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Oversight of the Inspector General Community: The IG Council's Integrity Committee

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Summary

The federal government has more than 70 federal inspectors general (IGs) who are vested with authority to combat waste, fraud, and abuse in their affiliated departments and agencies. This community of IGs serves a key role in assisting congressional oversight by conducting audits, investigations, and evaluations of their affiliated agencies, and by providing written reports at least two times a year to Congress.

The Inspector General Act of 1978 (5 U.S.C. Appendix), as amended, establishes an Integrity Committee (IC) that serves to oversee the appropriate conduct of high-ranking employees in the inspector general community and investigate allegations of wrongdoing against those employees. Ethical, transparent, and professional conduct is essential for members of the IG community because, as one Member of Congress stated at a February 2015 House Oversight and Government Reform hearing, "Your whole investigation is tainted if you're tainted."

A few recent high-profile IC misconduct investigations have prompted concern from certain Members of Congress and the public. In one case, the length of an investigation allowed a federal IG to remain on paid administrative leave for more than two years. That IG eventually left his post before the results of the IC's investigation were made public.

Congress may also have concerns about a committee of IGs investigating allegations of wrongdoing made against their peers.

In the 114th Congress, both the House and the Senate are considering legislation to amend the operations of the IC. The bills, S. 579 and H.R. 2395, have some similar provisions including language seeking to limit the amount of time the IC would have to conduct investigations into allegations of IG employee wrongdoing—among other provisions.

Congress may determine that the IC's current structure is effective in ensuring the professional conduct of the IG community. Alternatively, Congress may determine that the IC is not the appropriate mechanism for IG community misconduct investigations. Instead, Congress may determine that another investigatory organization, like the Government Accountability Office, is better suited to oversee IG community conduct.

This report provides context on the role of the IC in investigating allegations of wrongdoing made against employees of the IG community. The report provides analysis of congressional proposals seeking to amend and improve the IC's operations, and includes additional potential policy options for improvement of oversight of the IG community.

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Introduction

Congress vested federal inspectors general (IGs) with the authority to combat waste, fraud, and abuse within designated federal departments and agencies. Offices of inspectors general (OIGs) exist in more than 70 federal agencies, including all departments and larger agencies, numerous boards and commissions, and other entities.[1]

The overwhelming majority of IGs are governed by the Inspector General Act of 1978, as amended (hereinafter referred to as the IG Act).[2] The IG Act provides various authorities—including hiring authorities and subpoena power—that give IGs autonomy to conduct thorough investigations and assessments of agency operations. The IG Act also establishes an Integrity Committee (IC) that serves to oversee the appropriate conduct of high-ranking employees in the inspector general community and investigate allegations of wrongdoing against those employees. As Representative Gerald Connolly stated at a February 3, 2015 hearing on IG independence, access, and authority, "Your whole investigation is tainted if you're tainted."[3] The IC can refer certain allegations of wrongdoing to authorities that would be the most appropriate venue for investigation—for example the Office of Special Counsel[4] or the Department of Justice. If the IC determines the IG community is the best venue to investigate certain allegations of wrongdoing, it may task a federal IG with conducting the investigation on the IC's behalf.

In the 114th Congress, both the House and the Senate are considering legislation to amend the operations of the IC. On February 26, 2015, Senate Homeland Security and Governmental Affairs Chairman Charles Grassley introduced the Inspector General Empowerment Act of 2015 (S. 579). On May 18, 2015, House Oversight and Government Reform Committee Chairman Jason Chaffetz introduced a companion to the Senate bill (H.R. 2395). Both bills seek to limit the amount of time the IC would have to conduct investigations into allegations of IG employee wrongdoing.

Congress, watchdog organizations, and the public have expressed concerns over the length of IC investigations, the structure of the IC's leadership, and the lack of congressional and public access to the results of IC investigations.

Congress has a variety of policy options that it may pursue if it chooses to amend the operations of CIGIE. For example, Congress could give the Government Accountability Office (GAO) a larger role in the investigation of allegations of wrongdoing made against members of the IG community—removing IGs from the role of overseeing themselves. Congress could also choose to restructure the IC's leadership, removing the Federal Bureau of Investigation (FBI) from chairmanship of the committee. Such an amendment could alter what some have considered an unbalanced focus on criminal allegations of wrongdoing rather than ethical wrongdoing. To

[1] Three other inspector general posts (in the armed forces departments) are recognized in public law: Air Force (10 U.S.C. §8020), Army (10 U.S.C. §3020), and Navy (10 U.S.C. §5020). These offices, however, are not often included in tallies of federal inspectors general because they have a significantly different heritage, set of authorities, operational structure and organization, and degree of independence.

[2] 5 U.S.C. (IG Act) Appendix.

[3] U.S. Congress, House Committee on Oversight and Government Reform, *Inspectors General: Independence, Access and Authority*, 1st sess., February 3, 2015, at https://oversight.house.gov/hearing/inspectors-general-independence-access-authority-2/. Representative Connolly's statement is made around the 1:15:00 mark.

[4] The Office of Special Counsel is authorized to "safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing." See Office of Special Counsel, "About," at https://osc.gov/pages/about.aspx.

increase the transparency of the IC's operations, Congress may also choose to increase the committee's reporting requirements.

This report examines the structure and operations of the IC, and provides analysis of certain policy options that could improve the committee's operations. For additional information on the authorities and operations of federal inspectors general, see CRS Report R43814, *Federal Inspectors General: History, Characteristics, and Recent Congressional Actions*, by Wendy Ginsberg and Michael Greene.

