

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Pre-Hearing Questions for
Mr. Thomas Monheim upon his nomination to be
Inspector General of the Intelligence Community**

In these questions, all references to the statutory authorities relating to the Inspector General of the Intelligence Community (IC IG) are to Section 103H of the National Security Act of 1947 (50 U.S.C. § 3033), as amended by Section 405 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259).

Qualifications

QUESTION 1: Section 103H(c) provides that the nomination of an individual for appointment as Inspector General shall be made on the basis of qualifications that include "prior experience in the field of intelligence or national security," and "demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or investigations." What qualifies you to perform the duties of the IC IG generally with respect to the oversight of intelligence programs and activities and, specifically, with regard to audit and investigation tools?

I am qualified to perform the duties of the Inspector General of the Intelligence Community based on my more than 30 years of public service experience, which includes more than one year as Acting Inspector General (IG) and 12 years in various senior legal positions within the Intelligence Community (IC).

During my time as Acting IG, the Office of the Inspector General of the Intelligence Community (IC IG) independently conducted audits, investigations, inspections, and reviews of programs and activities within the Director of National Intelligence's (DNI) responsibility and authority. We managed the hotline and whistleblower programs. I led the IC IG Forum (consisting of the Inspectors General with oversight responsibility for an IC element) and worked closely with the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I kept the DNI and Congress fully and currently informed. This opportunity provided significant first-hand experience leading an IG office responsible for the independent, effective oversight of intelligence programs and activities utilizing a variety of tools, including audits and investigations.

During my time as General Counsel and Deputy General Counsel of the National Geospatial-Intelligence Agency (NGA), I ensured the agency accomplished its missions consistent with law; oversaw the agency's intelligence oversight program and ethics program; and worked closely with the NGA Inspector General and Counsel to the IG. While serving as Deputy General Counsel at the Office of the Director of National Intelligence (ODNI) and Senior Legal Advisor at the National Counterterrorism Center (NCTC), I developed a deeper understanding of ODNI and NCTC authorities, and gained a greater appreciation of the importance of independent, effective oversight of intelligence programs and activities to ensure public trust that the IC is carrying out its mission consistent with the rule of law and our core values.

Before joining the IC, I worked closely with the IC in various positions, including as Associate Deputy Attorney General at the Department of Justice, as Associate Counsel to the President, and as the Legal Advisor for a Joint Special Operations Task Force.

I believe these experiences and my character make me well qualified for this position.

Duties

QUESTION 2: Section 103(H)(b)(1) provides that the purpose of the IC IG is "to create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority of the Director of National Intelligence."

- a. Please describe your standards for "an objective and effective office" and how, if confirmed, you intend to establish an office that maintains those standards.**

My standards for an objective and effective office require that all IC IG personnel adhere to the highest ethical principles and exemplify the IC IG core values of Integrity, Independence, Transparency, Accountability, and Diversity.

If confirmed, I would (as I did when I was the Acting IG) focus on recruiting, developing, and retaining individuals with the requisite skills, experience, and character. I would clearly communicate expectations that all IC IG personnel should comply with CIGIE *Quality Standards* and other applicable standards, laws, and policies. I would also ensure appropriate internal controls, policies, and procedures are in place. I would remain vigilant against biases, pressures, conflicts of interest, or other potential impairments to integrity or independence. I would foster a culture of accountability and address any issues as they arise. And as I did throughout my legal career, I would diligently follow the facts and faithfully apply the law to reach sound judgments, regardless of the potential professional or political consequences.

- b. If confirmed, how do you expect to fulfill the statutory obligation to be "appropriately accountable to Congress"?**

If confirmed, I would expect to fulfill the statutory obligation to be "appropriately accountable to Congress," as I did when I was the Acting IG.

I would regularly engage with the intelligence oversight committees. I would comply with all legal requirements, such as submitting Semiannual Reports, responding to Congressionally Directed Actions, notifying Congress of "urgent concerns," and making other congressional notifications. I would also exercise my discretion to provide additional information that I believe would be appropriate to help Congress perform its vital oversight function, even if not required by law.

- c. What is your understanding of the scope of the term "programs and activities within the responsibility and authority of the Director of National Intelligence"?**

I understand the term "programs and activities within the responsibility and authority of the Director of National Intelligence" to broadly refer to the programs and activities that are funded by the National Intelligence Program (NIP) budget or that are carried out by IC elements.

My understanding derives from the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which established the DNI, and Section 103H(b)(1) and the other provisions of Section 103(H) that established IC IG. IRTPA provides that the principal responsibilities of the DNI are to: serve as the head of the IC; be the principal advisor to the President, to the National Security Council and to the Homeland Security Council for intelligence matters related to the national security; and oversee and direct the implementation of the NIP, consistent with IRTPA Section 1018. Accordingly, I understand Section 103H(b)(1) to specify that the scope of the IC IG's oversight authority reaches all of the programs and activities that are within the DNI's purview.

QUESTION 3: If confirmed, what standards and procedures would you apply to ensure the appropriate timeliness and responsiveness of the IC IG's completion of inspections, audits, reviews, and investigations?

As noted above in response to Question 2.a, I believe that IC IG personnel should comply with all CIGIE standards and applicable laws and policies, including those related to timeliness and responsiveness.

As the Acting IG, I led the IC IG team's effort to update the IC IG Strategic Plan. We developed three strategic goals, one of them being: "Conduct high-quality and timely audits, inspections, investigations, reviews, and other activities to improve the integration, economy, and efficiencies of the Office of the Director of National Intelligence and the broader Intelligence Community." We started developing specific objectives and initiatives to help accomplish this goal. We also analyzed the office's strengths, weaknesses, opportunities, and threats, which (among other things) identified a need to update some of IC IG's policies, procedures, and processes. Timeliness must also, of course, be balanced against the need for thoroughness and accuracy. I look forward to continuing these important efforts with the IC IG team, if confirmed.

Protection of Whistleblowers

Section 103H(g)(3)(B) provides that "no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity."

