Description of document:	Council of Inspectors General for Integrity and Efficiency (CIGIE) Integrity Committee (IC) Investigations No. 890 & 909, 2014-2020
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COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

August 29, 2024

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2024-145

This serves as a final response to the above-referenced Freedom of Information Act (FOIA) request to the Council of the Inspectors General on Integrity and Efficiency (CIGIE). Specifically, the request for:

> ***A copy of Integrity Committee Report of Investigation 890 and Report of Investigation 909. These two reports were probably combined into one report.***

CIGIE has processed the responsive records and is providing the attached PDF file consisting of 253 pages, subject to the following FOIA exemptions:

> Exemption 5 (5 U.S.C. § 552(b)(5)): allows the agency the discretion to withhold "…inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The purpose of this exemption is to protect the deliberative process by encouraging a frank exchange of views. In addition, this exemption protects from disclosure attorney-work product and attorney-client materials.
>
> Exemption 6 (5 U.S.C. § 552(b)(6)): allows Federal agencies the discretion to withhold information the disclosure of which would "constitute a clearly unwarranted invasion..." of individual privacy and might adversely affect the individual and his/her family.
>
> Exemption 7(C) (5 U.S.C. § 552(b)(7)(C)): protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]"

This confirms that in applying these FOIA exemptions, CIGIE considered the foreseeable harm standard. Specifically, in this case, Exemption 5 was applied to protect the deliberative process, attorney-work product, and attorney-client materials. Exemptions 6 and 7(C) were applied to protect against the unwarranted disclosure of third-party individuals' names, medical

and personnel information, telephone numbers, and/or direct email addresses. Courts have authorized the withholding of such information to avoid harassment, embarrassment, and unwarranted invasion of personal privacy.

If you have any questions, you may contact our FOIA Public Liaison, Aaron Lloyd, by email at FOIASTAFF@cigie.gov. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
ogis@nara.gov
(202) 741-5770
(877) 684-6448 (toll free)
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1750 H Street NW, Suite 400, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

(1) Regular mail sent to the address listed in this subsection, above; or

(2) By fax sent to the FOIA Officer at (202) 254-0162; or

(3) By email to FOIAAPPEAL@cigie.gov.

Your appeal must be received within 90 days of the date of this letter. The subject of the email or the outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,

Faith R. Coutier
Counsel to the Integrity Committee

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510-6250

The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Government Affairs

The Honorable Carolyn Maloney
Acting Chairwoman
Committee on Oversight and Reform
2471 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform

The Honorable Mike Crapo
Chairman
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services

Dear Chairmen and Ranking Members:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General Carl Hoecker of the U.S. Securities and Exchange Commission (SEC).

After thoroughly reviewing the report of investigation (ROI) and accompanying exhibits, the IC adopted the findings of fact in the ROI and concluded IG Hoecker abused his authority in the exercise of his official duties and engaged in conduct that undermines the independence and integrity reasonably expected of an IG, including a lack of candor. Accordingly, the IC

recommends the SEC Chairperson consider appropriate disciplinary action for this serious misconduct, including removal.

The IC provided the attached report with our recommendation to the CIGIE Executive Chairperson, the CIGIE Chairperson, the SEC Chairperson, and IG Hoecker, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Margaret Weichert
Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, D.C. 20006

Dear Executive Chairperson Weichert:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General Carl Hoecker of the U.S. Securities and Exchange Commission (SEC).

The IC also provided the attached report with our recommendation to the CIGIE Chairperson, the SEC Chairperson, IG Hoecker, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Michael Horowitz
Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, N.W., Suite 825
Washington, D.C. 20006

Dear Chairperson Horowitz:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General Carl Hoecker of the U.S. Securities and Exchange Commission (SEC).

The IC also provided the attached report with our recommendation to the CIGIE Executive Chairperson, the SEC Chairperson, IG Hoecker, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Clayton:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to receive, review, and refer for investigation allegations of wrongdoing made against an Inspector General (IG) or a designated staff member within an Office of Inspector General (OIG).[1] Pursuant to that mandate, this letter reports the IC's findings, conclusions, and recommendations regarding the allegations against Carl Hoecker, Inspector General; (b) (6), (b) (7)(C) [2] U.S. Securities and Exchange Commission (SEC). The below findings, conclusions, and recommendations relating to the wrongdoing of IG Hoecker are referred to you for appropriate action. (b) (6), (b) (7)(C) .[3]

Executive Summary

Numerous complaints against IG Hoecker, (b) (6), (b) (7)(C) were submitted to the IC beginning in October 2016. The complaints contained multiple allegations, including that IG Hoecker and (b) (6), (b) (7)(C) were improperly protecting the subjects of an internal SEC OIG investigation by conducting a limited, substandard investigation. Consequently, the complainants alleged the resulting SEC OIG Report of Investigation (ROI) understated the seriousness of the misconduct and significance of the evidence, and speculated in a manner favorable to the subjects.[4] Pursuant to its procedures, the IC decided to investigate the complaints with the assistance of special agents and staff from the U.S. Department of Education Office of Inspector General (ED OIG).