Integrity Committee Structure and Operations

The IC is one of eight committees of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), an interagency council in the executive branch that seeks to address issues of "integrity, economy, and effectiveness" that transcend individual agency jurisdictions.[5] Additionally, CIGIE seeks to develop "policies, standards, and approaches" that increase the "professionalism and effectiveness" of the IG workforce.[6] Members of the council include all federal IGs, among a few others: the FBI's appointed CIGIE member, the Deputy Director of the Office of Management and Budget (OMB), the Office of Federal Financial Management Controller (within OMB), the Director of the Office of Government Ethics, the Deputy Director for the Office of Personnel Management (OPM), and the Special Counsel.[7]

While CIGIE operates seven committees, only the IC is explicitly required by the IG Act. Pursuant to statute, the Integrity Committee "shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members of the various" OIGs.[8] The Integrity Committee operates using funding collected from council members. The IG Act provides the Integrity Committee chairperson the authority to request resources from CIGIE members as well as request that member OIGs detail employees to assist any investigations.

The statute appoints the FBI's CIGIE member as the chairperson of the Integrity Committee.[9] The law requires the chief of the Public Integrity Section of the Criminal Division of DOJ, or his or her designee, to serve as the Integrity Committee's legal advisor.

The size, scope, and structure of CIGIE have come under public and congressional scrutiny recently,[10] focusing particular attention on the time that certain investigations have taken to

[5] 5 U.S.C. (IG Act) Appendix, §11(d)(4)(A). Council of the Inspectors General for Integrity and Efficiency, "Mission and Organization," at http://www.ignet.gov/cigie1.html.

[6] Ibid.

[7] 5 U.S.C (IG Act), §11(d)(2).

[8] 5 U.S.C. (IG Act) Appendix, §11(d)(1). Staff members who can be investigated for wrongdoing pursuant to this provision include any OIG employee who reports directly to the IG and any staff member designated by the IG as a staff member in an annual submission to the Integrity Committee.

[9] 5 U.S.C. (IG Act) Appendix, §11(d)(2). The FBI's designee is not an IG.

[10] See, for example, Letter from Senator Charles E. Grassley, Ranking Member on the Committee on the Judiciary, to Joseph S. Campbell, Committee Chairman of the CIGIE Integrity Committee, August 21, 2014, http://www.grassley.senate.gov/sites/default/files/news/upload/CEG%20to%20CIGIE%20IC%20%28timelines%29%2C%208-21-14.pdf; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *To Amend the Inspector General Act of 1978 To Strengthen the Independence of the Inspectors General, and for Other Purposes*, report to accompany S. 579, 114th Cong., 1st sess., May 5, 2015, S.Rept. 114-36 (Washington: GPO, 2015).

complete and the opaque nature of the investigative process.[11] Additionally, the Integrity Committee has been criticized for not making public the results of investigations that find wrongdoing and not providing specific disciplinary recommendations for IG employees found to have committed wrongdoing.[12] In particular, S. 579, introduced by Senate Homeland Security and Governmental Affairs Committee Chairman Grassley, seeks to strengthen "the IC investigation process without being overly prescriptive."[13] Below the IC's processes and operations are examined to provide context for potential policy options to address some expressed concerns.

Integrity Committee Process

Pursuant to law, IGs are required to refer to the Integrity Committee "any allegation of wrongdoing against a staff member" within his or her office under particular circumstances.[14] For example, referral is to occur if review of the allegation cannot be assigned to any other executive branch agency "with appropriate jurisdiction over the matter" and the IG determines "an objective internal investigation of the allegation" is not possible or might not appear objective.[15]

As shown in **Figure 1**, the Integrity Committee is required to review any received allegations of wrongdoing and refer them to the executive branch agency with appropriate jurisdiction.[16] In cases where an appropriate executive branch agency is unavailable, the allegation is referred to the Integrity Committee. In cases referred to the Integrity Committee, investigations into alleged wrongdoing are required to be "thorough and timely" and conducted pursuant to the most current standards.[17]

The IG Act provides the Integrity Committee the authority to establish additional policies and procedures to increase "fairness and consistency" in initiating, conducting, and reporting the results of an investigation.[18] These policies are to be reported to the congressional committees of jurisdiction.[19]

The chairperson of the Integrity Committee is required by statute to report the results of any of its investigations to the full committee.[20] Likewise, any executive branch agency tasked with investigating allegations of OIG employee wrongdoing must report its results to the Integrity

[11] The Project on Government Oversight, a watchdog organization that works for government reforms, released a report in 2009 that found many in the IG community expressed concerns about a lack of transparency in the IC's operations. See, Project on Government Oversight, "Inspectors General: Accountability is a Balancing Act," p. 10, at http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf.

[12] See Project on Government Oversight, "Inspectors General: Accountability is a Balancing Act," p. 11, at http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf. As noted above, the IG Act requires the IC to provide recommendations on potential disciplinary action anyone found to have committed wrongdoing

[13] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *To Amend the Inspector General Act of 1978 To Strengthen the Independence of the Inspectors General, and for Other Purposes*, report to accompany S. 579, 114th Cong., 1st sess., May 5, 2015, S.Rept. 114-36 (Washington: GPO, 2015), p. 12.

[14] The IC is authorized to examine and investigate allegations of wrongdoing made against an IG, anyone who "reports directly to an Inspector General, or any of the OIG staff the IG has designated for inclusion as part of an annual submission made to the CIGIE chairman. 5 U.S.C. (IG Act) Appendix, §11(d)(4).

[15] 5 U.S.C. (IG Act) Appendix, §11(d)(4).

[16] 5 U.S.C. (IG Act) Appendix, §11(d)(5).

[17] 5 U.S.C. (IG Act) Appendix, §11(d)(6).