QUESTION 4: What is your understanding of the formal policies and processes in place to inform employees of their right to provide information to the IC IG, and to detect and protect against reprisal for making complaints or disclosing information to the IC IG?

There are several policies and processes in place to inform IC employees of their right to provide information to the IC IG, including: Presidential Policy Directive (PPD)-19, "Protecting Whistleblowers with Access to Classified Information;" Intelligence

Community Directive (ICD) 120, “Intelligence Community Whistleblower Protections;” and ODNI Instruction 20.04, “Whistleblower Protections and Review of Allegations of Reprisal Against Whistleblowers.”

As the Acting IG, I issued a message for the IC whistleblower website explaining the importance of whistleblowing and the rights and protections for whistleblowers. I also collaborated with DNI Haines on a similar message from the DNI, which was posted on the IC whistleblower website and emailed to all ODNI employees. The IC IG team provides employees with additional information about whistleblowing via new employee orientation, annual web-based training, websites (on the classified and unclassified systems), and periodic outreach events. The IC IG team also investigates allegations of reprisal and reviews whistleblower reprisal appeals through External Review Panels (ERPs).

QUESTION 5: If confirmed, what additional policies and processes will you establish to ensure compliance with this provision, and any related provisions that are applicable to elements of the IC, such as the provisions of the IC Whistleblower Protection Act?

As Acting IG, I issued IC IG Instruction 2020.001, “External Review Panel Procedures Pursuant to 50 USC 3236 and PPD-19,” in December 2020, to reflect changes in the law since 2013 (when the prior IC IG guidance was issued) and to provide additional transparency regarding the submission, assessment, and processing of ERP requests. The IC IG is committed to fairly reviewing and investigating all whistleblower reprisal allegations within ODNI and reviewing all whistleblower requests for ERPs.

In response to a Congressionally Directed Action, the IC IG also provided to the intelligence oversight committees and the DNI a “Report on Intelligence Community Whistleblower Matters & Harmonization of Processes and Procedures” in March 2021. That report made several recommendations that we believe would help clarify and improve whistleblower protections.

QUESTION 6: Please describe your view of the IC IG's role with regard to whistleblowers. Please address each of the following and provide specifics on actions you would take to improve performance, if confirmed as the IC IG.

The IC IG has various crucial roles to perform regarding whistleblowers, including those specified in law and policy. *See, e.g.*, Section 103H(k)(5); PPD-19, ICD-120, ODNI Instruction 20.04; IC IG Instruction 2020.001. The IC IG is responsible for maintaining a robust whistleblower program that allows whistleblowers a safe and appropriate way to disclose relevant information without fear of reprisal, while also protecting classified information as appropriate. I will elaborate on the specific areas requested by the Committee below.

a. Outreach and training across ODNI and the IC enterprise with regard to whistleblower rights and access to whistleblower protections;

Outreach and training is an important component of any whistleblowing program. As noted above in response to Question 4, the IC IG team provides employees with information about whistleblowing via IG messages, new employee orientation, annual web-based training, websites (on the classified and unclassified systems), and periodic outreach events.

If confirmed, I would ensure such efforts continue and would also consider other potential areas for improvement, as I did when I was the Acting IG.

b. Timely and thorough investigations of whistleblower complaints.

The IC IG team is committed to timely and thorough investigations of whistleblower complaints which, among other things, can help expeditiously stop or correct serious problems. The IC IG Hotline Program Manager continued working throughout the pandemic to receive, process, and refer whistleblower complaints for investigation.

The IC IG has worked diligently to recruit, develop, and retain a high-quality workforce and to increase our staffing levels within all divisions, including in the Investigations division. The relatively recent addition of a new Assistant Inspector General (AIG) for Investigation and the pending addition of several other investigators will better enable IC IG to devote more resources to investigating whistleblower complaints and allegations of whistleblower reprisal, including joint investigations with our partners as appropriate.

If confirmed, I would ensure such efforts continue and would also consider other potential areas for improvement, as I did when I was the Acting IG.

c. Management of whistleblower caseloads within the IC IG.

As reported in IC IG's semiannual and quarterly reports, the number of IC IG Hotline contacts continues to rise. Over the past two years, the IC IG has hired additional Hotline analysts and added contractor personnel to assist in processing these complaints. Additionally, while I was the Acting IG, I added another Hotline Analyst position to the Center for Protected Disclosures (CPD) division and added a Data Scientist position to the Mission Support division to help support CPD (and other divisions). I also established an Intake Action Committee (comprised of the Director of CPD, Counsel to the IG, and AIG for Investigations) to review complaints in a timely and collaborative manner in order to better and more effectively manage the caseload. The IC IG has also seen an increase in the number of requests for ERPs, as well as the complexity of many of those requests. Accordingly, the office is in the process of hiring an ERP Program Manager.

If confirmed, I would ensure such efforts continue and would also consider other potential areas for improvement, as I did when I was the Acting IG.

d. Notification to Congress regarding whistleblower complaints and acts of reprisal.

While serving as the Acting IG, I took very seriously my duty to keep Congress fully and currently informed. I notified Congress regarding whistleblower (and other) matters whenever required by law or when I exercised my discretion to make other appropriate notifications even if not required by law. Under my leadership, the IC IG also provided additional details to the intelligence oversight committees about how IC IG was handling alleged “urgent concern” matters in light of the September 2019 opinion by the Department of Justice Office of Legal Counsel. If confirmed, I would continue to operate in the spirit of transparency and accountability to keep Congress appropriately informed, as I did when I was the Acting IG.

QUESTION 7: Do you see any need for additional actions, policies, or processes to protect whistleblowers?

Yes, I believe some changes to the whistleblowing authorities are needed. As noted above in response to Question 5, the IC IG’s “Report on Intelligence Community Whistleblower Matters & Harmonization of Processes and Procedures” made several recommendations that we believe would further clarify and improve whistleblower protections. I understand that based on the report, the Committee may consider potential legislative changes.

