



May 12, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate

The Honorable Harry Reid  
Democratic Leader  
United States Senate

Dear Majority Leader McConnell and Senator Reid,

As the representatives of the 72 federal Inspectors General, we appreciate Congress's strong bipartisan commitment to independent oversight of federal programs and operations. Inspectors General prevent and detect waste, fraud, abuse, and mismanagement in federal agencies and hold officials accountable for their use of taxpayer funds. We work closely with whistleblowers to identify wrongdoing and, because of our work, federal agencies are more effective and efficient. However, a July 2015 decision by the Department of Justice's (DOJ) Office of Legal Counsel (OLC)<sup>1</sup> has seriously impaired our ability to perform this watchdog role by restricting our independent access to agency records and hampering whistleblowers' ability to bring us evidence of waste and misconduct. To address the July 2015 OLC decision and ensure that Inspectors General have the authority to do their jobs, a bipartisan group of 20 Senators are supporting Senate bill S.579, the "Inspector General Empowerment Act of 2015" (S.579). We appreciate your prior support for legislative initiatives during your tenures in the Senate, and urge the Senate to promptly consider S.579. The longer Congress waits to act, the greater the risk to the integrity of federal programs and to our ability to serve as independent watchdogs for taxpayers.

A bedrock principle of the Inspector General Act of 1978 (IG Act) is that an Inspector General must have access to "all" agency records and information "which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."<sup>2</sup> This language had been seen as clear and unqualified. However, since 2010 a number of federal agencies, including the DOJ, Peace Corps, Department of Commerce, and Chemical Safety and Hazard Investigation Board, have challenged their IGs' right to access "all" such agency information. This issue came to a head in July 2015, when the OLC issued the abovementioned opinion concluding that the IG Act does not actually entitle the DOJ Inspector General (DOJ-IG) to obtain independent access to "all records" in the DOJ's possession that are necessary to DOJ-

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<sup>1</sup> "The Department of Justice Inspector General's Access to Information Protected by the Federal Wiretap Act, Rule 6(e) of the Federal Rules of Criminal Procedure, and Section 626 of the Fair Credit Reporting Act" (July 20, 2015), <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/07/23/2015-07-20-doj-ig-access.pdf>.

<sup>2</sup> 5 U.S.C. app. § 6(a)(1).

IG's oversight. The OLC's restrictive reading of the IG Act represents a threat to the independence of all Inspectors General and creates a serious challenge to our collective ability to have timely and independent access to agency records—access that is central to our ability to engage in the oversight that is at the core of the IG Act. As Senator McCaskill noted in a 2015 floor speech supporting the legislation, “[f]or the last 37 years [since passage of the IG Act in 1978], we lived in a world where ‘all’ meant all. ... There is no universe in which the Inspector General Act should be interpreted to mean anything less than what it says.”

Following the OLC opinion in July 2015, a bipartisan group of Senators amended S.579 to expressly address the OLC opinion. Since then, over a dozen Senators, both Republican and Democrat, have become co-sponsors. The bill is currently awaiting consideration by the entire Senate. In addition, in December 2015, Congress included unambiguous language in Section 540 of Division B, Title V, of the Fiscal Year (FY) 2016 Consolidated Appropriations Act (the Commerce, Justice, Science, and Related Agencies Appropriations Act), which was specifically drafted to reverse the effect of the July 2015 OLC opinion and generally prohibits agencies covered by the Commerce, Justice, Science, and Related Agencies Appropriations Act from denying, preventing, or impeding Inspector General access to agency records or materials.<sup>3</sup> Days ago, the OLC issued an opinion stating that Section 540 has the effect of prohibiting DOJ, for the remainder of FY 2016, from denying or impeding the DOJ-OIG’s timely access to grand jury, wiretap, and credit information. However, Section 540 only impacts FY 2016 funds and only covers the six OIGs funded by the Commerce, Justice, Science, and Related Agencies Appropriations Act.<sup>4</sup> The remaining 66 federal Inspectors General are not covered by this language. Without reversing the July 2015 OLC opinion, Congress will increasingly be asked to arbitrate such disputes or to remind agencies that “all” means “all.”

