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Testimony of

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Before the

Subcommittee on Government Efficiency
and Financial Management
Committee on Government Reform
United States House of Representatives

Regarding

Inspector General Functionality
And Independence

Mr. Chairman, Ranking Member Towns, and Members of the Subcommittee:

On behalf of the Inspector General (IG) community, we thank you for your support of the Inspectors General over the years. My colleagues and I are pleased to be here today to discuss IG functionality and independence and the importance of the IG Act in improving the efficiency and effectiveness of Federal operations and eliminating fraud, waste, and abuse in Federal programs.

As you know, last October marked the 25th anniversary of the IG Act. At that time, and many times over the past 25 years, the IG community has reflected on its accomplishments and explored opportunities for improvement. We are here today to share our accomplishments since we last appeared before this Subcommittee and offer our impressions of the bill, “Improving Government Accountability Act,” introduced by Representative Jim Cooper last fall.

Representative Cooper’s bill, H.R. 3457, serves as an excellent starting point to begin a discussion of improvements to and enhancements of an already effective law. In general, we support the thrust of the Representative’s bill and have some refinements and additional ideas to improve the quality, effectiveness, and impact of our work that we would like to share with you today. We appreciate Representative Cooper’s leadership in this area and his overall support of the IG community, and we look forward to continuing this dialogue.

At this time, I would like to take the opportunity to briefly introduce myself, my colleagues, and the community we represent.

I am the IG for the Federal Deposit Insurance Corporation and have served in this capacity since April 1996. I am also 1 of 29 presidentially-appointed, Senate confirmed IGs, who are members of the President’s Council on Integrity and Efficiency (PCIE). Created by Executive Order 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 their professional activities. Since May 1999, I have served as the Vice Chair of this Council.

To my left is J. Russell George. He is the IG for the Corporation for National and Community Service and has served in that capacity for the past 2 years. He is currently the Administration’s nominee to be the Treasury IG for Tax Administration. Mr. George is a member of the PCIE and began serving as the PCIE Legislation Committee Chair in January of this year. Prior to becoming an IG, Mr. George served as the staff director for Representative Steve Horn while he was the Chairman of this Subcommittee.

To my right is Barry Snyder. Since 1998, Mr. Snyder has served as the IG of the Board of Governors of the Federal Reserve System. He is 1 of 28 statutory IGs who are appointed by their agency heads in certain designated Federal entities (DFE) and are part of the Executive Council on Integrity and Efficiency (ECIE). Similar to the PCIE, the ECIE was created by Executive Order in 1992 and provides a forum for IGs and Federal

officials to work together and coordinate professional activities. Mr. Snyder has served as the ECIE Vice Chair since October 1999.

As we discussed with your staff, while we are leaders within our respective Councils, we are here today representing our understanding of the views of the majority of the Federal IGs who comprise the two Councils. We are not speaking on behalf of these Councils, as each Council includes individuals who are not IGs and who have not endorsed these views.

Before we discuss possible modifications to H.R. 3457, we would like to briefly highlight the impact of IG work during fiscal year 2003.

The Impact of Inspectors General on Federal Government Operations

For 25 years, IGs have served as independent voices to their agency heads and to the Congress by identifying opportunities and promoting solutions to improve the performance of government programs. The IG Act is a good law and has stayed the test of time. Since 1978, the basic tenets of the Act have remained constant and strong.

The IG Act creates an inherent tension between the Executive and Legislative branches of government. The IG must keep both the agency head and the Congress "fully and currently" informed about program or operational deficiencies.¹ This dual reporting requirement creates a fine line and one that involves balancing the needs and requests of "two masters."² But that is the beauty of the Act and why it has served the Congress, the Administration, and the public so well for so long.

The Act has had a profound impact on our government, which can be seen in improved operations in Federal agencies and added attention on governmentwide initiatives. Today, 57 IGs protect the integrity of the government; improve program efficiency and effectiveness; and prevent and detect fraud, waste, and abuse in Federal agencies. By virtue of our independent and nonpartisan status, we provide a measure of continuity and offer a wealth of institutional knowledge and expertise.