During my time as Acting IG, I also proposed that IC IG receive testimonial subpoena authority. This new authority could assist with investigations of whistleblower reprisal matters.

As described in my response to Question 6, if confirmed, I will continue to assess IC IG processes and address resource needs to support and strengthen the IC IG’s ability to protect whistleblowers.

QUESTION 8: What is your view of the role of the IC IG in managing and investigating whistleblower complaints made by employees of ODNI? What is your view of the role of the IC IG with regard to complaints made by IC employees outside ODNI?

I believe the IC IG has the statutory authority to receive complaints “from an employee of the Intelligence Community” (whether or not in ODNI) regarding activities within the authorities and responsibilities of the DNI. *See* Section 103H(g)(3).

The IC IG endeavors to investigate allegations of wrongdoing reported by ODNI employees. While traditionally most of this work has been in response to information received through the IC IG Hotline, the IC IG team is working to be more proactive in identifying trends and potential problems within the programs and offices of the ODNI.

The IC IG also works collaboratively with partners in the IC when receiving complaints made by IC employees outside ODNI in order to address any potential areas of overlapping jurisdiction and consider joint investigations when appropriate. The

reporting system envisioned and directed by Congress under the Fiscal Year 2020 Intelligence Authorization Act (IAA) Section 5334 should better enable the IC IG to more easily identify trends across the IC for the benefit of all involved.

QUESTION 9: What role do you believe the IC IG has in setting investigative standards and ensuring consistency in whistleblower investigations across the Intelligence Community?

I believe the IC IG can add value by enhancing efficiency and effectiveness of Offices of Inspectors General (OIGs) within the IC, while respecting the roles and responsibilities of those independent offices, and following applicable standards, such as CIGIE's *Quality Standards for Investigations*.

For example, as noted above in response to Question 5, I issued IC IG Instruction 2020.001, "External Review Panel Procedures Pursuant to 50 USC 3236 and PPD-19," which helps set standards for review of whistleblower reprisal appeals. CPD is also collaborating with other OIGs to cross-level efforts with respect to whistleblower matters, discussing review standards, and providing general information and guidance respecting reviews of ERP requests pursuant to PPD-19. The IC IG Forum also provides a venue for information sharing, collaboration, and training on matters of mutual interest, such as whistleblowing.

QUESTION 10: To proactively protect IC employees and contractors from potential retaliation, do you support providing IC employees with the same stay authority that is afforded almost every other federal employee?

During my time as Acting IG, there was no matter that would have been subject to a stay if the authority existed. I have not had the opportunity to carefully consider whether IC employees should be afforded the same stay authority afforded to non-IC employees. If confirmed, I would discuss this issue with the IC IG Forum members and CIGIE to better understand their views and the effectiveness of protections currently in place.

QUESTION 11: Do you believe the Whistleblowing and Source Protection Office should be established by statute within the Office of the Inspector General of the Intelligence Community?

Although there was no longer a Whistleblowing and Source Protection Office at IC IG when I was appointed as Acting IG, the CPD has substantially similar responsibilities.

Given the vital importance of this function, I would support formally establishing CPD in law within the IC IG. I do not, however, believe that doing so is necessary for its effective operation, as evidenced by the accomplishments and effectiveness of CPD despite not having such legislation.

Whether or not a specific whistleblower office is established in law, if confirmed, I would remain committed to receiving protected disclosures and protecting whistleblowers, as I did when I was the Acting IG.

QUESTION 12: To your knowledge, have you ever been the subject of a whistleblower complaint? If yes, please provide dates and a brief summary of each complaint of which you are aware?

No, not to my knowledge.

QUESTION 13: What are your views on the extension of IC whistleblower protections to contractors?

I support the extension of IC whistleblower protections to contractors. The majority of protections have been extended to contractors by legislation enacted over the last 5 years. There are some remaining gaps, which were discussed in the aforementioned IC IG “Report on Intelligence Community Whistleblower Matters & Harmonization of Processes and Procedures.” The recommendations made in that report would extend the remaining protections and harmonize the authorities for cadre and contractor employees.

Access to Information

Pursuant to Sections 103H(g)(2)(B) and (C), "[t]he Inspector General shall have access to any employee, or any employee of a contractor, of any element of the intelligence community needed for the performance of the duties of the Inspector General" as well as "direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities[.]"

QUESTION 14: Please describe how, if confirmed, you would address a situation where an agency, U.S. official, or a government contractor refused to provide such access, including what remedies you would pursue in addition to those described in Section 103H(g)(2)(E).

As I understand Sections 103H(g)(2)(B) and (C), the IC IG is entitled to access any IC element employee or contractor “needed for the performance of the duties of the Inspector General” and to access all materials “that relate to the programs and activities with respect to which the Inspector General has responsibilities.”

Given the clarity of these statutory authorities and the importance of access to the IC IG’s ability to carry out its important mission, I would consider several steps in response to a situation in which such access was refused, with the goal of resolving the issue at the lowest possible level. First, I would attempt to understand the basis for the refusal and, in collaboration with the ODNI General Counsel, explain the IC IG’s statutory right of access. If such efforts were unsuccessful, I next would elevate the matter to the appropriate component or agency head. If access continued to be refused, I would elevate the matter to the DNI and potentially seek appropriate administrative remedies against those who refused to cooperate with the IC IG. If a contractor refused to provide

access, I would notify the appropriate government contracting officer. If the matter remained at an impasse despite all of these efforts, I would consider whether one or more provisions in Section 103H(k) require me to report the matter to the intelligence oversight committees. I would also consider whether a subpoena is appropriate, in accordance with Section 103H(g)(5)(A).

While I was the Acting IG, I encountered a few situations where someone raised questions about IC IG access to information, but was able to successfully resolve them at the first step without needing to proceed to subsequent steps. If confirmed, I would continue to follow the same approach.

QUESTION 15: Section 103H(g)(5) provides authority for the authorization and enforcement of subpoenas for the production of information that is necessary in the performance of the duties and responsibilities of the Inspector General. What is your view of the appropriate use of this subpoena authority?