Despite Congress’s unequivocal support for Inspector General access to records, the problems faced by the Inspector General community continue. For example, in March the Special Inspector General for the Troubled Asset Relief Program reported to Congress that the Department of the Treasury refused to provide files that contain basic data needed to oversee the Hardest Hit Fund.<sup>5</sup> Additionally, just last month the Department of Commerce General Counsel blocked its Inspector General from accessing agency records because of the July 2015 OLC opinion despite Congress’s clear statement of intent in the subsequent Commerce, Justice, Science, and Related Agencies Appropriations Act.<sup>6</sup> The Department of Commerce only reversed its decision and agreed to provide its Inspector General access to the agency records in the controversy following the Inspector General’s notification to the Congress of the decision,

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<sup>3</sup> See 2016 Consolidated Appropriations Act, Division B, Title V, Section 540, providing “*No funds provided in this Act shall be used to deny an Inspector General funded under this Act timely access to any records, documents, or other material available to the department or agency over which that Inspector General has responsibilities under the Inspector General Act of 1978, or to prevent or impede that Inspector General’s access to such records, documents, or other materials, under any provision of law, except a provision of law that expressly refers to the Inspector General and expressly limits the Inspector General’s right of access....*”

<sup>4</sup> The term “FY 2016 funds” refers to funds authorized under Division B, Title V of the FY 2016 Consolidated Appropriations Act.

<sup>5</sup> See attached letter from Special Inspector General Christy Goldsmith Romero, Troubled Asset Relief Program Inspector General, to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated March 10, 2016.

<sup>6</sup> See attached letter from Deputy Inspector General David Smith, Department of Commerce Inspector General, to Chairman Cochran and Vice Chairwoman Mikulski, Committee on Appropriations, U.S. Senate, dated April 4, 2016.

after the Chairman and Ranking Member of the House of Representatives Government Oversight and Reform Committee sent a letter to the Department of Commerce inquiring into the reasons for denying the Inspector General's request, and after the Senate Appropriations Committee included a provision in the FY 2017 Appropriations Act that would cut off funds for the Department of Commerce's Office of General Counsel if the Department of Commerce withheld information from its Inspector General.<sup>7</sup>

The only way to reverse the July 2015 OLC opinion's harmful consequences on Inspector General oversight is for Congress to adopt S.579. That is why a bipartisan group of 20 Senators supports the bill, and why numerous other organizations and individuals support it as well. For example, such support has come from the Project on Government Oversight; former Senator John Glenn, who was an author of the IG Act in 1978; and editorials in several newspapers, including *The New York Times*, *The Washington Post*, and *The Los Angeles Times*.<sup>8</sup> Even the Department of Justice publicly supported a legislative solution to this issue, although its proposal would affect only DOJ-IG.

Besides resolving these problems of access, S.579 would enhance the abilities of Inspectors General to ensure that agencies are proper stewards of taxpayer dollars. For example, the bill provides Inspectors General with testimonial subpoena authority so that we can obtain critical evidence from former agency employees and from grant and contract recipients. In far too many of our investigations the perpetrators of alleged misconduct - such as supervisors who are alleged to have engaged in retaliation against whistleblowers or employees of grant and contract recipients who are alleged to have misused federal funds - resign or retire from their positions or refuse to discuss their work with the agencies we oversee, thereby preventing us from gathering important evidence. Congress has previously given similar authority to the Inspectors General at the Department of Defense and the Department of Health and Human Services, as well as to the Recovery Accountability and Transparency Board, and their use of this authority has been judicious and limited. To ensure the continued appropriate use of this authority by Inspectors General, the bill's sponsors have put in place additional oversight mechanisms, which the Inspector General community fully supports. It also includes a provision that allows DOJ to review in advance the possible use of a testimonial subpoena and to prevent any subpoena that would interfere with an ongoing criminal investigation.

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<sup>7</sup> See Letter from Chairman Chaffetz and Ranking Member Cummings, Committee on Oversight and Government Reform, U.S. House of Representatives, to Secretary Pritzker, Department of Commerce, dated April 26, 2016. See also Section 113 of Senate bill 2837, Appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the Fiscal Year ending September 30, 2017.

<sup>8</sup> See Aug. 5, 2015, testimony by Danielle Brian, Executive Director, Project on Government Oversight, before the Senate Committee on the Judiciary titled "'All' Means 'All': The Justice Department's Failure to Comply with its Legal Obligation to Ensure Inspector General Access to All Records Needed for Independent Oversight," <http://www.judiciary.senate.gov/download/08-05-15-brian-testimony>; attached letter from former Senator John Glenn to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Chaffetz, Committee on Oversight and Government Reform, dated July 23, 2015, [https://www.ignet.gov/sites/default/files/files/IGAccess\\_JGlennLtr\\_072315.pdf](https://www.ignet.gov/sites/default/files/files/IGAccess_JGlennLtr_072315.pdf); *Let Inspectors General Do Their Jobs*, N.Y. TIMES, Mar. 9, 2016, [http://www.nytimes.com/2016/03/09/opinion/let-inspectors-general-do-their-job.html?\\_r=0](http://www.nytimes.com/2016/03/09/opinion/let-inspectors-general-do-their-job.html?_r=0); Editorial Board, *Let Inspectors General Do Their Jobs*; WASHINGTON POST, Oct. 31, 2015, [https://www.washingtonpost.com/opinions/let-inspectors-general-do-their-jobs/2015/10/31/f03763b2-7c04-11e5-afce-2afd1d3eb896\\_story.html](https://www.washingtonpost.com/opinions/let-inspectors-general-do-their-jobs/2015/10/31/f03763b2-7c04-11e5-afce-2afd1d3eb896_story.html); Times Editorial Board, *Federal Corruption Watchdogs Are Being Denied Access To Necessary Information*, L.A. TIMES, Dec. 23, 2015, <http://www.latimes.com/opinion/editorials/la-ed-inspector-general-20151223-story.html>.