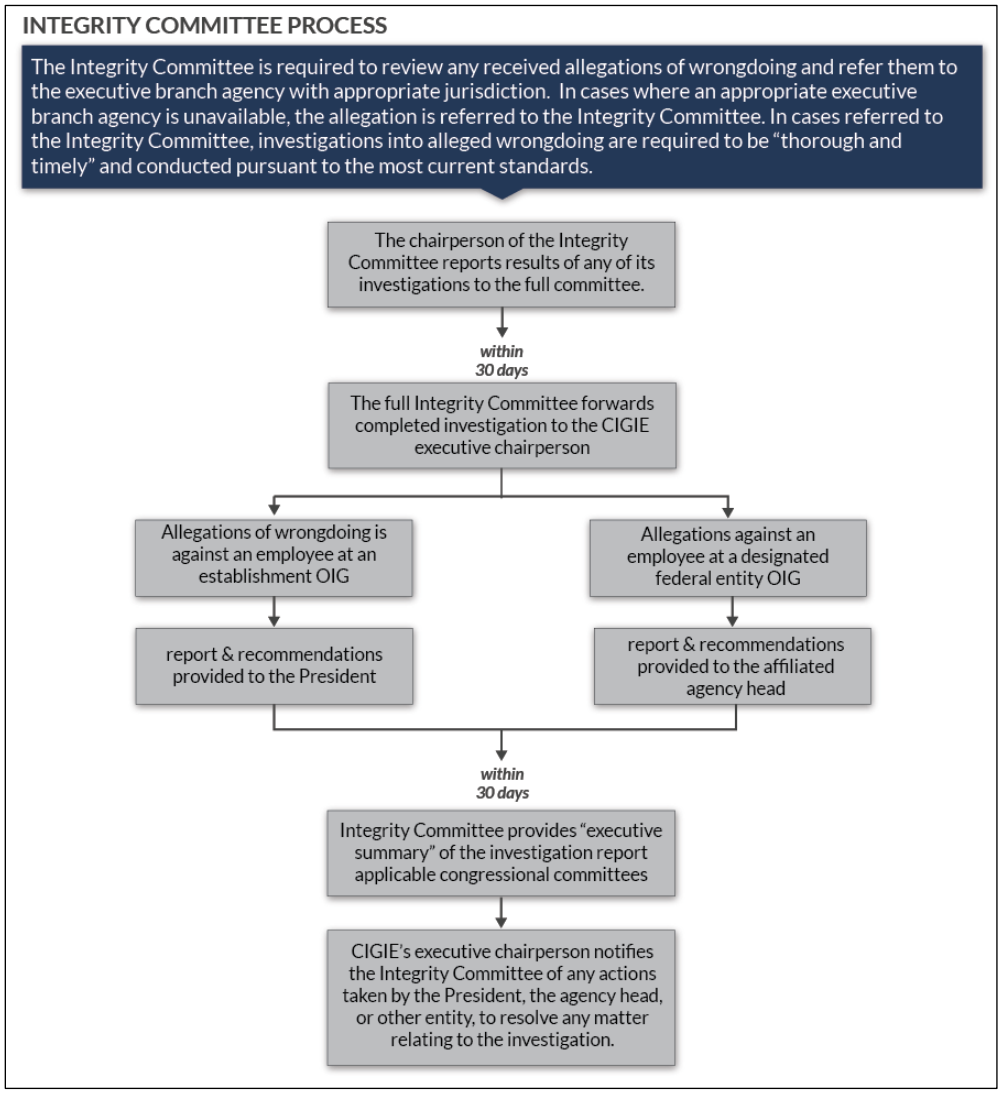
[18] 5 U.S.C. (IG Act) Appendix, §11(d)(7)(B).

[19] 5 U.S.C. (IG Act) Appendix, §11(d)(7)(B)(ii).

[20] 5 U.S.C. (IG Act) Appendix, §11(d)(7)(C)(i).

Committee.[21] The committee is also required by statute to create policies and procedures that provide those accused of wrongdoing "an opportunity to respond to" any Integrity Committee report.[22]

Figure 1. The Integrity Committee's Investigatory Process



Source: Created by the Congressional Research Service based on statutory language found in 5 U.S.C. (IG Act) Appendix, §11(d).

Note: CIGIE is the Council of the Inspectors General on Integrity and Efficiency. OIG is Office of Inspector General.

The full Integrity Committee is then required within 30 days to forward the completed investigation to the CIGIE executive chairperson—complete with any recommended disciplinary actions.[23] In the case of allegations of wrongdoing against an employee at an establishment OIG

[21] 5 U.S.C. (IG Act) Appendix, §11(d)(7)(C)(ii).

[22] 5 U.S.C. (IG Act) Appendix, §11(d)(7)(B)(i)(IV).

[23] 5 U.S.C. (IG Act) Appendix, §11(d)(8)(A).

(an OIG with an IG appointed by the President with the advice and consent of the Senate), the investigation report is to be provided to the President within 30 days of its completion. For allegations against an employee at a designated federal entity OIG (an OIG with an IG appointed by the applicable agency head), the report would be provided to the affiliated agency head within 30 days.[24] Within 30 days of providing the report with recommendations to CIGIE's executive chairperson, the Integrity Committee is required to provide to applicable congressional committees an "executive summary" of the investigation report.[25] CIGIE's executive chairperson is required by statute to notify the Integrity Committee of any actions taken by the President, the agency head, or other entity, to resolve any matter relating to the investigation.[26]

As shown in **Figure 2**, pursuant to the IG Act, the Integrity Committee must report annually to Congress and the President on a number of items including

- the number of allegations of wrongdoing it received;
- the number of allegations of wrongdoing referred to other agencies, including criminal allegations;
- the number of allegations of wrongdoing closed without referral;
- dates of receipt and disposition of all allegations of wrongdoing; and
- the status of all investigations conducted by the Integrity Committee into allegations of wrongdoing, including the findings of completed investigations.[27]