I understand Section 103H(g)(5) to generally authorize the IC IG to issue document subpoenas to non-federal entities and individuals, and to authorize the enforcement of such subpoenas in an appropriate federal court.

Based on my prior experience in the military (as a prosecutor, defense counsel, and judge), at the Department of Justice, and in the IC, I believe subpoenas should be used sparingly because information can often be obtained by other means and subpoenas require additional resources to issue, execute, and enforce. Subpoenas can, however, be a valuable and, at times, necessary tool to obtain relevant information. They may be necessary, for example, when individuals, such as former employees or contractors, are no longer required by statute to comply with an IC IG document request.

Sources of Complaints

QUESTION 16: Pursuant to Section 103H(g)(3), "[t]he Inspector General is authorized to receive and investigate ... complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety."

If confirmed, what steps would you take to inform individuals, within or outside of the U.S. Government, including contractors, of their opportunity to provide such complaints or information to the IC IG?

As noted above in response to Question 4, the IC IG team provides the ODNI workforce with information about whistleblowing via new employee orientation, annual web-based training, websites (on the classified and unclassified systems), and periodic outreach events. The IC IG team also provides information to the public via the unclassified

website and publicly-posted Semiannual Reports. Whistleblowers can contact IC IG via various means, including classified and unclassified websites, e-mail, telephone, fax, and drop boxes in ODNI facilities.

If confirmed, I will consider other potential areas for improvement, as I did when serving as the Acting IG.

Relationship to Other Inspectors General

Section 103H has several provisions on the relationship of the IC IG to other inspectors general with responsibilities in or for elements of the IC, including Sections 103H(h)(1)(A), 103H(j)(4)(C), and 103H(l). To facilitate resolution of questions between or among inspectors general, Section 103H(h)(2) establishes in statute the Intelligence Community Inspectors General Forum, for which the IC IG is to serve as chair.

QUESTION 17: What is your understanding of these provisions on potentially overlapping responsibilities of inspectors general? In answering, please describe your priorities, if confirmed, for the work of the Office of the IC IG in relation to the work of other Inspectors General with responsibilities concerning intelligence programs and activities.

I understand that if a matter may be within the jurisdiction of the IC IG and another IG with oversight responsibility for an element of the IC, the IC IG and other IG shall expeditiously resolve the question of which IG should handle the matter. The IGs can enlist the assistance of the IC IG Forum, and if the matter still cannot be resolved, the matter should be submitted to the DNI and the head of the affected IC element for resolution. *See* Section 103H(h).

While serving as the Acting IG, I encountered questions of potentially overlapping jurisdiction with various OIGs on multiple occasions. Each time, I coordinated closely and collaboratively with the appropriate IG to expeditiously resolve the jurisdictional issue and identify an appropriate path forward. We did not need to enlist the assistance of the broader IC IG Forum or refer any matters to the DNI and head of the affected IC element. If confirmed, I will continue to utilize this collaborative approach.

QUESTION 18: Please describe your understanding of the IC IG's leadership role vis-a-vis other Intelligence Community Inspectors General? How will you engage this leadership role?

As noted above in response to Question 17, I understand Section 103H(h)(2) to demonstrate Congressional intent that the IC IG lead the IC IG Forum, without having any “administrative authority” over any other IG.

My approximately 10 years of experience participating in the IC General Counsels Forum while at ODNI and NGA gave me different perspectives and deeper appreciation of how ODNI can embrace the responsibility of leading the IC in a collaborative way while also respecting the roles, responsibilities, and authorities of the individual IC elements. I also

witnessed numerous examples of how the ODNI can add value on matters of common interest and help integrate the Community.

While serving as the Acting IG, I fostered a similarly collaborative approach among IC IG Forum members regarding myriad matters to include, for example: responses to the COVID-19 pandemic; diversity, equity, and inclusion efforts; and engaging with Congress and the Government Accountability Office (GAO).

If confirmed, I will continue this collaborative approach to leading the IC IG Forum.

QUESTION 19: Please describe your goals, if confirmed, concerning the work of the IC IG General Forum and any measures you would recommend to improve its functions, if warranted.

I believe the IC IG Forum and its various Committees (Deputies, Counsels, Audits, Inspections and Evaluations, Investigations, Hotline, and Whistleblowing) are working relatively well, and I have also received positive feedback from other Forum members to that effect.

Although the Forum was resilient and accomplished many things while communicating virtually during the pandemic, I believe periodic in-person meetings would further foster relationships, promote even greater collaboration, and enhance Forum functions. I also believe the Forum Deputies Committee should continue updating the Forum governance documents.

If confirmed, I will continue to look for additional opportunities to enhance collaboration, coordination, and communication among Forum members to maximize the value of this important venue, as I did when I was the Acting IG.

QUESTION 20: Section 103H(j)(4)(C) provides that "[t]he Inspector General of the Intelligence Community may, upon reasonable notice to the head of any element of the intelligence community and in coordination with that element's inspector general ... conduct, as authorized by this section, an investigation, inspection, audit, or review of such element[.]" What is your understanding of this provision, particularly pertaining to the "coordination with that element's inspector general"?

As indicated in my response to Question 2.c, I understand Section 103H(b)(1) to grant the IC IG the statutory authority to “initiate and conduct independent investigations, inspections, audits, and reviews” concerning the funding, administration, or operation of any program or activity that is funded by the NIP budget or that is carried out by an IC element. I understand Section 103H(j)(4)(c) to be consistent with the IC IG’s broad statutory jurisdiction, while also recognizing the need to properly notify the affected element and coordinate with the impacted element’s OIG. In addition, I understand such notification and coordination to be consistent with Congressional intent, as reflected in Section 103H(h)(1)(A), that the IC IG play a leadership role to foster coordination,

collaboration, and deconfliction in order to “avoid unnecessary duplication of the activities of the inspectors general.”

