissue from—following up on surgery.

Mr. GROTHMAN. \$32,000 a tube?

Mr. DAHL. That was for one of the medications, I think the Postal Service OIG found that. And we found multiple examples of—as I said, tens of thousands of dollars.

Now, I want to note that there are certain patients and certain compounding medications that are—that have found to be beneficial. We're concerned about the ones that, as you pointed out, are not approved by the FDA, and may be provided to patients who don't have the medical necessity to have those.

Mr. GROTHMAN. \$32,000 for a prescription, one tube and it might not do anything. Hmm? Kind of amazing. Well, that's why we're on OGR, we can just have hearings every day. We may have a whole hearing on that later.

Thank you very much for giving me my 5 minutes.

Mr. PALMER. I thank the gentleman. I now recognize myself for 5 minutes. I would like to get the panel's views on a couple of questions regarding the referral of criminal matters to the Department of Justice. Over the last 4 years, what's your estimate of how long

it took the DOJ to generally respond to your criminal referrals? Mr. Horowitz, we'll start with you.

Mr. HOROWITZ. I don't have any numbers sort of handy or available. I will say, we get fairly prompt attention from the Department, and the prosecutors we work with regularly when we do go to them with cases.

Mr. PALMER. Ms. Buller, was that your experience?

Mr. BULLER. Yes, the Peace Corps is a little different, because we also have usually complicated questions involving jurisdiction, so sometimes it takes a while to work through those.

Mr. PALMER. Mr. Dahl.

Mr. DAHL. Like Mr. Horowitz, we get prompt attention from the U.S. Attorney's offices and from are the Department of Justice in our criminal referrals. We made 277 last year, and we had 322 convictions last year. And so we feel like across the country, we get great support from our work.

Mr. PALMER. Mr. Roth.

Mr. ROTH. DOJ is highly decentralized with 94 different U.S. attorney's offices. I would concur with Mr. Horowitz and Mr. Dahl that it is generally good, but there are some areas in which sometimes a little extra attention needs to be paid, but I don't foresee this as a systemic issue.

Mr. PALMER. Do you have pending referrals left over from the last administration? The nods work on TV, but—

Mr. HOROWITZ. Yes.

Ms. BULLER. Yes.

Mr. PALMER. —unless the camera is on you, so let the record show the panel all said yes.

How many are over a year old? Do you have any that are over a year old?

Mr. HOROWITZ. I don't think so. I can go back and check. Like I said, as a general matter, it's a fairly prompt response for us.

Ms. BULLER. I don't believe we have any over a year old either.

Mr. DAHL. I don't believe we have one over a year, but we will check.

Mr. ROTH. Likewise, that would be an extreme case.

Mr. PALMER. Let me ask you something, does the Inspector General's office have jurisdiction over a case in which a Federal agency violated an international treaty?

Mr. HOROWITZ. I think if one of the department components violated a treaty, we presumably would have the authority to look at. It would have to be a Department of Justice component, though. And we'd probably partner with the State Department IG if it was an international treaty, given their expertise.

Mr. PALMER. But you could make that referral to the Department of Justice?

Mr. HOROWITZ. If we found issues with regard to an allegation of misconduct related to a set of laws, including the treaty, yes, we would be able to do that. I can't think of a situation where that's arisen for us. So that we have, as you know, done work with DEA agents overseas and the Department does have overseas representatives.

Mr. PALMER. Thank you. Coming back to you, Mr. Horowitz, according to the website, there are 11 vacancies in the Federal agen-

cy IG offices. We covered this a little bit. These offices are being led by acting IGs. Do you see a benefit for having a permanent inspector general rather than an inspector general in an acting capacity?

Mr. HOROWITZ. I have testified to this before. We have and had extraordinarily committed and dedicated acting IGs filling these roles. I had the experience of coming in. My agency had a vacancy for 15 months before I arrived. And my deputy IG did an extraordinary job in the middle of the access fights, by the way, leading our office. She did a great job. But there is an ability to get things done that is present when you have confirmed leadership. Certainly, in the presidentially appointed Senate-confirmed positions, but also the agency-level positions. There is an authority that goes with this and a presence, and an ability to fight for issues that I think is important to have when you are dealing with agency leadership, that they know that you have the position full-time, and you're not just—you're not sitting there waiting for the successor to show up.

Mr. PALMER. Well, as each—many of the members on the committee have already expressed, we're very grateful for the work you do. We respect you and appreciate you. I would like to thank the witnesses for taking the time to appear before us today and for the members for their questions.

If there is no further business, without objection, the committee stands adjourned.

[Whereupon, at 12:08 p.m., the committee was adjourned.]

