

TESTIMONY OF DANIEL W. LUCAS, INSPECTOR GENERAL

**BEFORE THE
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON FINANCE AND REVENUE**

**Bill 21-813, the “Comprehensive Inspector General
Independence and Empowerment Amendment Act of 2016”**

OCTOBER 25, 2016

Good morning Chairman Evans and members of the Committee. I am Daniel W. Lucas, Inspector General for the District of Columbia. I appreciate the opportunity to be here today at this public hearing to discuss Bill 21-813 (“proposed Bill”), the “Comprehensive Inspector General Independence and Empowerment Amendment Act of 2016.”

BACKGROUND

Leading up to my confirmation hearing, I met with Councilmembers, members of the Executive, and other District stakeholders, all of whom shared with me their desire for a strong Office of the Inspector General (OIG). Since then, I worked tirelessly to transform the District’s Office of the Inspector General to meet these demands. The support that OIG received from both the Office of the Mayor and Council during this transformation has been tremendous, both budgetary and legislatively, and it ensures we succeed in standing guard for the integrity of District government operations.

During the same time period, I identified D.C. Code sections that encumber the OIG's ability to ensure the effective and efficient use of District resources. Ultimately, this proposed Bill, if passed, will give my Office, the ability to perform its statutory mandates while being flexible enough to respond to the needs of the District.

Broadly speaking, this proposed Bill provides the OIG with legislative improvements in three categories: (1) enhanced independence from other District programs; (2) enhanced law enforcement authority; and (3) amended statutory authority and requirements. I would like to discuss with you this morning the OIG's legislative history, the rationale for my proposed changes, and the controls we will put in place in response to the requested provisions.

ENHANCED INDEPENDENCE

During my confirmation hearing, I stated that I would “unabashedly guard OIG independence [as the IG].” I have evaluated both the legislative evolution of the OIG, and our current statutory framework; it is apparent that this OIG is not a “truly independent inspector general” as Congressional and District leaders initially envisioned. In 1995, these leaders stated the OIG needed to have “the political independence and financial resources to act as a strong watchdog over the city government.” In the leaders' minds, a more independent IG, coupled with an independent CFO, was the “nucleus [to a] more efficient, responsible, and responsive city government.”

However, this never came to fruition and currently, the District's OIG does not truly have political or financial independence. While we have some autonomy from the political pressures, given the statutory protection of the IG's appointment, we are dependent on other agencies for services, and those agencies do not have such protections. This puts us in a precarious position

because our reliance for critical services from the same agencies we audit, inspect, evaluate, and investigate will leave us vulnerable to possible reprisals for pursuing oversight activities the agencies do not welcome.

Financial independence is equally important for my Office. How we fund initiatives is important to the integrity of OIG operations and should be based solely on the authority of the Inspector General. As the OIG has independence to procure some items, such as the CAFR, so must we have that same independence to use funds and procure items that are integral to our operational mission – using experts or products specific to an OIG in a manner that meets our standard timeframes for completing investigations, inspections, evaluations, or audits for the District.

At the end of the day, the only way my Office can and will positively impact the District government and its stakeholders will be through independent oversight, with political and financial separation from other District operations.

Our desired structural independence leverages best practices within the federal inspectors general community. Currently, the OIG is under the statutory authority of District agencies such as the Department of Human Resources (DCHR), the Office of Contracting and Procurement (OCP), and the Office of the Chief Technology Officer (OCTO). While we enjoy positive working relationships with these agencies now, the OIG did not have always that same positive working relationship with previous administrations, and may not in the future. This puts our oversight mission at risk because the OIG is then forced to rely on agencies for services where we may be engaged in active oversight work. By comparison, as federal inspectors general evolved, their independence was enhanced to reduce the reliance on these service providers in order to mitigate mission risk.