Independence

QUESTION 21: Section 103H(c)(3) provides that "[t]he Inspector General shall report directly to and be under the general supervision of the Director of National Intelligence." Please describe your understanding of both elements of this provision: "report directly to;" and "under the general supervision of the Director of National Intelligence."

I understand Section 103H(c)(3)'s requirement that the IC IG “report directly” to the DNI to provide the IC IG with direct and prompt access to the DNI, whenever necessary, to complete the duties and responsibilities of the IC IG, and to ensure that the DNI is kept fully and currently informed regarding problems and deficiencies identified by the IC IG.

I further understand Section 103H(c)(3)'s requirement that the IC IG be “under the general supervision” of the DNI to state the organizational relationship between the IC IG and the ODNI consistent with other applicable provisions of Section 103H, as also noted in response to Question 2.c and Question 14. While I understand there is no statutory definition of “general supervision,” CIGIE published a July 14, 2014, paper on Inspector General Authorities explaining that courts have analyzed “general supervision” with respect to its usage in the Inspector General Act of 1978. CIGIE noted one particular case, *United States Nuclear Regulatory Commission v. Federal Labor Relations Authority*, 25 F.3d 229, 235 (4th Cir. 1994), where the court reviewed the “general supervision” language and described the agency head’s supervisory authority over the IG as “nominal.” Therefore, I do not believe the “general supervision” provision authorizes the DNI to direct that the IC IG initiate, carry out, or complete, or to dictate the outcome of, a particular investigation, audit, review, or other inspector general activity.

These understandings are also consistent with my experience as the Acting IG working with two DNIs and one Acting DNI.

QUESTION 22: Section 103H(k)(3) provides that in the event that the IC IG is unable to resolve any differences with the DNI affecting execution of IC IG's duties or responsibilities, the IC IG shall immediately notify and submit a report to the congressional intelligence committees. If confirmed, in addition to this reporting responsibility, please describe what actions you would you take if a senior official of the IC sought to prevent you from "initiating, carrying out, or completing" any audit or investigation within the jurisdiction of the Office of the ICIG.

During my time as the Acting IG, I never encountered a situation where a senior official of the IC sought to prevent the IC IG from “initiating, carrying out, or completing” any audit or investigation within the IC IG’s jurisdiction.

However, if confirmed and such a situation arose, I would consider taking a series of steps similar to those outlined in response to Question 14 in an effort to resolve the matter at the lowest possible level. First, I would attempt to discuss, understand, and resolve the concern at the component level, in collaboration with the ODNI General Counsel. Second, if unable to resolve the issue at the component level, I would engage with the DNI or the appropriate agency head and IC IG Forum member from the relevant IC element. I would seek to ensure that they understood the IC IG's statutory responsibility and authority to "make such investigations and reports relating to the administration of the programs and activities within the authorities and responsibilities of the Director as are, in the judgement of the Inspector General, necessary or desirable."

Except for the DNI's authority under Section 103H(f) to limit or prohibit IC IG activities in the interest of national security, however, I understand Section 103H to authorize the IC IG to independently identify and pursue investigations, audits, and reviews as are, in the judgment of the IC IG, necessary or desirable.

QUESTION 23: What is your view on the importance of independent hiring authority and contracting authority to ensure the independence of the IC IG?

Because independence is of paramount importance to an effective OIG, it is crucial that the IC IG has independent hiring authority under Sections 103H(d), (i), and (j). These provisions authorize the IC IG, subject to applicable law and the policies of the DNI, to hire AIGs, a Counsel to the IG, and other personnel, and to enter into contracts necessary to carry out the IC IG's mission.

I experienced first-hand as Acting IG that, although the IC IG relies on ODNI Human Resources to carry out the hiring process, and the Contracting Office to carry out contracting actions, the IG has independent authority to make staffing and contracting decisions for the IC IG. I also understand that such reliance on local agency mechanisms is common practice among the other IC OIGs. However, if confirmed as the IG, I will work with the IC IG's AIG for Mission Support and ODNI to further discuss the current construct and determine if having a fully separate hiring apparatus is necessary and desirable.

Inspector General Work Plan

Section 103H(g)(2)(A) provides that the IC IG shall make such investigations and reports relating to the administration of programs and activities within the DNI's authorities and responsibilities as are "in the judgment of the Inspector General, necessary, or desirable." This requirement is subject to certain limitations in Section 103H(f), which provides that, subject to congressional notification, the DNI may prohibit the IC IG from carrying out, or completing any investigation, inspection, audit, or review that "is necessary to protect vital national security interests of the United States."

QUESTION 24: Please describe your understanding of these provisions.

As noted above in response to Questions 22, I understand Section 103H(g)(2)(A) to authorize the IC IG to independently identify and pursue investigations, audits, and reviews, based on the IG's judgment of what is necessary or desirable. I understand Section 103H(f) provides a limitation on the IG's authority to exercise independent judgment to pursue a particular investigation, audit, or review in the circumstance in which the DNI determines it is necessary to prohibit a particular IC IG activity in the interest of national security. In such a circumstance, I understand Section 103H(f) to require the DNI to submit to the congressional intelligence committees within seven days a statement of reasons for exercising the authority to prohibit a particular IC IG activity, and the DNI must also allow the IC IG to comment on any such submission. I do not believe the statute authorizes any official other than the DNI to make such a determination.

QUESTION 25: If confirmed, how will you determine the investigations and reports that are "necessary or desirable" to complete each year?

As the Acting IG, I led the development and publication of the IC IG's Annual Work Plan for Fiscal Year 2021. In developing the Work Plan, I prioritized the IC IG's activities based on several factors, including but not limited to, those matters required by law, Office of Management and Budget (OMB) required reviews, and the availability of resources to conduct additional discretionary projects. To identify potential discretionary projects, the IC IG leadership team and I reviewed the previous IC IG Annual Work Plan; engaged ODNI to solicit input regarding management challenges and how IC IG might be able promote economy, efficiency, and effectiveness; considered what value we could provide, what problems we could address, or risks we could help mitigate; and engaged the congressional intelligence committees and GAO to understand their priorities and planned activities. The IC IG also responded to complaints about alleged fraud, waste, and abuse and conducted investigations as deemed appropriate. I found this approach to be effective and, if confirmed, would continue using a similar approach.