Each year, audits, inspections, and evaluations conducted by Offices of Inspector General (OIGs) identify billions of dollars in potential savings that could be put to better use or questioned costs representing expenditures that may violate a provision of law, regulation, or contract. OIG investigations lead to thousands of prosecutions or other actions as well as billions of dollars in potential recoveries for violations of Federal criminal laws.

As evidenced in our fiscal year 2003 annual report, *A Progress Report to the President*, which we are releasing today, the IG community has stayed true to its mission. In fiscal

¹ 5 U.S.C. Appx. § 2(3).

² See S. REP. NO. 95-1071, at 9 (1978).

year 2003 alone, IG community efforts accounted for nearly \$18 billion in potential savings from agency action on current and prior recommendations and through investigative recoveries. Further, the community was instrumental in about 6,600 successful prosecutions, suspensions or debarments of over 7,600 individuals or businesses, and over 2,600 civil or personnel actions. The community as a whole processed nearly 200,000 complaints, received primarily through OIG fraud hotlines; issued nearly 4,700 reports; closed about 22,000 investigations; and testified more than 80 times before the Congress.

Although impressive, these numbers do not tell the entire story. Success and impact can be measured in many different ways. The IG community publishes notable statistics, issues reports to agency management, works cooperatively with U.S. Attorneys, and testifies before the Congress—success which is tangible and easy to quantify. However, another way to assess how successful the IG Act has been and will continue to be lies in the fact that IGs are being repeatedly asked by their agency and the Congress to make recommendations to promote the agency’s economy, efficiency, and effectiveness and uncover fraud, waste, and abuse.

Further, the Congress has seen fit to expand the duties of an OIG beyond the original mission described in the IG Act by assigning new responsibilities through general management laws, such as the Chief Financial Officers Act, the Reports Consolidation Act, and, more recently, the Federal Information Security Management Act. The Administration has also encouraged our involvement in assisting agencies in their implementation of the President’s Management Agenda. We interpret this to mean that our work “adds value” to improving the efficiency, effectiveness, and integrity of our government.

At this time, we would like to discuss the specifics of H.R. 3457 and share our thoughts and views on this bill. As we previously mentioned, the opinions we express should not be considered official positions of the PCIE or ECIE. Rather, the opinions we are about to share have the support of the majority of the Federal IGs who comprise the two Councils.

Inspectors General Views on the Improving Government Accountability Act, H.R. 3457

Removal for Cause and Term of Office Protections

Currently, most IGs do not have statutory terms of office.³ The only condition on their removal is that, in the case of presidentially-appointed IGs, the President must notify the

³ A few IGs have terms of office. For example, the IG of the U.S. Postal Service has 7-year term of office, and the IG of the Peace Corps has a term of office of 5 years, which can be extended to an overall term of 8 years.

Congress of the reasons for their removal. The same holds true for IGs appointed by their respective agency heads.

The IGs reached a general consensus that instituting removal for cause criteria such as those in Representative Cooper's bill would enhance the independence of IGs. Removal for cause means that as a government official, an IG may be removed only for certain reasons, such as failing to perform the duties required by the IG Act. Removal for cause protection would enhance independence by shielding IGs from reprisal for conducting essential yet potentially unpopular investigations or audits.

We note that individuals occupying a number of other positions with identical or analogous oversight functions in the Executive branch may be removed only for cause. For instance, the Special Counsel and the Inspector General of the U.S. Postal Service may be removed only for cause. In the Legislative branch, the Comptroller General of the Government Accountability Office (GAO) possesses removal for cause protection. We believe that removal for cause criteria would further the Congress' intent to provide IGs with the independence needed to carry out our responsibilities and would better insulate IGs from undue influence.

Representative Cooper's H.R. 3457 lists the following five grounds for removal: permanent disability, inefficiency, neglect of duty, malfeasance, and conviction of a felony or conduct involving moral turpitude. These removal conditions strike the appropriate balance between giving the President or agency head the authority to remove IGs who have failed to fulfill their responsibilities and providing a degree of protection to IGs to perform their duties diligently without undue repercussion. While the IGs are generally supportive, we would welcome the opportunity to work with the Congress to clarify these removal conditions.