To accomplish both our mission and our responsibilities to District stakeholders, the OIG must not rely on external agencies to accomplish our oversight responsibilities. The OIG knows best what it needs to meet our mission. This means my Office needs to identify and control the types of employees necessary to do our work; the compensation required; the training and development needed to complete our objectives; and finally, when absolutely necessary, the timing and reasoning for termination of those employees.

Further, the OIG should be able to contract and procure goods and services without external involvement from other agencies but within the confines of the District's statutory and regulatory framework. By seeking external approval for purchases, the OIG may be forced to reveal the nature of our sensitive work to outside parties to meet contracting and procurement requirements. This is problematic because knowledge of our sensitive work may provide opportunities for certain individuals to undermine our efforts.

Finally, reliance on sensitive data and integrated information technology (IT) systems to accomplish government business is increasing, as are the demands of data and IT security. The OIG needs to ensure that we have full control over our IT systems to protect sensitive and confidential data and information. This includes both information deemed law enforcement sensitive and privacy sensitive. Again, this is necessary to protect the integrity of OIG work prior to release to either District leadership or prosecutorial bodies, and to ensure that an individuals' personal information is protected in accordance with applicable laws, rules, regulations, and policies.

As I have articulated previously and again today, the lack of OIG independence and reliance on other District agencies for critical services presents an inherent risk to the successful

accomplishment of our oversight mission. This proposed Bill includes necessary amendments to enhance and solidify the OIG's independence to ensure the integrity of OIG operations so my Office can serve the needs of the District as well as protect the integrity of government and OIG operations.

While seeking independence from DCHR, OCP, and OCTO, it goes without saying that we would still be subject to the same rules and regulations we currently abide by, namely the Comprehensive Merit Personnel Act of 1978¹ and the Procurement Practice Reform Act of 2010.² Further, if granted independence we would maintain a written agreement with the Chief Technology Officer to coordinate the operations of our respective IT systems.³ These controls will afford the OIG independence, while ensuring that my Office continues to be an exemplar in abiding by the rules and regulations governing human resources, contracting and procurement, and information technology that most District agencies and offices follow.

ENHANCED LAW ENFORCEMENT AUTHORITIES

The second part of our proposed Bill concerns enhanced law enforcement authorities. Shortly after the independence of the OIG was strengthened in 1995, Council added several law enforcement provisions to the OIG's enabling legislation.⁴ Specifically, individuals designated by the IG could carry a firearm, employ limited arrest authorities, and apply for and execute a search warrant. At the time, these law enforcement provisions afforded to the OIG were in line with the prevailing authorities of federal inspectors general.

¹ D.C. Law 2-139, D.C. Code § 1-601.01 *et seq.*

² D.C. Law 18-371, D.C. Code § 2-351.01 *et seq.*

³ *See* D.C. Law 18-111, Code § 1-1406, permitting the same for the Council and the D.C. Auditor.

⁴ D.C. Law 12-0190, eff. Mar. 26, 1999.

However, in 2002, federal inspectors general were granted full law enforcement authority to enhance the effectiveness of their investigations and reduce reliance on other law enforcement agencies.⁵ Full law enforcement authority means that federal special agents now: (1) carry a firearm while engaged in official duties; (2) make an arrest without a warrant while engaged in official duties for all offenses [. . .] if the special agent has reasonable grounds to believe that the person to be arrested *has committed* or is committing such a felony; and (3) upon probable cause to believe that a violation has been committed, seek and execute warrants for arrest, search of premises, or seizure of evidence issued under the authority of the United States. While the federal inspectors general evolved to meet their mission requirements, the OIG has not.

As enabled, OIG special agents are not included in the definition of law enforcement officer under Title 23, Chapter 5 (Warrants and Arrests) of the D.C. Code. OIG special agents may *only* make an arrest for a felony violation of a federal or District of Columbia statute if the criminal violation is committed *in the presence* of an OIG special agent in the District or in a District government facility (*emphasis added*). Even if an OIG special agent comes across an individual with an outstanding warrant, they cannot effect an arrest. Executing any arrest for any felony violation of a federal or District of Columbia statute not committed in the presence of the OIG special agent requires the assistance of other law enforcement entities to effect the arrest. This reliance on outside law enforcement partners puts my Office on their schedule, and we must compete with their time and mission demands, ultimately affecting our efficiency.