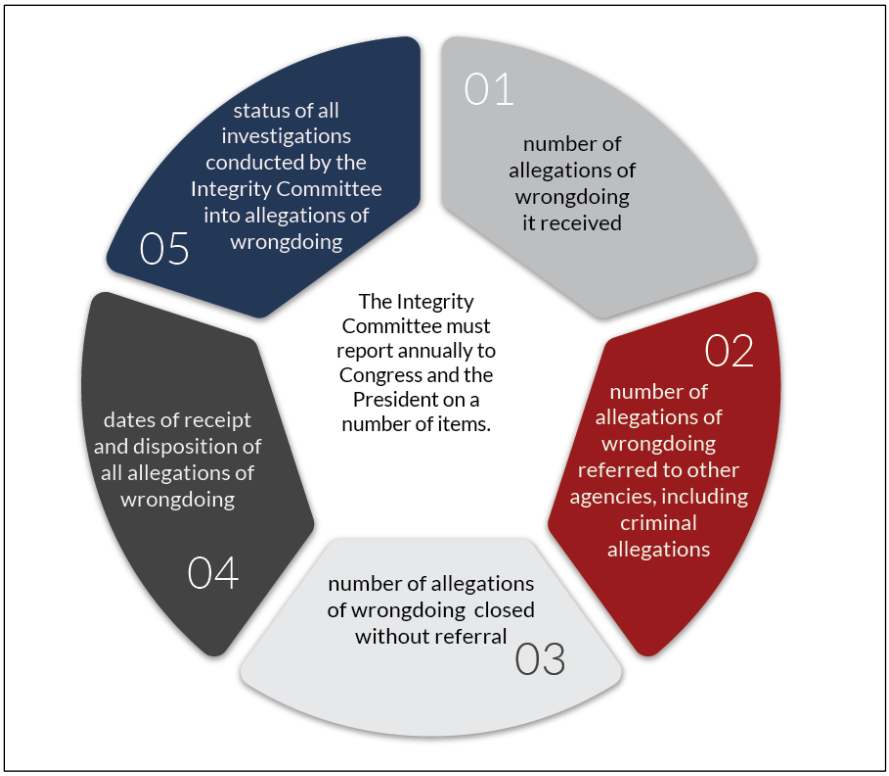
[24] 5 U.S.C. (IG Act) Appendix, §11(d)(8)(A)(ii).

[25] 5 U.S.C. (IG Act) Appendix, §11(d)(8)(A)(iii).

[26] 5 U.S.C. (IG Act) Appendix, §11(d)(8)(B).

[27] 5 U.S.C. (IG Act) Appendix, §11(d)(9). The statute also provides for the chairperson or ranking Member of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and any applicable committee of jurisdiction to request additional information from CIGIE related to specific allegations.

Figure 2. The Contents of CIGIE's Annual Report to Congress



Source: Created by the Congressional Research Service based on the statutory language found in 5 U.S.C. (IG Act) Appendix, §11(d)(9).

Notes: The statute also provides for the chairperson or ranking Member of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and any applicable committee of jurisdiction to request additional information from CIGIE related to specific allegations.

Allegations Received

In FY2014, the Integrity Committee reported receiving 72 allegations of wrongdoing, 37 of which were determined to be "outside" of the purview of CIGIE or the IG community.[28] Of the remaining 35 allegations of wrongdoing, 30 were reviewed and closed, four were referred for further investigation, and one allegation was "pending."[29] **Table 1** provides historical data on the number of allegations the Integrity Committee received, as well as data on allegations within the IC purview and the number of allegations that were referred for investigation.

[28] Council of the Inspectors General on Integrity and Efficiency: Integrity Committee, *Fiscal Year 2014 Annual Report to Congress and the President*, Washington, DC, December 15, 2014, at https://www.ignet.gov/sites/default/files/files/FY%202014%20IC%20Annual%20Report%20-%2012-22-14.pdf. When an allegation is found to be outside of the purview of the IC, it may be referred to another more appropriate entity for further investigation, such as the Department of Justice or the Office of Special Counsel.

[29] Ibid. Each allegation may not be unique. For example, in certain cases, multiple allegations can be made that could result in a single investigation.

Table 1. Integrity Committee Annual Investigative Workload

FY2009-FY2014

Fiscal Year	Allegations Received	Allegations Within IC Purview	Allegations Closed	Allegations Referred to Committee Chair for Investigation	Allegations Referred to Appropriate Agency	Allegations Pending Review
2009	43	38	36	2	5	0
2010	44	43	36	1	1	6
2011	51	28	22	1	23	5
2012	44	19	8	3	25	8
2013	390[a]	374[a]	361[a]	12	16	1
2014	72	35	30	4	37	1

Source: CIGIE Annual Reports, available at https://www.ignet.gov/content/reports-publications.

a. According to CIGIE, of the allegations received in FY2013, 312 concerned allegations previously reviewed and closed. No other information was available on the increase of allegations in this year. See Council of the Inspectors General on Integrity and Efficiency, *Progress Report to the President: Fiscal Year 2013*, Washington, DC, p. 5, at https://www.ignet.gov/sites/default/files/files/CIGIE%202013%20Progess%20Report.pdf.

Concerns with the Integrity Committee's Operations

Some Members of Congress and the public have expressed concerns about the operations of the Integrity Committee, focusing particular attention on the lengths of time that certain investigations have taken and the opaque nature of the investigative process.[30] Additionally, the Integrity Committee has been criticized for not making public the results of investigations that find wrongdoing and for not providing the President, agency heads, or Congress specific recommendations for holding accountable IG employees found to have committed wrongdoing.[31]

Case Study: The Integrity Committee Investigation of the National Archives and Records Administration Inspector General

Beginning in June 2012, CIGIE received "numerous" allegations about a variety of inappropriate behavior by the National Archives and Records Administration (NARA) IG, counsel to the IG, and the assistant IG for investigations.[32] According to CIGIE, allegations of wrongdoing included

[30] For one example of concern over the timeliness of an investigation that arose from a watchdog organization, see above "Case Study: The Integrity Committee Investigation of the National Archives and Records Administration Inspector General." The Project on Government Oversight, a private organization that works for government reform, also released a report in 2009 that found many in the IG community expressed concerns about a lack of transparency in the IC's operations. See Project on Government Oversight, "Inspectors General: Accountability is a Balancing Act," p. 10, at http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf.

[31] See Project on Government Oversight, "Inspectors General: Accountability is a Balancing Act," p. 11, at http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf. As noted above, the IG Act requires the IC to provide recommendations on potential disciplinary action of anyone found to have committed wrongdoing.

[32] Council of the Inspectors General on Integrity and Efficiency: Integrity Committee, *Fiscal Year 2014 Annual Report to Congress and the President*, Washington, DC, December 15, 2014, at p. 3 of 6, https://www.ignet.gov/sites/default/files/files/FY%202014%20IC%20Annual%20Report%20-%2012-22-14.pdf.