Representative Cooper also proposes amending the IG Act to establish a term of office of 7 years. The majority of IGs support a term of office because, like removal for cause protection, it would enhance independence. A fixed term would also serve to improve IG operations by facilitating long-range planning and increasing institutional memory. Moreover, the increased job security would facilitate recruitment and retention of well-qualified IGs, as well as provide more continuity during changes of administration.

A number of positions with analogous functions within the Executive branch have fixed terms of office. For example, the Director of the Office of Personnel Management (OPM) has a 4-year term. The Director of the Office of Government Ethics, the Special Counsel, and members of the Federal Labor Relations Authority all have 5-year terms. Merit Systems Protection Board members have 7-year terms. Other officials with similar duties but broader responsibilities, such as the Comptroller General and the Director of the Federal Bureau of Investigation, also have terms, 15 years and 10 years, respectively.

Considering the similarities and differences of all these positions, the IGs support a 9-year term of office as opposed to the 7-year term proposed in H.R. 3457. We believe that a 9-year term would span administrations and be more consistent with other terms of office across the government.

Codification of the PCIE and ECIE into a Single Inspectors General Council

As noted, two councils of IGs currently exist: the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. Each council was established by executive order.⁴ The basic mission, responsibilities, and authorities of the two councils are essentially the same. They provide a forum for IGs, OMB, and other Federal officials⁵ to work together to address oversight issues that transcend individual government agencies.

Representative Cooper's bill, H.R.3457, would create a single, unified council of IGs that would include the current membership of the PCIE and ECIE. The proposed council would be authorized to receive an annual appropriation of \$750,000 to carry out its administrative functions. The IG community embraces the idea of creating an IG council that would be supported by a single, annual appropriation. This would eliminate our current funding arrangement where all funding of IG community-wide activities is borne by an individual OIG absorbing the costs or by contributions solicited from individual OIGs.

The benefits of a single, statutory council are numerous. Creating such a council would:

- enhance communications among the IGs and their staffs;
- improve the efficiency and effectiveness of joint activities between and among IG offices;
- increase the consistency of training for IG staff across the community; and
- centralize initiatives that benefit the entire IG community.

A codified IG council could also strengthen our relationship with the Congress. Such a council would provide an official forum for contact on an IG community-wide basis. Periodic oversight hearings of council activities would ensure that the council is accomplishing its designated purposes.

In testimony before this Subcommittee last year, Comptroller General David Walker supported the codification of the IG councils. The Comptroller General recommended strengthening the councils "by providing a statutory basis for their roles and

⁴ The President's Council on Integrity and Efficiency was established by Executive Order 12301 on March 26, 1981. The Executive Council on Integrity and Efficiency was created by Executive Order 12805 on May 11, 1992.

⁵ The other Federal officials who are members of the PCIE and ECIE include the Assistant Director of the Criminal Investigative Division of the Federal Bureau of Investigation; Director of the Office of Government Ethics; Special Counsel of the Office of Special Counsel; and Deputy Director of the Office of Personnel Management.

responsibilities.”⁶ He continued by testifying that through codification “the permanence of the councils could be established and their ability to take on more sensitive issues strengthened.”⁷ Another benefit to establishing the councils by statute, according to Mr. Walker, is that the Congress could clearly establish the strategic focus of the councils to enhance coordination of Federal oversight with GAO.⁸

While the IG community strongly supports codifying the council, we recommend that the Congress consider several important refinements to the current bill:

First, after lengthy discussions on the role that OMB should play in a proposed IG council, we recommend that the Deputy Director for Management (DDM) of OMB serve in a leadership position on the proposed council. Currently, the DDM serves as Chairperson of both the PCIE and ECIE. Under H.R. 3457, the DDM would remain a member of the IG council, but an IG would be selected as chairperson. We believe that the DDM should remain in a leadership role to preserve the existing link between the IGs and the administration.

Second, we suggest that the proposed IG council maintains academies designed specifically to train OIG personnel and provides support for a criminal forensic laboratory. Carrying out the proposed council’s functions would also require a small council staff. We expect that maintaining training academies and hiring a small council support staff would necessitate an appropriation.

Third, we recommend that the Integrity Committee, which is currently a committee of the PCIE, also be codified as part of the proposed IG council. Since its creation by Executive Order in 1996,⁹ the Integrity Committee has served as the independent investigative mechanism to handle allegations against IGs and senior OIG staff members. H.R. 3457 does not address this particular issue. We believe that establishing the Integrity Committee by statute would better formalize its functions to ensure that administrative allegations against IGs and certain staff members are investigated and resolved equitably and expeditiously.

