



Empowering government watchdogs requires cross-agency coordination and an investment in long-term relationships

Lessons Learned

1. Collaborative relationships between executive branch leaders, members of Congress and staff require ongoing communication, transparency and a sustained investment of time.
2. Federal agency leaders can use cross-agency councils to inform congressional oversight and speak to Congress with a common voice about issues that transcend individual agency silos.
3. Congress can use the expertise and authority of cross-agency councils to identify and address problems that affect multiple agencies.
4. Members of Congress and agency officials can bridge partisan and inter-branch divides by taking time to understand one another's good government priorities, and addressing common goals through bipartisan legislation that solves problems and improves government effectiveness.

The enactment of legislation in 2016 strengthening the authority of the federal government's 73 inspectors general was prompted by a high-profile dispute over access to agency records. But the law also contained many important provisions that stemmed from years of collaborative oversight and consensus-building by the IG community and congressional staffers.

The impetus for the Inspector General Empowerment Act of 2016 was the release of a legal opinion by the Department of Justice that allowed a number of agencies—including the FBI, the Peace Corps and the Environmental Protection Agency—to withhold certain sensitive information from their IGs based on privacy and national security concerns.

Congress responded with legislation confirming that the IGs are entitled to largely unfettered access to agency records, and lawmakers added several key provisions long sought by the IGs to enhance their oversight capabilities and independence. These provisions included amendments that make it easier for IGs to match datasets across federal agencies to identify fraud and waste as well as to collect timely information from large groups of people for audits and investigations.

Enactment of the Inspector General Empowerment Act provides a template for how an organized community of executive branch leaders, members of Congress and their staffs can build relationships, engage outside stakeholders and lay the groundwork for passage of important legislation when the right political moment occurs.

Matching data from multiple agencies to identify possible trends in fraudulent conduct, for example, was an issue of concern that dated back almost a decade.

In 2009, Peg Gustafson was the Small Business Administration's Inspector General, overseeing distribution of disaster relief loans. Like

the inspectors general before her, she was certain that some claimants were receiving duplicate assistance from either the Federal Emergency Management Agency or the Department of Homeland Security. But federal law prohibited her and others from acting on any findings of duplicate benefits and charging those abusing the system with defrauding the government.

"We couldn't do anything about it. It was billions of dollars in duplicate benefits," said Gustafson.

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The IGs knew only legislative action could solve this problem, and they had been asking Congress for a statutory exemption to the Computer Matching Act for years. But this time was different. The IGs began the process of reaching out to lawmakers and Capitol Hill aides to make their case through the newly created Council of the Inspectors General on Integrity and Efficiency—a central entity for the 73 federal IGs established by law in 2008. The IGs realized the council could help identify common challenges and provide a united voice when engaging Congress.

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The IGs went to work building consensus among themselves and with key congressional staff—those who serve on the congressional committees that oversee the IGs as well as the staff on committees that rely on the IGs to ensure that agencies are operating efficiently and effectively. Through the council, the IGs alerted lawmakers to their legislative needs and, just as important, linked those needs to the issues of importance to members of Congress.

The IGs held meetings with legislators across Capitol Hill, and focused efforts on Sen. Claire McCaskill (D-Mo.) and Sen. Charles Grassley (R-Iowa), both champions of IG issues in the Senate. A Democratic staffer who helped draft the IG Empowerment Act said that the IGs, “had a list of things that were causing problems with their ability to conduct independent oversight of federal agencies.” And the Senators had some IG priorities of their own. “All the members brought their issues to the table. And we hadn’t done a big IG bill in a while,” he said.

Sen. Grassley, chairman of the Senate Committee on the Judiciary, for example, had longstanding concerns about how the IGs were policing themselves. He wanted changes to the committee within the IG council that investigated allegations of wrongdoing committed by IGs. Sen. Ron Johnson (R-Wis.), chairman of the Senate Committee on Homeland Security and Governmental Affairs, wanted to determine why there were so many vacancies in the ranks of federal IGs—and work to fill those vacancies. His ranking member counterpart on the committee, Sen. McCaskill, wanted to give the IGs the authority to subpoena federal employees and compel their testimony in certain cases.

As the IGs pressed for legislative changes, congressional staff laid the groundwork with outside stakeholders, working for a number of years with good government watchdog and civil

liberties organizations to help them understand why the IGs needed these new authorities. Engaging these outside organizations at the start would later prepare certain provisions to sail through any legislative process without stoking controversy. Peter Tyler, then a staffer on the Senate Committee on Homeland Security and Governmental Affairs, said that he and other congressional staffers also needed to win administration support, and spent time educating Office of Management and Budget officials on the role of the IGs and the need for these provisions.

A consensus slowly began to build for a variety of legislative fixes, but efforts stalled in part because the disparate provisions couldn’t galvanize political momentum to move a bill through Congress.

That momentum arrived in 2011 when several IGs had difficulty accessing agency information. At the Department of Justice, in particular, the IG was trying for months to oversee the Federal Bureau of Investigation’s use of national security letters to collect information and the DOJ’s and FBI’s use of warrants to arrest potential witnesses in national security investigations. DOJ officials refused to hand over documents the IG requested. At the Peace Corps, the IG was prevented from accessing records related to the handling of reported sexual assaults against Peace Corps volunteers. And the Environmental Protection Agency was withholding certain records, claiming attorney-client privilege.

The years of relationship building with Capitol Hill staff and others was about to pay off. Committees across Congress held hearings to let federal agency leaders know that they should not be withholding information from the IGs. Michael E. Horowitz, the Justice Department’s IG and head of the IG council, testified at 11 hearings in 2015 alone, often focusing on the information access problems that he and the IG community faced.

“Michael Horowitz had done a good job of constantly coming to Congress to tell us when he was being denied access to documents,” said Gabby Singer, chief counsel on the Senate Committee on Homeland Security and Governmental Affairs. “So we were well aware of the issues. Just being continually informed was really important.”

The other IGs, too, worked tirelessly to inform Congress of their access concerns. In August 2014, 47 IGs signed on to a letter objecting to the withholding of information by agencies. “That letter was very significant,” said Horowitz. “It brought the IG community together in a way that nobody had seen before.”

The IGs leveraged this moment of unity and grew their existing relationships with Capitol Hill staff and members of Congress. Through those relationships, the IGs worked collaboratively with congressional staff to draft legislation that bolstered IG access to information and included many provisions from the wish list of the IGs, such as an exemption to the Computer Matching Act, an exemption to certain Paperwork Reduction Act provisions and a requirement that the Government Accountability Office examine IG vacancies.

“We basically sat with the sponsors of the bill and said, ‘We’re in for this completely. So we’ll fight to the end,’” Horowitz said.

Ultimately, the IG Empowerment Act passed easily through both chambers and was signed into law by President Barack Obama on December 16, 2016. The law didn’t contain all the provisions on the IGs’ and the lawmakers’ wish lists. Some provisions, like the proposed new subpoena authority, were left for future debates. But all the IGs and stakeholders across the executive and legislative branches managed to package years of work into one comprehensive piece of legislation.

“This was a long, thorough game,” said Tyler, the former Senate staffer. ♦

Resources

Counsel of the Inspectors General on Integrity and Efficiency <https://www.ignet.gov/>

Letter signed by 47 IGs in August 2014 <https://www.grassley.senate.gov/sites/default/files/issues/upload/IG%20Access%20Letter%20to%20Congress%2008-05-2014.pdf>

IG Empowerment Act (P.L. 114-317) <https://www.congress.gov/114/plaws/publ317/PLAW-114publ317.pdf>