- "various statements the IG may have made concerning the race and/or ethnicity" of NARA employees;
- "comments about dating NARA employees" or contractors;
- comments "sexual in nature" about employees or contractors;
- "comments about the weight or personal appearance of employees" or contractors;
- "threatening comments about the NARA General Counsel"; and
- "a failure to follow appropriate investigative and audit standards and taking retaliatory actions against OIG employees."[33]

In July 2013, the Federal Deposit Insurance Corporation OIG (FDIC OIG) accepted the Integrity Committee's request to conduct an investigation into the allegations against the NARA OIG employees.[34] In May 2014, the FDIC OIG provided its findings to the Integrity Committee, which substantiated the allegations of various inappropriate comments made by the NARA IG. The FDIC OIG report stated it was "not able to substantiate the allegation" of failure to follow appropriate investigative and audit standards.

Throughout the entirety of the FDIC OIG investigation, the NARA IG was placed on paid administrative leave.

On May 21, 2014, the Integrity Committee met to discuss the FDIC OIG's findings. The IC "accepted and adopted" the investigation's findings and concluded that the NARA IG's behaviors "constituted administrative misconduct and undermined the integrity reasonably expected of an IG."[35] Neither the counsel to the IG nor the assistant IG for investigations was found to have "committed administrative misconduct."

From the time the IC received allegations of wrongdoing against NARA OIG officials to completion of the investigation, more than two years elapsed. In fact, the NARA OIG reportedly resigned from office in August 2014 when a copy of the FDIC OIG investigation's findings were leaked to the *Washington Post*.[36] It is unclear whether the agency head or Congress had been provided the FDIC OIG findings or the Integrity Committee's recommendations prior to the report's leak to the *Washington Post*.

Throughout the investigation process, several lawmakers criticized the length of time it was taking to complete. For example, on February 21, 2014, Representative Darrell Issa, Senator Charles E. Grassley, and then-Senator Tom A. Coburn wrote a joint letter to the Archivist expressing concern over the "use of extended, paid administrative leave" for the NARA IG, as well as whether the IG Act "adequately ensures that Congress receives formal notice and explanation when an agency takes action to prevent an IG from performing his duties."[37] On August 21, 2014, Senator Grassley wrote to the IC chairman expressing concerns about "[e]xtended investigations" that "are harmful to the independence and integrity of the IG community." Senator Grassley also noted that placing an IG on administrative leave for extended periods of time could constitute de facto removal of an IG from his or her office.[38]

In his February 3, 2015, testimony before the House Committee on Oversight and Government Reform, CIGIE's Chairman, Michael E. Horowitz, the IG at DOJ, stated,

> I am aware of the recent questions that have been raised relating to the work of CIGIE's Integrity Committee, including with respect to the timeliness of its work and the transparency of its efforts. One of my first meetings as Chair of CIGIE was with the

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Lisa Rein, "Embattled National Archives IG to Retire After Probe Finds Misconduct," *Washington Post*, August 4, 2014, at http://www.washingtonpost.com/blogs/federal-eye/wp/2014/08/04/embattled-national-archives-ig-to-retire-after-probe-finds-misconduct/.

[37] Letter from Senator Charles E. Grassley, Ranking Member of the Senate Committee on the Judiciary, Representative Darrell Issa, Chairman of the House Committee on Oversight and Government Reform, and Senator Tom A. Coburn, Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs, to David Ferriero, Archivist of the United States, February 21, 2014. Letter provided to the author by staff from the Senate Committee on the Judiciary on February 23, 2015.

[38] Letter from Senator Charles E. Grassley, Ranking Member on the Committee on the Judiciary, to Joseph S. Campbell, Committee Chairman of the CIGIE Integrity Committee, August 21, 2014, http://www.grassley.senate.gov/sites/default/files/news/upload/CEG%20to%20CIGIE%20IC%20%28timelines%29%2C%208-21-14.pdf.

> Assistant Director of the FBI, who chairs the Integrity Committee, in order to discuss ways to address these issues. OIGs must maintain the highest levels of accountability and integrity, and as Chair of CIGIE I will make it a top priority to improve the procedures for the Integrity Committee.[39]

Certain Members of Congress and a watchdog organization have also expressed concerns with the reporting requirements of the IC and the IC's role in recommending actions, including disciplinary action, to be taken after completion of an investigation. For example, the IC is not required to provide the final report of its investigations into allegations of wrongdoing to Congress. Instead, as noted above, Congress receives an "executive summary" of the investigation.[40] Additionally, the Project on Government Oversight, an independent watchdog organization, has requested that the IC offer more precise recommendations for sanctions against or removal of IGs found to have committed wrongdoing.[41]

Recent Legislation to Amend the Integrity Committee's Structure and Operations

In the 114th Congress, companion bills have been introduced that would amend the structure and operations of the IC. In the Senate, S. 579, introduced by Senate Homeland Security and Governmental Affairs Committee Chairman Grassley, seeks to strengthen "the IC investigation process without being overly prescriptive."[42] A similar bill, H.R. 2395, was introduced by House Oversight and Government Reform Committee Chairman Chaffetz. Provisions from each bill, as reported, are provided below as well as in an abbreviated form in **Table 2**.

Time Limits on Investigations (S. 579 and H.R. 2395)

Both S. 579 and H.R. 2395 would place time limits on the completion of Integrity Committee investigations. Pursuant to S. 579, within seven days of the Integrity Committee's receipt of an allegation of wrongdoing against an IG or qualifying OIG staff, the allegation would be required to be appropriately referred to either the DOJ, the Office of Special Counsel, or the Integrity Committee—presumably dependent upon the substance of the allegation. If such an allegation were submitted to the Integrity Committee, S. 579 would provide the committee up to an additional seven days to determine whether the allegations warrant initiation of an investigation. The bill seeks to require that OIGs assigned to investigate allegations of wrongdoing by another IG or IG staff member are of "similar size." S. 579 would require completion of the investigation within 120 days of the Integrity Committee's referral for investigation. If the investigation could not be completed within 120 days, S. 579 would require the investigating IG to "notify" and "brief" the appropriate congressional committees of jurisdiction[43] every 30 days until the

[39] U.S. Congress, House Committee on Oversight and Government Reform, *Inspectors General: Independence, Access and Authority*, testimony of CIGIE Chairman Michael E. Horowitz, 114th Cong., 1st sess., February 3, 2015, at http://oversight.house.gov/wp-content/uploads/2015/02/IG-Horowitz-CIGIE-Chair-Statement-2-3.pdf.