Fourth, H.R. 3457 does not include the OIGs for the Central Intelligence Agency (which is part of the PCIE) and the Government Printing Office (which is part of the ECIE). These two offices were not established by the IG Act or any of its subsequent amendments, but have long participated in IG community activities.

Personnel Flexibilities for IGs

The IGs join the chorus of other Executive branch voices that have expressed interest in more flexible personnel management authorities. The IG Act currently authorizes IGs to

⁶ INSPECTORS GENERAL: Enhancing Federal Accountability, Statement of David M. Walker, Comptroller General of the United States, October 8, 2003 (GAO-04-117T).

⁷ Id.

⁸ Id.

⁹ The Integrity Committee was established by Executive Order 12993.

“select, appoint, and employ such officers and employees” as necessary to carry out their duties. As the role of the IG has expanded in both mission and complexity, it has become clear that additional personnel authority is needed.

Human capital management flexibilities would allow IGs to cultivate an office that more effectively and efficiently carries out its responsibilities. Enhanced personnel management authorities would allow each OIG to improve financial and information technology capabilities, and develop critical audit and investigative expertise through hiring, retention, and leadership development. These authorities would make OIGs more agile and responsive organizations.

The Improving Government Accountability Act, H.R. 3457, provides personnel flexibilities by creating a personnel management system under title 5 for all OIGs under the IG Act. While the IG community supports personnel flexibilities, we disagree with the title 5 approach. Many OIGs are not covered by title 5 and already possess certain personnel authorities that would be relinquished under the current language of the H.R. 3457.

As an alternative, the majority of the IGs support a proposal that authorizes individual OIGs *to apply* to OPM for certain personnel authorities. The decision to apply for personnel flexibilities would be left to the discretion of the individual IGs.

After extensive discussion and research, the IGs believe that the following authorities would greatly enhance our management of human capital and result in an even more highly skilled and effective workforce:

Pay Authorities – Pay Banding, Merit-Based Pay, and Market-Based Pay

Pay banding is a compensation and classification framework that reduces the 15 existing General Schedule pay grades into fewer (typically four to six) pay bands based on career paths and occupations. Pay banding potentially serves as a recruitment tool by simplifying and expediting the hiring process. Such authority would enable OIGs to better compete with the private sector in attracting high-quality candidates, especially for positions requiring technical expertise.

Merit-based pay would allow OIGs to compensate employees based on their performance or their specific contribution to the OIG’s mission. A merit-based pay system eliminates the automatic pay increases civil servants typically receive and replaces it with a system where job performance determines salary increases.

Market-based pay systems would enable OIGs to set salaries commensurate with the equivalent position in the private sector rather than with respect to specific skills and knowledge. This authority would assist IGs in recruiting for positions that require a high level of technical skill, such as an auditor, attorney, or technology specialist.

Critical Pay or Position Authorities

Critical pay or position authorities would allow OIGs to more highly compensate individuals for a limited number of positions. Such positions must be critical to the OIG mission. For example, a position that requires both managerial skills and a high level of technical expertise might be designated a critical position. This tool would allow OIGs to attract superior candidates for key positions.

Additional Recruitment and Retention Bonuses

The IGs would benefit from increased flexibility when awarding recruitment and retention bonuses. Such flexibility might include allowing OIGs to structure bonus payments in a variety of ways: as a lump sum paid at the beginning of a new employee's tenure, a bonus paid over time, or a lump sum paid at the end of an agreed-upon period. These tools would help OIGs retain employees who might otherwise consider leaving for another government job.

Classification Flexibilities – Rank-in-Person and Categorical Ranking

Rank-in-person classification systems recognize the personal contributions and capabilities of individual employees. Rank-in-person would allow OIGs to determine grade and pay level with reference to an individual's qualifications and assignments rather than the responsibilities and duties of the position. This type of system can serve as a more flexible hiring tool and also serve as a performance management tool.