QUESTION 26: If confirmed, would you make it a practice to keep the congressional intelligence committees fully informed of these activities?

Yes. As indicated in response to Question 2.b, I believe the IC IG should be "appropriately accountable to Congress" and, as indicated in response to Question 25, I engaged the congressional intelligence committees prior to selecting the final projects for the Fiscal Year 2021 Annual Work Plan. I ensured that the IC IG provided the Annual Work Plan to the committees, and also posted the unclassified version on the IC IG public website, in the spirit of transparency. If confirmed, I intend to continue those practices.

Referrals to the Department of Justice

QUESTION 27: Please describe your understanding of the authority and responsibility of the IC IG to report matters to the Department of Justice concerning possible criminal conduct, including the conduct of current or former officials described in Section 103H(k)(3)(A)(iii).

I understand that Section 4 of the Inspector General Act and Section 103H(k)(6) require the IC IG to expeditiously report to the Department of Justice (DOJ) any information, allegation, or complaint received by the IC IG relating to violations of Federal criminal law that involve a program or operation of an IC element, or in the relationships between IC elements. I also understand that the IC IG must notify the DNI of any such reporting to the Attorney General (AG). In addition to this responsibility, I understand Section 103H(k)(3)(A)(iii) requires the IC IG to immediately notify and submit a report to the congressional intelligence committees regarding such a referral. If confirmed, I will ensure IC IG reports matters to DOJ and notifies Congress as appropriate.

QUESTION 28: In your view, what should be the role, if any, of any other office or official, including the Office of General Counsel, in making referrals to the Department of Justice?

My understanding is that the roles of other offices or officials, including the Office of General Counsel (OGC), in referring matters to DOJ are prescribed by other statutory or policy provisions, or through agreement with DOJ.

For example, 28 U.S.C. § 535(b) generally provides that information about a violation of Federal criminal law involving Government employees shall be reported to the AG by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate. Similarly, Executive Order 12333, section 1.6(b) provides that the heads of the IC elements shall report to the AG possible violations of federal criminal law. The 1995 Memorandum of Understanding: "Reporting of Information Concerning Federal Crimes" addresses these reporting requirements for IC personnel (including the ODNI General Counsel) in more detail. And ICD 701 sets forth the process for referring alleged unauthorized disclosures of classified information for criminal investigation and prosecution. To the extent that these or other provisions authorize other offices to make referrals, it would be appropriate for those offices to do so.

If confirmed, I will work with the ODNI General Counsel and other responsible offices to ensure the IC IG is also informed of such referrals, as I did when I was the Acting IG.

Consultations about Reports

QUESTION 29: Under what circumstances, if any, do you believe it would be appropriate for the IC IG to consult with other ODNI officials, or other officials of an IC element outside an office of an Inspector General, before issuing a report, regarding the findings and recommendations in the report?

My understanding is that, consistent with CIGIE standards, it is common OIG practice to obtain the views of responsible officials of the entity reviewed regarding draft report findings, conclusions, and recommendations to help ensure a report is fair, complete, and objective. This provides the responsible officials the opportunity to provide their perspectives, to convey corrective actions they plan to take, and helps ensure the proper classification markings of the information. The responsible officials can also provide technical comments to address points of fact, or are editorial in nature, and do not address substantive issues such as the findings, conclusions, or recommendations.

After the IC IG receives comments from the responsible officials, it is the IC IG's discretion to consider the input and make the appropriate changes, if warranted, to enhance the accuracy of the report. However, I firmly believe that the review and comment process should not be utilized to attempt to unduly or improperly influence the content of the report or abdicate the IC IG's statutory responsibility to make independent findings and recommendations.

If confirmed, I intend to continue this practice.

QUESTION 30: To the extent that you believe such consultation is appropriate, what steps, if any, do you believe the Inspector General should take to keep a record of the consultation and record the results in the text of the report?

In accordance with CIGIE standards, and I believe consistent with the practice of many OIGs, the practice of the IC IG under my leadership was to request the component provide a formal written response containing the comments on the draft report. This written response would be maintained in the appropriate project files as part of the IC IG's official record. In addition, the final report would typically include a copy or summary of the component's formal comments. If confirmed, I intend to continue this practice.

QUESTION 31: Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the IC IG not investigate or review a particular matter?

As I indicated in response to Questions 22 and 24, I understand Section 103H(f) to provide a limitation on the IC IG's authority to exercise independent judgment to pursue a particular investigation, audit, or review in the circumstance in which the DNI (but not any other senior official) determines it is necessary to prohibit a particular IC IG activity in the interest of national security.

During my time as the Acting IG, I never encountered a situation where a senior official of the IC or the DNI sought to prevent the IC IG from investigating a particular matter. If confirmed and such a situation arose, I would consider taking a series of steps in an effort to resolve the matter, as described in response to Question 22. In taking those steps, I would seek to ensure that the official understood the IC IG's statutory responsibilities and authorities to investigate and report on matters within the IC IG's jurisdiction "as are, in

the judgement of the Inspector General, necessary or desirable.” I would carefully consider the official’s concerns and then make a determination on a case-by-case basis in accordance with my oath and statutory obligations.

QUESTION 32: Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the IC IG not issue a report on a particular matter?

As indicated in response to Questions 22 and 24, I understand Section 103H(f) to provide a limitation on the IC IG’s authority to exercise independent judgment to pursue a particular investigation, audit, or review in the circumstance in which the DNI (but not any other senior official) determines it is necessary to prohibit a particular IC IG activity in the interest of national security.

During my time as the Acting IG, I never encountered a situation where a senior official of the IC or the DNI sought to prevent the IC IG from issuing a report on a particular matter. If confirmed and such a situation arose, I would consider taking a series of steps in an effort to resolve the matter, as described in response to Questions 22 and 31. I would carefully consider the official’s concerns and then make a determination on a case-by-case basis in accordance with my oath and statutory obligations.

