

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG
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Before the
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE of REPRESENTATIVES

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Thank you, Chairman Towns, and Ranking Member Bilbray, for inviting me to testify before you today to discuss several issues of interest pertaining to the independence, accountability, and operations of Federal Offices of Inspectors General (OIG). I want to express my thanks to the Chairman and also the former Chairman, Representative Platts, for your continued interest in the role and performance of Inspectors General (IGs) in the Federal Government.

After being nominated by President Bush and confirmed by the Senate, I have served as the IG for the Department of Agriculture (USDA) since December 2002. Prior to that, I had received an appointment from then-President Clinton and served as the IG at the Small Business Administration from April 1999 until December 2002. My entire career in executive level positions in the Federal IG community spans 19 years, and I am a career member of the Senior Executive Service.

In addition to my service as USDA's IG, I am currently the Chair of the Legislation Committee for the President's Council on Integrity and Efficiency (PCIE). Created in 1981, the PCIE provides a forum for IGs, the Office of Management and Budget (OMB), and other Federal officials to work together and coordinate professional activities. The Legislation Committee consists of IGs from both segments of the IG community – nine presidentially-appointed (PAS) IGs who are members of the PCIE, and three IGs who were appointed by agency heads in Designated Federal Entities (DFEs), and thus are members of the Executive Council on Integrity and Efficiency (ECIE). The ECIE provides a forum similar to the PCIE for the DFE IGs.

The PCIE Legislation Committee serves as the IG community's primary point of contact and liaison on legislative issues with Congressional committees, congressional offices, and the Government Accountability Office (GAO). The Legislation Committee is responsible for providing input to and receiving feedback from Congress on legislation affecting the IG community as a whole. The Committee works toward developing consensus within the entire IG community

regarding major legislation impacting IGs; on some issues, however, there may be a range of perspectives that reflect different IGs' experiences and situations.

As requested by Chairman Towns, my testimony today will be based on my experience as an Inspector General at two Federal agencies and, when appropriate, my perspective as Chair of the PCIE Legislation Committee. My testimony will address the overarching issues of IG independence and accountability in the context of H.R. 928, the Improving Government Accountability Act.

H.R. 928 – The Improving Government Accountability Act

As Chair of the PCIE Legislation Committee, I want to express our appreciation to Representative Cooper for his continuing efforts to explore and craft legislation to promote the independence and accountability of the IG community. We have worked closely with Representative Cooper and his staff on prior versions of this bill, and there is widespread support in the IG community for the major provisions in its current version, H.R. 928. I would like to briefly address several of the bill's provisions that are of particular interest to the IG community.

Establishment of a Council of the Inspectors General on Integrity and Efficiency

H.R. 928 would create a unified Inspectors General Council to enhance coordination and communication among OIGs and better serve our agencies and the Congress.

A unified council would promote the independence and unique responsibilities of IGs by creating a forum for more sustained and organized IG initiatives on a governmentwide basis. Just as individual IGs have dual responsibilities to both the Executive and Legislative branches, so too would a statutory unified Council. For example, the Deputy Director for Management of OMB would serve as the Council's Executive Chair and the Council would also be responsive and report to Congress, as appropriate. The bill would also establish a necessary funding mechanism for the Council's institutional activities, such as publishing an annual

progress report and providing essential training programs for OIG audit, investigative, inspection, and management personnel.

In the area of accountability, the unified IG council provision would permanently establish an Integrity Committee (IC) to handle allegations of wrongdoing on the part of an Inspector General or certain OIG staff. The Integrity Committee is a response to the question of “*Who is watching the watchdogs?*” The functions of the current IC are set forth in an Executive Order. The bill includes several provisions to maintain quality and integrity in IC operations, including a requirement to adhere to the most current Quality Standards for Investigations issued by the IG Council or the PCIE/ECIE, and requirements to ensure fairness and consistency in the operations of the committee. The bill would provide, for example, that the subject of an investigation have the opportunity to respond to any IC report.

H.R. 928’s proposal to create a Council of the Inspectors General on Integrity and Efficiency has widespread support in the IG community.