[40] 5 U.S.C. (IG Act) Appendix, §11(d).

[41] Project on Government Oversight, *Inspectors General: Accountability is a Balancing Act*, 2009, March 20, 2009, pp. 10-11, at http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf.

[42] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *To Amend the Inspector General Act of 1978 To Strengthen the Independence of the Inspectors General, and for Other Purposes*, report to accompany S. 579, 114th Cong., 1st sess., May 5, 2015, S.Rept. 114-36 (Washington: GPO, 2015), p. 12.

[43] These committees would include the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and other applicable committees of substantive

investigation was completed. The Senate report to accompany S. 579 stated that the provision "puts time limits on each significant step in the investigation to ensure the IC is moving efficiently toward completing the investigation and keeping Congress apprised of delays as well as informed of the results."[44]

H.R. 2395, by comparison, seeks to amend the IC's process by providing up to 60 days for the Integrity Committee to determine whether to initiate an investigation into an allegation of wrongdoing and then capping any investigation undertaken by the committee at six months. Pursuant to the provisions, if the investigation takes longer than the six-month cap, the committee would notify certain congressional committees of the need for an extension, and "to the maximum extent practicable, complete the investigation" within an additional three months. If the investigation lasts longer than nine months, the committee would be required to "brief" certain congressional committees every 30 days until the investigation was completed.

Concurrent Investigation (S. 579 and H.R. 2395)

S. 579 and H.R. 2395 would permit the Integrity Committee to conduct any investigation even if their investigation ran concurrently with another oversight entity's investigation into the same allegation. For example, the Integrity Committee could investigate an allegation of wrongdoing for ethics, fraud, or other improprieties, while at the same time DOJ was investigating the allegation for criminal violations. Until a recent administrative chance in policy, if an allegation was referred to DOJ for investigation into potential criminal infractions, the Integrity Committee ceased any ongoing non-criminal investigation into that allegation. At a January 2015 meeting, CIGIE officials stated that in many cases, FBI investigations into allegations of IG wrongdoing prompted lengthy Integrity Committee investigation.[45] Earlier this year, however, the IC administratively determined that it may now conduct concurrent investigations. Congress, however, may decide that allowing concurrent investigation should be codified in statute. In other cases, Congress has stated that unclear or overlapping jurisdiction between the Integrity Committee and the Office of Special Council have hindered or delayed investigations into allegations of IG community wrongdoing.[46]

Restructuring the Integrity Committee (S. 579)

S. 579 would amend the IG Act by removing the Special Counsel of the Office of Special Counsel from Integrity Committee membership, and removing the FBI official's statutory designation as the IC's chairperson. Instead, S. 579 seeks to provide authority to Integrity Committee members to elect, for a two-year term, a chairperson from among the IGs who are members of CIGIE. These provisions seek to address concerns, according to the Senate Committee Report, that "the chairmanship of the IC is a largely administrative role that has not been embraced by FBI and is better served by another party."[47]

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jurisdiction.

[44] Ibid.

[45] Information provided from CIGIE officials to the author at a January 29, 2015, meeting at the Congressional Research Service.

[46] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *To Amend the Inspector General Act of 1978 To Strengthen the Independence of the Inspectors General, and for Other Purposes*, report to accompany S. 579, 114th Cong., 1st sess., May 5, 2015, S.Rept. 114-36 (Washington: GPO, 2015), p. 11.

[47] Ibid., p. 12.

Reporting Requirements (S. 579)

Pursuant to S. 579, the results of any investigation—whether conducted by the Integrity Committee, DOJ, or the Office of Special Counsel—would have to be submitted to the Integrity Committee chairperson. In addition, the bill would ensure that Members of Congress have access "to any report authored by the Integrity Committee," and would require that any investigation final report be submitted, with Integrity Committee recommendations, to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, and other appropriate congressional committees of jurisdiction. These provisions seek to keep Congress "informed of the results" of IC investigations.[48]

Increased Investigatory Jurisdiction (S. 579)

S. 579 seeks to provide the Integrity Committee the authority to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel. The bill provides the Integrity Committee the authority to promulgate "regulations necessary" to execute such investigations.

Selecting an Appropriate Investigator (H.R. 2395)

H.R. 2395 would formalize the process the Integrity Committee currently uses to select an IG to investigate allegations of wrongdoing made against OIG employees. As noted above, the IC does not investigate the allegations itself; it delegates that responsibility to a particular IG. H.R. 2395 would require CIGIE to create "a regular rotation" of IGs that can be "assigned to investigate complaints." The provisions also require the IC to create procedures that ensure IC investigations "avoid conflicts of interest." This provision appears to codify procedures already performed by the IC.

Table 2. Legislative Provisions Seeking to Add Time Caps on Integrity Committee Investigations

S. 579 and H.R. 2395

Provisions	S. 579	H.R. 2395
Time for Committee to Determine whether to Refer a Case for Investigation	Seven days to determine whether the allegation should be referred to either DOJ or the Office of Special Counsel. If the IC decides to further pursue the case itself, the bill would provide the committee an additional seven days to determine whether the allegations warrant initiation of an investigation.	Up to 60 days.

[48] Ibid.