QUESTION 33: Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the IC IG change findings, recommendations, or other pertinent material in a report on a particular matter?

As discussed in my response to Question 29, I believe it is appropriate to provide responsible officials the opportunity to review and comment on draft report findings, conclusions, and recommendations. As previously stated, the review and comment process should not be utilized to attempt to unduly or improperly influence the content of the report or abdicate the IC IG’s statutory responsibility to make independent findings and recommendations.

During the course of the review, IC IG maintains effective relations by communicating the objectives, scope, and methodology of the review, and provides periodic updates on the progress of the project as requested or needed. Regular communication is important during the review to discuss some of the issues or deficiencies found so that prompt corrective actions can be implemented immediately if required; to clarify any information discussed; or obtain missing documentation still needed for the review. Following the conclusion of the review, an exit conference is held with the responsible officials to discuss potential findings, convey the position of both parties, resolve any matters in dispute, and to ensure the accuracy of the information obtained during the project. This helps prevent any major disagreements or controversies with the findings, conclusions, or recommendations in the draft report. As explained above, any changes to the report based on comments received is at the discretion of IC IG and documented in the project files.

Major Challenges, Problems, and Priorities

QUESTION 34: In your view, what are the major challenges facing the Office of the IC IG?

Having served as the Acting IG for over a year, I believe the major challenges facing IC IG relate to (1) staffing and (2) the pandemic.

When I arrived at IC IG in April 2020, only approximately 50% of the billets were filled. There are various reasons why it can be challenging to recruit, develop, and retain a highly-qualified workforce, but one particularly problematic area is the length of time it takes for a candidate to receive a security clearance once selected, which on average is more than one year (and in some cases much longer). The staffing challenges are especially acute with auditors, who are in high demand elsewhere in the federal government and industry. Moreover, the COVID-19 pandemic compounded the staffing challenges, as other offices involved in personnel matters (including Human Resources, Security, and Medical) were limited in staffing.

The pandemic, not surprisingly, also had a severe impact on IC IG operations (including audits, investigations, inspections, reviews, hotline activity, and counsel work). In adherence with ODNI's health and safety protocols, the number of personnel permitted in the office at a given time was limited, and the classified nature of much of the work limited IC IG's ability to take advantage of workplace flexibilities such as telework.

QUESTION 35: If confirmed, how do you intend to address these challenges and what priorities, including for the selection of subjects for audits, inspections, investigations, and reviews, would you establish to address these challenges?

The IC IG leadership team and I were actively addressing those challenges while I was the Acting IG.

We identified our number one strategic goal as: "Strengthen the foundation of the Office of the Inspector General of the Intelligence Community by recruiting, developing, and retaining a premier workforce and fostering a diverse, inclusive, collaborative, and engaging environment." Among other things, we conducted a resource review, streamlined internal IC IG processes to reduce timelines for the portions of the hiring process within our control, explored incentives for hard-to-fill positions, and started analyzing data about attrition. We were also conducting an audit to address certain aspects of the security clearance process and coordinated with GAO to better understand related work it is doing in this area. As a result, we increased our overall fill rate in the past year and have pending personnel actions against most of the remaining vacancies.

Regarding the pandemic, we prioritized the health and safety of the IC IG workforce and accomplished our mission as soon as we reasonably and responsibly could do so. We afforded maximum flexibilities to the workforce, consistent with OPM, OMB, and ODNI

guidance. The IC IG team was resilient and is continuing to conduct audits, inspections, investigations, reviews, hotline processing, and other activities.

If confirmed, I will continue these efforts and explore other potential options for addressing these challenges to help ensure IC IG remains on a positive trajectory.

Personnel and Budgetary Resources of the IC IG's Office

Section 103H(j)(2)(B) provides that the Inspector General shall ensure that personnel shall have the required training and experience to enable the IC IG to carry out the duties of the IC IG effectively. Section 103H(j)(2)(C) provides that the IC IG "shall create...a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General."

QUESTION 36: Please describe how, if confirmed, you would create the career cadre sufficient to satisfy these statutory obligations and what, in your view, is necessary to meet these obligations.

As noted above in response to Question 35, IC IG's top priority is recruiting, developing, and retaining a premier workforce. In addition to the previously-mentioned personnel efforts, I believe IC IG could benefit from additional training and educational opportunities that promote greater professional development, technical skills, and tradecraft capability (much of which was curtailed or limited because of the pandemic). I also believe IC IG could benefit from a more structured career mapping program for IC IG professionals that addresses training, developmental opportunities, experiences, and competencies. If confirmed, I will work closely with the AIG for Mission Support and others on these areas.

QUESTION 37: If confirmed, what changes, if any, would you expect to consider or make in the present Office of the IC IG, with regard to organization, staff qualifications, training, budget, or other features relevant to the effective performance of the duties of the office?

If confirmed, I do not currently anticipate making any major changes to the IC IG organization or operations because, during the past year as Acting IG, I felt empowered to take the actions I believed appropriate to lead the team and accomplish the mission. I would continue the initiatives and activities already underway, while seeking opportunities for further improvement and adjusting as necessary, based on changing requirements, resources, and priorities.

QUESTION 38: Under what circumstances, if any, do you believe that the use of contractors to perform such functions is appropriate?

I believe the majority of IC IG's requirements are more appropriately performed by government personnel. In addition to some inherently governmental functions that legally must be performed by government personnel, staffing critical functions with

government personnel can help enhance stability and continuity, provide deeper understanding of the organization's programs and activities, and foster stronger and longer-lasting partnerships within the Community. These benefits are particularly important for an office like IC IG that already has some staffing challenges, and especially crucial for IG work that is particularly sensitive or complex.