Categorical ranking is a departure from the standard classification system of job applicants where three candidates are selected. Under a categorical ranking system, an OIG could develop two or three categories of candidates, taking into consideration the veterans' preference within each category, and then select a candidate from the highest quality grouping. This tool simplifies hiring, involves managers more directly in the hiring process, and provides larger pools of candidates from which managers may choose.

Performance Management

Giving the IGs flexibility to create performance management systems for their individual offices would benefit the community. Unique performance management systems could better align OIG organizational goals with an individual employee's performance and provide incentives for employees to excel.

Flexible Probationary Periods

Many IGs believe that the current one-year probationary period is inadequate to assess a new employee's performance, especially for employees engaged in long-term projects or scientific research. Providing IGs the authority to extend probationary periods in limited situations could serve as a valuable hiring and performance management tool.

Other Personnel Issues

A few other personnel issues exist that are unrelated to personnel flexibilities. Representative Cooper identified one of these issues in his bill. H.R. 3457 includes a provision that empowers IGs to deal directly with OPM on the allocation of Senior Executive Service positions within OIGs. This proposal seeks to correct an anomaly that resulted from the 1988 amendments to the IG Act. The 1988 amendments clarified that IGs are the appointing authority for the hiring, performance management, and retention of senior executive employees. However, these amendments neglected to give the IGs the ability to control allocations of senior executive positions. Correcting this anomaly would make the existing statutory authorities more meaningful, better recognize the independence of IGs, and eliminate an unnecessary source of conflict between IGs and their agency heads.

Along similar lines, we also suggest that the proposed IG council be given the authority to make initial recommendations to OPM for career senior executives to receive Presidential Rank Awards. Currently, agencies make recommendations for these awards to OPM, which forwards its recommendations to the President. The proposed IG council would be in a more appropriate position, and likely have more expertise, to identify those senior OIG executives who have exhibited sustained superior achievement. Under this authority, OPM would retain its role in approving and forwarding nominations to the President.

In Representative Cooper's bill, he proposes authorizing IGs to apply directly to OPM for the authority to enter into voluntary separation agreements within OIGs. The IG community supports this proposal. Voluntary separation agreements, commonly referred to as buyouts, are an important workforce reshaping tool that should be wielded directly by the IG, since he or she is most familiar with the office's workforce and unique mission.

In addition to the buyout authority in H.R. 3457, the IGs believe they would benefit from the authority to enter into voluntary early retirement agreements. We recommend that the Congress consider allowing the IG, instead of the agency head, to apply directly to OPM to offer voluntary early retirement. The IG, rather than the agency head, is in a better position to determine the availability and appropriateness of using this workforce reshaping tool within an OIG.

Finally in the area of personnel, we have identified an area of particular importance to the DFE IGs. Unlike the presidentially-appointed IGs, the IG Act does not address the issue of grade and compensation for DFE IGs. Currently the head of a DFE agency has the discretion to staff the IG position at a grade inferior to other management officials, causing at least the perception of unequal status between these IGs and the senior management officials with whom they work. Because the head of the DFE can define the grade of the IG position, this can hamper the IGs ability to command the requisite agency attention on findings and recommendations. To remedy this situation, we suggest that the

Congress consider an amendment to the IG Act that requires the DFE IGs to be staffed at a grade and level comparable to the most senior staff members of the respective DFE.

Submission of Budget Requests to the Congress

Representative Cooper's H.R. 3457 amends the IG Act to authorize each IG to transmit an appropriation estimate and request directly to OMB and the Congress. The bill also would require the President's budget to include a separate statement of the amount requested by each IG, and a comparison of this amount to the amount requested for the OIG by the agency head.

The IG community supports this authority as long as it remains discretionary. The IGs would oppose requiring all IGs to submit their budgets directly to the Congress because such a requirement would interfere with the budget process of agencies that do not participate in an annual budget review.

Submission of Semiannual Report to the Congress

Twice each year, OIGs submit semiannual reports to the Congress, which provide updates on their work during the previous 6 months. The semiannual report details the findings of major investigations and audits, and provides statistical data on final audit reports and other matters. H.R. 3457 would change the submission dates of these semiannual reports from a fiscal-year basis to a calendar-year basis.