Further, an OIG special agent cannot apply to an appropriate judicial officer for, and ultimately execute an arrest warrant. Again, this statutory limitation requires OIG special agents to request

⁵ 5 U.S.C. app. § 6(e)(1).

the assistance of other law enforcement entities, such as MPD, the FBI, or another law enforcement agency, to apply for an arrest warrant for an OIG investigation.

In addition to the limitations on arrest and warrant authority, OIG special agents' lack of inclusion in the definition of law enforcement officer precludes them from gaining access to law enforcement databases and information used in furtherance of criminal investigations.

I fully recognize that the proposed authority enhancements require additional controls and safeguards. Currently, all special agents receive training at either the Federal Law Enforcement Training Center, or a state or local law-enforcement training academy. To carry a firearm, OIG agents undergo a background investigation, are subject to random drug screenings, conduct firearms training every quarter, and ultimately qualify at the MPD range semiannually.

Taking these current requirements and expanding our safeguards under my leadership, we have invested heavily in additional training for OIG special agents. Of note, we have sent OIG special agents to firearms instructor training, armorer school, and use of force instructor school; and increased the periodicity of training for OIG special agents. Once the proposed enhancements are adopted, I will continue to adopt additional best practices from the federal inspectors general community, to include our ongoing efforts to align our office with the U.S. Attorney General's *Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority*.⁶

In summary, the law enforcement authority enhancements in the proposed Bill are to remove impediments to our investigative work, reduce the undue burden on other law enforcement agencies, and employ best practices from the federal inspectors general community.

⁶ <https://www.ignet.gov/sites/default/files/files/agleguidelines.pdf>

STATUTORY ALTERATIONS

The remaining provisions within our proposed Bill amend outdated requirements, implement necessary authority to fulfill my Office's statutory mandates, and clarify additional requirements to ensure the OIG can provide effective oversight to the District. Those alterations include:

- Assigning the OIG with primary investigative authority for/over all administrative and criminal investigations, only to the extent the agency believes a violation of criminal law may have occurred, as it relates to the programs, operations, employees, and contractors of District government departments, agencies, instrumentalities, boards, and commissions.
- Revising the OIG's annual procurement audit requirements to ensure that all procurement activities for the District government are subject to this review. Further, that the corresponding annual procurement audit report will include recommendations deemed advisable by the Inspector General for improvements to procurement operations and compliance is included as a requirement.
- Ensuring the OIG expeditiously reports a potential violation of federal or District criminal law to the United States Attorney General.
- Ensuring the OIG complies with quality standards promulgated by the Council of the Inspectors General for Integrity and Efficiency.

The remaining alterations in our proposed Bill address unnecessary or outdated requirements.

CONCLUSION

In conclusion, Chairman Evans and members of the Committee, the legislative improvements reflected in Bill 21-813 will greatly enhance the OIG's independence, law enforcement abilities, and address outdated and/or unnecessary provisions.

In this proposed Bill, we have taken best practices employed by other state and federal inspectors general to ensure that the District's Office of the Inspector General is a world-class Office of the Inspector General, an OIG that holds the integrity of District government operations and the efficient use of District resources to the highest standard, while upholding a political and financial independence from District operations to ensure the faith and trust of the District's most important resource, District stakeholders, and your constituents.

I appreciate the Committee's consideration of this bill and I leave you with this final thought: I recently heard someone say, "*the OIG is key to rebuilding the confidence of communities in their government.*" I believe this to be true and if enacted, the provisions within this proposed Bill will build a stronger OIG by rebuilding and ensuring this confidence is maintained in the District government. This concludes my prepared testimony. I am happy to discuss any of the elements of the proposed legislative changes or answer other questions.