Provisions	S. 579	H.R. 2395
Time for IC Committee to Complete an Investigation	120 days, starting at the point the investigation was referred to the committee. If the investigation lasts longer than the 120-day cap, the investigating IG would be required to "notify" and "brief" applicable congressional committees every 30 days until the investigation's completion.	Six months. If the investigation needs additional time to complete, the IC can notify applicable congressional committees and would receive an additional three months. After expiration of a nine-month investigation period, members of the IC would be required to brief appropriate congressional committees on the investigation every 30 days until the investigation was completed.
Concurrent Investigation	Would permit concurrent investigations by the IC, Office of Special Counsel, DOJ, or other appropriate entities.	Would permit concurrent investigations by the IC, Office of Special Counsel, DOJ, or other appropriate entities.
Restructuring the Integrity Committee	Would amend the IG Act by removing the Special Counsel of the Office of Special Counsel from Integrity Committee membership, and removing the FBI official's statutory designation as the IC's chairperson. Would allow for the election of a CIGIE member to serve as the IC's chairperson.	N/A
Reporting Requirements	Would require the submission of results of any investigation of an IG community employee—whether conducted by the Integrity Committee, DOJ, or the Office of Special Counsel—to the Integrity Committee chairperson. Would ensure that Members of Congress have access "to any report authored by the Integrity Committee,"	N/A
Increased Investigatory Jurisdiction	Would provide the IC authority to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel.	N/A
Selecting an Appropriate Investigator	N/A	Would formalize the process the IC uses to select an IG to investigate allegations of wrongdoing made against OIG employees by statutorily requiring the establishment of "a regular rotation" of IGs that can be "assigned to investigate complaints."

Source: The text of S. 579 and H.R. 2395 is available in the Legislative Information System (LIS) at http://www.lis.gov/.

Previous Congresses

The 114th Congress is not the first in which legislators introduced legislation to amend the operations of CIGIE and the Integrity Committee. H.R. 5492 (113th Congress) sought to amend CIGIE's statutory authority by placing time limits on the Integrity Committee's determination of whether to investigate allegations of wrongdoing against an IG and certain other IG employees. Like H.R. 2395 in the 114th Congress, H.R. 5492 also would have initially limited an Integrity Committee investigation to six months with a potential to gain an additional three months. To gain the additional three months, the Integrity Committee would be required to notify appropriate congressional committees of jurisdiction of the need for additional time. If the Integrity Committee determined that an investigation needed additional time beyond nine months, the Integrity Committee would be required to brief Members of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and other applicable committees of jurisdiction about the progress of the investigation every 30 days until the investigation's completion.

H.R. 5815 (111th Congress) contained provisions nearly identical to S. 579 (114th Congress) that sought to authorize the IC to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel.

Analysis

Both chambers of Congress have demonstrated an interest in amending the operations of the IC. The sections below examine in more detail the major concepts proposed in legislation in the 114th Congress.

The Length of Integrity Committee Investigations

As noted in the sections above, these bills focus on the length of time the IC takes to investigate allegations of wrongdoing made against high-ranking IG community staff. For example, both bills would cap the length of time the Integrity Committee would have to refer an investigation to the appropriate authority. These bills also seek to cap the time an investigation can take, if the appropriate referral authority is the IC itself.

IGs strive to root out waste, fraud, and abuse in their affiliated agencies. Allegations of waste, fraud, or abuse within the OIG community can prompt doubt in IG findings or can cause inappropriate use of finite federal resources. As noted above, Members of Congress have emphasized the importance of expeditiously investigating allegations of misconduct by IGs and other high-ranking OIG officials. Yet, there is also concern to ensure that those accused of wrongdoing are provided the opportunity to demonstrate innocence, providing needed context to an investigation. CIGIE is in a unique position to oversee investigations into allegations of wrongdoing and keep applicable congressional committees of jurisdiction apprised of the investigation's progress. The substance of an IG investigation is sensitive—even the knowledge that someone is the subject of an ongoing investigation into alleged misconduct can negatively affect his or her career, regardless of the investigation's findings. The IC, therefore, may be concerned about sharing information on ongoing or even completed investigations with Congress or the public.

Congress, however, has an interest in ensuring that the IG community is appropriately overseen as well. The Integrity Committee is one tool Congress has to root out waste, fraud, or abuse in the

IG community. Congress may choose to limit the time the IC has to complete an investigation, as S. 579 and H.R. 2395 seek to do.

Another mechanism Congress may choose to employ is requiring GAO to investigate an allegation of wrongdoing in lieu of the Integrity Committee. GAO has, historically, performed such reviews of allegations of misconduct waged against an OIG.[49] Replacing the IC with GAO would remove the responsibility of policing the IG community from CIGIE in the executive branch and place it with GAO in the legislative branch. GAO is not a member of CIGIE and would, therefore, remove any concerns with the IG community policing itself. GAO, however, may not have the capacity to investigate all allegations of wrongdoing in the IG community. GAO also may not be capable of investigating wrongdoing at IGs of a significantly larger size, like the Department of Defense or the Department of Health and Human Services OIG.

In lieu of assigning all investigatory responsibilities to GAO, Congress may choose to require GAO to select a sample of investigations into wrongdoing allegations conducted by IGs on behalf of the Integrity Committee and examine their efficacy. This policy option would establish an audit of IC investigations. If Congress chose this policy option, it would provide an additional check on the IG community's oversight of itself. This additional layer of oversight, however, could increase the length of time it would take to come to a final conclusion about a particular investigation.

Concurrent Investigation

As noted above, until a recent administrative change by the IC, some IC investigations were suspended while DOJ or the Office of Special Counsel examined allegations that fell within their jurisdictions. DOJ, for example, would examine a case with potential criminal implications. The Office of Special Counsel may come into play when a federal agency uses prohibited personnel practices against an employee. When either of these federal agencies investigated allegations of wrongdoing made against a member of the IG community, any investigation of those allegations conducted on behalf of the IC previously ceased. The IC investigation could not resume until the other entities finished their investigations. Sometimes, as in the case of the investigation of the NARA IG, these stoppages lasted for long stretches of time. Although the IC has administratively eliminated the prohibition on concurrent investigation, Congress may decide to codify the authority to conduct concurrent investigation. Codifying the authority to conduct concurrent investigation could allow the IC to complete its investigations more quickly, thereby saving time, resources, and money over the longer term. Codification would also reinforce the IC's administrative decision to permit concurrent investigation, should any of the other investigatory bodies object to the IC's new policy. Concurrent investigation could, however, prompt investigative redundancy thereby adding to the shorter-term time and costs each investigating entity may have to incur.