Additionally, S.579 would address several issues of concern to the Inspector General community and enhance our ability to ensure that agencies are proper stewards of taxpayer dollars. First, the bill assures the independence of Inspectors General by reaffirming existing precedent that an agency head is the “nominal” supervisor of an Inspector General. Second, S.579 would improve our ability to identify improper and duplicative government payments by exempting Inspectors General from the Computer Matching and Privacy Protection Act and provisions of the Paperwork Reduction Act. For the second year in a row, the amount of improper payments by the federal government has increased, exceeding \$100 billion annually. Further empowering Inspectors General to detect and prevent such wasteful spending through the adoption of S.579 will greatly benefit the taxpayer.

For all of these reasons, we urge the Senate to promptly consider S.579. Since the passage of the IG Act in 1978, Inspectors General have saved taxpayers billions of dollars and improved the federal government’s programs and operations. This has been possible because of strong bipartisan support for Inspectors General and for the independent oversight that they provide. However, our ability to continue to perform as the public’s watchdogs has been significantly harmed by the July 2015 OLC opinion. S.579 addresses this serious problem and allows us to provide the effective oversight that the American people deserve from the Inspector General community.

Sincerely,



Michael E. Horowitz  
Chair  
CIGIE



Kathy A. Buller  
Chair  
CIGIE Legislation Committee

**Attachments:**

1. Letter from Deputy Inspector General David Smith, Department of Commerce Inspector General, to Chairman Cochran and Vice Chairwoman Mikulski, Committee on Appropriations, U.S. Senate, dated April 4, 2016.
2. Letter from Chairman Chaffetz and Ranking Member Cummings, Committee on Oversight and Government Reform, U.S. House of Representatives, to Secretary Pritzker, Department of Commerce, dated April 26, 2016.
3. Letter from Special Inspector General Christy Goldsmith Romero, Troubled Asset Relief Program Inspector General, to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated March 10, 2016.

4. Letter from former Senator John Glenn to Chairman Johnson, Committee on Homeland Security and Government Affairs, and Chairman Grassley, Committee on the Judiciary, U.S. Senate, dated July 23, 2015.

CC:

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs

The Honorable Charles Grassley  
Chairman  
Committee on the Judiciary

The Honorable Thad Cochran  
Chairman  
Committee on Appropriations

The Honorable Richard Shelby  
Chairman  
Subcommittee on Commerce, Justice, Science and Related Agencies  
Committee on Appropriations

The Honorable Roy Blunt  
Chairman  
Committee on Rules and Administration

The Honorable Michael B. Enzi  
Chairman  
Committee on the Budget

The Honorable Susan M. Collins  
Chairman  
Special Committee on Aging

The Honorable Johnny Isakson  
Chairman  
Committee on Veterans' Affairs

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and Governmental Affairs

The Honorable Barbara A. Mikulski  
Vice Chairwoman  
Committee on Appropriations

The Honorable Claire McCaskill  
Ranking Member  
Special Committee on Aging  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance

The Honorable Kelly Ayotte  
U.S. Senate

The Honorable Tammy Baldwin  
U.S. Senate

The Honorable John Cornyn  
U.S. Senate

The Honorable Joni Ernst  
U.S. Senate

The Honorable Deb Fischer  
U.S. Senate

The Honorable Mark Kirk  
U.S. Senate

The Honorable James Lankford  
U.S. Senate

The Honorable Joe Manchin, III  
U.S. Senate

The Honorable Gary C. Peters  
U.S. Senate

The Honorable Rob Portman  
U.S. Senate

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform

The Honorable Elijah Cummings  
Ranking Member  
Committee on Oversight and Government Reform

The Honorable Hal Rogers  
Chairman  
Committee on Appropriations

The Honorable Nita Lowey  
Ranking Member  
Committee on Appropriations

The Honorable John Culberson  
Chairman  
Subcommittee on Commerce, Justice, Science and Related Agencies  
Committee on Appropriations

The Honorable Mike Honda, Acting Ranking Member  
Subcommittee on Commerce, Justice, Science and Related Agencies  
Committee on Appropriations