PFCRA, Subpoena Authority, and Law Enforcement Authority

H.R. 928 includes several provisions that the PCIE Legislation Committee believes would improve the effectiveness of OIG audit and investigative activities. First, the bill would amend the Program Fraud Civil Remedies Act (PFCRA) to allow DFE IGs to utilize the Act’s processes to pursue false claims and statements where the loss to the government is less than \$150,000. Presidentially-appointed IGs already can utilize PFCRA to recover the loss of taxpayer dollars due to fraud, and smaller OIGs should also have the ability to pursue lower-threshold fraud cases. DFE IGs are not currently authorized to utilize PFCRA procedures because those IGs had not been created at the time of PFCRA’s enactment.

Second, H.R. 928 would modernize IG law enforcement capabilities by clarifying that IG subpoena authority extends to electronic information and tangible things.

This is an important clarification at a time when ever-increasing amounts of information are stored electronically, and technological advances are constantly creating new forms of data, computer equipment, and data transmission devices.

Finally, H.R. 928 would authorize DFE IGs to apply for full law enforcement authority rather than having to apply for such authority on a case-by-case basis. Presidentially-appointed IGs obtained this authority pursuant to the Homeland Security Act of 2002, which allows them to make arrests, execute search warrants, and carry firearms. This authority has been used effectively by PAS IGs. The bill would make it available to those DFE IGs who seek such authority, once approved by the Department of Justice.

Term Appointment and Removal for Cause

H.R. 928 would establish a renewable term of office of 7 years for both PCIE and ECIE IGs and would authorize removal of an IG prior to the expiration of the term for certain enumerated causes. The IG Act currently provides no specified term of office for IGs; the only limit on the authority to remove IGs is a requirement that Congress be notified of such removal. A majority of the IG community believes that these provisions of H.R. 928, if enacted, would enhance the independence of IGs.

Other provisions in H.R. 928 pertaining to IG authority over OIG personnel and budgets would also enhance OIG independence.

Compensation for DFE IGs

H.R. 928 contains a provision that would require DFE IGs to be classified, for pay and other purposes, at the same level as the majority of other senior officials (such as a general counsel, deputy director, or chief of staff) who report directly to the entity's head or board. This provision would ensure the parity of IG pay and rank within a DFE.

Compensation Issues Involving PAS IGs

Among the issues on which the Chairman invited testimony for today's hearing are pay disparities encountered by IGs. H.R. 928 addresses this issue with respect to DFE IGs, but is silent as to PAS IGs. Currently, a number of PAS IGs are ineligible for locality pay and cost of living adjustments, are excluded from the benefits of the performance-based pay system Congress established for career senior executives, must forego potential bonuses to preserve OIG independence, and have their salaries capped by statute at Level IV of the Executive Schedule, without the possibility of promotion. At a time when IG responsibilities are steadily increasing and Congressional committees, agency heads, and the public look to IGs to ensure integrity in government operations, virtually all PAS IGs are paid at a level significantly below the average annual compensation of the SES personnel they supervise. This disparity in compensation is a significant concern for current PAS IGs and could have an increasing impact on the Government's ability to retain experienced IGs. Perhaps more important, however, is the impact on the willingness of qualified and talented Federal career executives to serve as PAS IGs in the larger and more challenging Federal departments and agencies.

A proposal to equitably remedy this situation can be found in a statutory provision pending in a procurement reform bill.¹ It would simply move PAS IGs from Level IV of the Executive Schedule pay scale to Level III. While this adjustment would not completely address the pay disparities for PAS IGs, it would be a positive step towards recruiting and retaining well-qualified IG candidates.

On behalf of the Legislation Committee, we respectfully request that Representative Cooper and the Members of the Subcommittee consider adding a similar provision to any IG Act-related legislation you may advance during the 110th Congress. We would be pleased to provide additional information to assist the Subcommittee in its deliberations.

¹ S. 680, the Accountability in Government Contracting Act of 2007.

This concludes my testimony. I again want to thank you for your interest in and support of the Inspector General community, and on behalf of the PCIE Legislation Committee, I sincerely look forward to working with Members of the Subcommittee and your staff to improve the effectiveness of our offices and the departments and agencies we serve. I would be pleased to address any questions you may have.