Integrity Committee Structure

The membership of the IC, particularly for leadership positions, has been of concern to Congress and the public since the IC's statutory establishment. As noted above, Congress has expressed reservations that the current leadership structure, which taps the FBI's CIGIE representative as

[49] See, for example, U.S. General Accounting Office, *Financial Markets and Institutions: RTC Inspector General*, GGD-95-132R, March 30, 1995, at http://gao.gov/products/GGD-95-132R; and U.S. General Accounting Office, *GPO Office of Inspector General: Alleged Mismanagement and Misconduct by Assistant Inspector General for Audits*, OSI-97-3R, April 23, 1997, http://gao.gov/products/OSI-97-3R.

the IC chairman, has not been as effective as desired. Additionally, the Project on Government Oversight (POGO), the independent watchdog organization, has expressed concerns that an FBI representative "may overlook misconduct or inappropriate behavior that does not actually violate any laws" because of the FBI's focus on criminal violations.[50] Citing a former DOD OIG official as its source, POGO wrote, "criminal investigators should not be in charge of administrative inquiries."[51]

S. 579 includes provisions that would remove the FBI's CIGIE representative from the IC chairmanship and render the post an elected position, chosen for a two-year term from among CIGIE's membership. Such an amendment could improve the operations of the IC committee by placing a chairman at the committee's helm whose expertise more clearly align with the assignments and goals of the IC. Additionally, the amendment would establish the IC chairmanship post as the only statutorily established CIGIE position in which a special IG[52] or an IG affiliated with a legislative branch entity[53] were authorized to serve. Currently, only IGs established explicitly through the IG Act of 1978, as amended, are authorized to hold statutorily established CIGIE leadership roles. The language, therefore, could be seen to make CIGIE more inclusive of all its members. Accordingly, the FBI's CIGIE representative would still be eligible to serve in the post if elected.

On the other hand, electing an IG to the chairmanship of a committee charged with investigating wrongdoing of his or her colleagues may prompt concerns that the IC lacks the impartiality necessary to conduct such sensitive work. Removing a non-IG official from the chairmanship of the IC committee could prompt conflict-of-interest concerns that IGs—who often know and work with one another—may not be aggressive enough in their investigations of alleged wrongdoing.

Congress has a number of potential options regarding future leadership of the Integrity Committee. On the one hand, the existing leadership structure could remain unchanged, with the FBI's CIGIE representative continuing to serve as the IC's chairperson. Congress may choose, on the other hand, to enact the provisions of S. 579 that would make the chairperson's position an elected one. Congress might also consider requiring another of CIGIE's non-IG members to serve as chair, or even bring in new leadership from outside the council. For example, Congress could require the Special Counsel of the Office of Special Counsel, a CIGIE member, to serve as chairperson or share the leadership position with the FBI representative, thereby embedding both criminal and civil oversight expertise into the role. Additionally, Congress could choose to appoint the Director of the Office of Government Ethics, also a CIGIE member, as the IC chairman, refocusing the committee on ethical violations and allowing referral to DOJ for criminal infractions. Congress might also choose to appoint someone from outside of CIGIE's membership to the leadership structure of the IC. For example, Congress could appoint the Comptroller General or another GAO representative to serve as the IC chairperson or in another IC leadership role. Placing a GAO representative at the helm of the committee could remove any perception of a conflict of interest while retaining knowledge of IG community operations and expectations.

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[50] Project on Government Oversight, *Inspectors General: Accountability is a Balancing Act*, 2009, March 20, 2009, pp. 10-11, at http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf.

[51] Ibid.

[52] Special IGs include those established by a statute outside of the IG Act. Special IGs include the IG for the Central Intelligence Agency, the IG for the Intelligence Community, the Special Inspector General for Afghanistan Reconstruction, and the Special Inspector General for the Troubled Asset Relief Program.

[53] The five legislative branch IGs include the IGs for the Architect of the Capitol, the Government Accountability Office, the Government Printing Office, the Library of Congress, and the U.S. Capitol Police.

Additional Reporting Requirements

Congress needs access to accurate, authoritative, and timely materials to conduct effective oversight of IGs. Currently, the IC is required to provide appropriate committees of Congress an executive summary of any investigation conducted by the IC. Provisions in S. 579 would require that all investigations into IG employees—whether conducted by the Integrity Committee, DOJ, or the Office of Special Counsel—be provided to Congress. The provisions would also ensure that Congress receives the report of the full investigation, with recommendations—and not an executive summary of the investigation.

Access to the full investigation results could provide greater context to certain investigations and assist Congress in determining whether additional actions to discipline or remove an OIG employee need to be taken. The contents of investigations are sensitive. As noted above, even the knowledge that a particular IG or employee is under investigation could harm his or her career. Congress may determine that the current level of access to IC reports is an appropriate balance between protection of sensitive information and information access that allows for effective congressional oversight.

Increased Investigatory Jurisdiction

S. 579 would increase the IC's investigatory jurisdiction to include authority to investigate allegations of wrongdoing against the Special Counsel and the Deputy Special Counsel. These positions have unique roles in the federal government, but possess a skill set that may be similar to that of an IG. The IC, therefore, may be an appropriate entity to lead an investigation into allegations of wrongdoing. Alternatively, the differences between a special counsel and an IG may render an IC investigation less useful than another entity's investigation.

The provision expanding the IC's jurisdiction would vest the IC with the authority to promulgate "regulations necessary" to perform these new duties. Among the items these regulations might need to address are the following:

- Which IGs could be tasked with performing an investigation?
- Would the Special Counsel have to recuse himself or herself from the IC during any ongoing investigation involving the Special Counsel or the Deputy?
- Which office would pay for any investigations involving the Office of Special Counsel?
- Could the IC make recommendations for remedial action against or removal of the Special Counsel or the Deputy Special Counsel?

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