Having said that, during my time in the IC, including as Acting IG, I have been privileged to work with many dedicated, highly-skilled, mission-enabling contractors. As DNI Haines explained during her confirmation process "With regard to the value of a workforce mix that includes both contractors and government employees, both play a critical and complementary role in ensuring that the Intelligence Community performs its mission. Questions to consider when deciding whether to hire contractors include: whether the work is inherently governmental; whether an effort is temporary or enduring; what presents the most cost-effective option; and whether the skill set is unique or a surge requirement requiring a quick solution." *See* Response # 74 to Additional Prehearing Questions for Avril D. Haines upon her Nomination to be the Director of National Intelligence.

The IC IG is currently leveraging contractor support in areas such as information technology, paralegal, hotline processing, and administration. The IC IG is also interested in utilizing contractors to perform financial statement audits and audits pursuant to the Federal Information Security Modernization Act (FISMA), which would still be overseen by government personnel. I understand that is common practice in other OIGs and consistent with the Chief Financial Officers Act of 1990, as amended by the Government Management Reform Act of 1994, and OMB Bulletin 14-02. This would help address auditor staffing shortages and enable cadre auditors to perform other discretionary audits.

QUESTION 39: In your view, are there any barriers or disincentives, including any created by personnel policies, which impede the recruitment or retention of qualified IG personnel? If so, please describe them, as well as how, if confirmed, you would address these impediments.

As noted above in response to Question 34, I believe the biggest barrier or disincentive to recruitment is the lengthy pre-employment security process. As a result, several selected candidates have withdrawn from the process or declined the conditional offer of employment in favor of other opportunities. Another barrier is the inability to make competitive salary offers or offer hiring incentives. As explained in response to Question 35, the IC IG leadership team and I have already been taking action to address these challenges. If confirmed, I will continue these efforts and explore other potential options for addressing these challenges.

Oversight of Acquisition Programs and Contracts

QUESTION 40: What role, if any, do you believe the IC IG should play in achieving acquisition reform?

Consistent with IC IG's purpose as set forth in Section 103H(b)(2), I believe the IC IG has an important role in promoting economy, efficiency, and effectiveness, and preventing and detecting fraud and abuse in IC-related procurement and acquisition activities. Additionally, given Section 103H(g)(2)(A), I believe the IC IG is statutorily authorized to conduct independent investigations, audits, inspections, or reviews concerning IC-related procurement and acquisition matters.

If confirmed, I will discuss with the IC IG team and the IC IG Forum whether there are IC-specific acquisition-related matters that may be appropriate for further IC IG action. To the extent that such matters yield information suggesting a need for acquisition reform, I will ensure that any resulting report includes recommendations to improve or remedy any deficiency in the acquisition process, and consistent with Section 103H(b)(3) and (b)(4), I will ensure the DNI and Congress are appropriately informed.

QUESTION 41: What is your view of the role the IC IG should play in advising the IC and the Congress on the sufficiency of management controls in acquisition programs and the impact that legislative and regulatory proposals could have on such management controls?

As discussed in my response to Question 40, I believe the IC IG has the statutory authority to review IC-related acquisition programs and provide appropriate recommendations for reform if necessary. In my view, this naturally extends to providing information and recommendations regarding the sufficiency of management controls in appropriate circumstances. If confirmed, I will ensure that when circumstances warrant, IC IG reports will include recommendations to improve or remedy any deficiency in the acquisition process, and consistent with Section 103H(b)(3) and (b)(4), I will ensure the DNI and Congress are appropriately informed.

QUESTION 42: What is your view of the role the IC IG should play in oversight, audit and investigation over contracts in the IC?

Similar to my responses to Questions 40 and 41 regarding acquisitions, I believe the IC IG has an important role, and the statutory authorities, to conduct independent oversight, audit, and investigative activities concerning IC-related contracting matters, to provide appropriate recommendations for reform if necessary, and to keep the DNI and Congress appropriately informed.

Professional Experience

QUESTION 43: For each of the following, please describe specifically how your experiences will enable you to serve effectively as the IC IG. Please include within each response a description of issues relating to the position that you can identify based on those experiences:

a. Special Advisor to the Chief of Staff, National Geospatial-Intelligence Agency

I just started this position in May 2021 after I resigned as Acting IG coincident with my nomination to be the IG. My duties are not directly relevant to the IG position.

b. Acting Inspector General of the Intelligence Community, Office of the Director of National Intelligence

All of my experiences while serving as Acting IG for more than a year are directly relevant to my abilities to serve as the IG on a permanent basis. Among other things, I successfully led the IC IG team and we accomplished our mission despite challenges. Under my leadership, the IC IG independently conducted audits, investigations, inspections, and reviews of programs and activities within the DNI's responsibility and authority. We managed the IC IG hotline and whistleblower program. I also led the IC IG Forum and worked closely with CIGIE and Five Eyes Intelligence Oversight and Review Council. I kept the DNI and Congress fully and currently informed, and also worked collaboratively with the OMB and GAO.

c. General Counsel, National Geospatial-Intelligence Agency

During my time as General Counsel of NGA, I ensured the agency accomplished its missions consistent with law; oversaw the agency's intelligence oversight program and ethics program; and worked closely with the NGA Inspector General and the Counsel to the IG on various matters.

d. Deputy General Counsel, National Geospatial-Intelligence Agency

During my time as Deputy General Counsel of NGA, in support of the General Counsel, I ensured the agency accomplished its missions consistent with law; oversaw the agency's intelligence oversight program and ethics program; and worked closely with the NGA Inspector General and the Counsel to the IG on various matters.

e. Senior Legal Advisor for Counterterrorism, Office of the Director of National Intelligence, National Counterterrorism Center

While serving as Deputy General Counsel at ODNI and Senior Legal Advisor at NCTC, I developed a deeper understanding of ODNI and NCTC authorities, and gained a greater appreciation of the importance of independent, effective oversight of

intelligence programs and activities to ensure public trust that the IC is carrying out its mission consistent with the rule of law and our core values.

f. Associate Deputy Attorney General, U.S. Department of Justice

During my time as Associate Deputy Attorney General, I helped coordinate the Department's national security-related efforts, represented the Department in various interagency meetings, and worked closely with the IC on myriad matters.