After careful consideration of this proposal, the IGs recommend that the submission of semiannual reports remain on a fiscal-year basis. Most of our offices, like the rest of the Federal government, operate using a fiscal year. Requiring the OIGs to submit semiannual reports on a calendar-year basis would essentially necessitate the use of two sets of records – one based on the fiscal year and one based on the calendar year. If the Congress needs information in the interim between the submissions of OIG semiannual reports, the OIGs are ready to work with the Congress to provide the information needed to conduct vigorous oversight.

However, the IGs recommend a separate modification relating to semiannual reports. As the role of OIGs has developed over the last 25 years, many OIGs have expanded their reviews to include inspections and evaluations of agency programs and operations. These reports of inspections and evaluations make recommendations to agency management that result in monetary savings. Such savings demonstrate the productive reform of various Federal activities and would be of particular interest to the Congress. We suggest that the IG Act be amended to allow OIGs to include the results of inspections and evaluations in semiannual reports.

Additional Recommendations to Assist OIGs

After considerable discussion, the IGs have developed a general consensus that two additional legislative changes would strengthen the ability of OIGs to eliminate waste,

fraud, and abuse. These changes are not included in H.R. 3457, but would be a valuable asset to the community.

First, the Program Fraud Civil Remedies Act (PFCRA)¹⁰ should be amended to allow DFE OIGs to utilize its provisions. This issue is of great significance to the DFE IGs and would require only a minor adjustment to the Act. Congress enacted PFCRA in 1986 to enable agencies to recover small dollar losses resulting from false claims and statements that would not otherwise be recovered. This Act provides a mechanism for agencies to address false claims and statements where the loss to the government is less than \$150,000.

The authority to use this Act is currently granted to agencies with presidentially-appointed IGs and the United States Postal Service. However, the DFE OIGs, which were created after PFCRA was enacted, are frequently confronted with recovery amounts less than \$150,000 and would clearly benefit from inclusion in this Act. We believe that the Congress' intent when it enacted PFCRA was to provide all OIGs with a tool to address false claims where the dollar amount of loss is relatively small. Allowing DFE OIGs to use the Act would achieve the Congress' original intent and provide some of the smaller OIGs with an additional tool to recoup taxpayer losses resulting from fraud.

Second, the IGs recommend a minor adjustment to the IG Act relating to the scope of subpoena authority. Under current law, the scope of the subpoena power might be read by some to suggest that it is limited to documentary evidence. We recommend a technical amendment to the IG Act to clarify that IGs are authorized to subpoena physical evidence in addition to documentary evidence. When the IG Act was originally enacted in 1978, the best evidence of fraud, waste, and abuse was found in the books and paper records of agencies and the entities that conducted business with these agencies. In the last 25 years, the scope of matters reviewed by IGs has expanded and advances in information technology have exploded.

Considering these changed circumstances, the best source of evidence is not necessarily documentary evidence. Evidence critical to OIG investigations is no longer limited to traditional documentary form but is routinely found in non-documentary forms of real evidence including, but not limited to, computer hard drives, computer discs, transportable e-mail devices, videotape, and audiotape. Amending the IG Act to include physical evidence would ensure that all relevant evidence, no matter what particular physical form it happens to take, is accessible to the IGs as we perform our duties.

Closing

In conclusion, a constant theme underlies most of the suggestions shared today: the theme of independence. In the legislative history of the IG Act of 1978, the Congress recognized that IGs would need an "unusual degree of independence."¹¹ More than 25

¹⁰ 31 U.S.C. §§ 3801-12 (2004).

¹¹ See S. REP. NO. 95-1071, at 9 (1978).

years later, the need for independence still exists. The IG community believes that these legislative changes will further enable the IGs to be strong, independent voices for integrity, accountability, and transparency in the Federal government.

Mr. Chairman, this concludes our prepared statement. On behalf of my colleagues here today and the IG community as a whole, I would like to thank you and the Members of your Subcommittee for holding this hearing and allowing us to share our thoughts on H.R. 3457. As always, we appreciate your support of the IG community and our mission and look forward to continuing this dialogue. We would also like to again acknowledge Representative Cooper for his leadership in introducing legislative changes to the IG Act that would enhance our effectiveness as IGs. At this time, we would be happy to respond to any questions that you, Mr. Towns, or the other Members of the Subcommittee may have.