ED OIG conducted an extensive investigation of the allegations and provided a draft ROI to the IC on August 21, 2018. In accordance with section 11(d) of the IG Act, the IC provided IG

[1] Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), section 11(d)(1).
[2] (b) (6), (b) (7)(C) .
[3] The IC notes the IG or Acting IG makes personnel decisions regarding subordinate OIG employees, not the agency, however the statute requires the IC to include all findings in their report to the appointing authority.
[4] The substance of the remaining allegations is addressed in the attached Integrity Committee Report of Investigation (ROI).

Hoecker, (b) (6), (b) (7)(C) the opportunity to respond to the draft ROI, which was redacted to protect witness and complainant confidentiality. However, on October 12, 2018, the IC received information that IG Hoecker had improperly contacted one of those protected witnesses, compelling the IC to expand the scope of the investigation to include that conduct. ED OIG completed this supplemental work and the IC provided IG Hoecker, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) an opportunity to respond to the revised draft ROI and their responses were incorporated into the final ROI.

After a thorough review of the final ROI and its exhibits, including the subjects' comments, the IC adopts the facts in the ROI and concludes that IG Hoecker abused his authority in the exercise of his official duties and engaged in conduct that undermines the independence and integrity reasonably expected of an IG, including a lack of candor. (b) (6), (b) (7)(C)

Background of SEC OIG's Internal Investigation

In February 2013, IG Hoecker became the SEC IG after the resignation of the previous IG, the Deputy IG, and (b) (6), (b) (7)(C) the AIGI. Their departures followed an external investigation, which found the former SEC IG's personal relationship with an attorney and a whistleblower created a conflict of interest relating to the initiation and supervision of multiple investigations and violated CIGIE's investigative standards and the Standards of Ethical Conduct for Employees of the Executive Branch.[5]

IG Hoecker began rebuilding the OIG by hiring new employees and personally selected, without interview, three individuals with whom he had longstanding professional relationships – (b) (6), (b) (7)(and (b) (6), (b) (7)(C) (referred to herein as Senior Employee 1 (SE1) and Senior Employee 2 (SE2)). These individuals had previously worked for IG Hoecker when he was (b) (6), (b) (7)(C) at the U.S. Department of Treasury (Treasury) OIG.[6] On May 16, 2016, IG Hoecker received multiple complaints alleging SE1 and SE2 "maintained the appearance of an inappropriate relationship" and, as a result, SE2 received preferential treatment. The complaints also alleged SE1 and SE2 wasted government funds and engaged in time and attendance fraud.

Against concerns raised by (b) (6), (b) (7)(C) , IG Hoecker decided to handle the allegations internally instead of asking an outside, independent OIG to conduct the investigation, and assigned the investigation as a "joint" effort to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) . Like IG Hoecker, (b) (6), (b) (7)(C) also had a longstanding relationship with the subjects, particularly SE1. SE1 worked directly for (b) (6), (b) (7)(C) , where SE1 was known as (b) (6), (b) (7)(C) "right hand," and at SEC OIG, where (b) (6), (b) (7)(C) was SE1's direct supervisor

[5] https://archive.org/stream/472239-finalsec12uihq0063gc37si-sec-oig-a-pdf/472239-finalsec12uihq0063gc37si-sec-oig-a-pdf_djvu.txt. These standards include a requirement for acting impartially and avoiding any actions that would create the appearance of a violation.
[6] ROI, Exhibit 38, Interview of IG Hoecker on June 13, 2018, p. 410.

from 2013 until (b) (6), (b) (7)(C) retired, including the time of the SEC OIG internal investigation. Email correspondence demonstrates that (b) (6), (b) (7)(C) and SE1 enjoyed a mentor-protégé relationship, in which (b) (6), (b) (7)(C) expressed pride and pleasure in SE1's achievements, and SE1 expressed gratitude for (b) (6), (b) (7)(C) friendship and mentoring.[7]

IG Hoecker tasked (b) (6), (b) (7)(C) with completing the bulk of the investigative legwork prior to (b) (6), (b) (7)(C) imminent retirement. (b) (6), (b) (7)(C) gathered evidence and conducted most of the interviews, including the subject interviews of SE1 and SE2.[8] (b) (6), (b) (7)(C) also provided testimony and evidence as a fact witness for his own investigation, including a dispositive memo he sent to (b) (6), (b) (7)(C) that evaluated SE1 and SE2's work performance and interpreted "reasonable travel time" for the SEC OIG policy on physical fitness, which was used in the SEC ROI to directly refute the allegations of time and attendance fraud.[9]

SEC OIG issued its final ROI on March 3, 2017, which found SE1 and SE2 did not have a sexual relationship but found SE1 created the appearance of an inappropriate relationship with SE2.[10] However, this finding appeared to be unduly generous to SE1 and SE2 in multiple respects: the investigation did not follow up on clear leads as to whether there was an *actual* inappropriate relationship and failed to fully and responsibly confront SE1 or SE2 on relevant points in their interviews.

Additionally, the SEC ROI found that SE1 and SE2 had unexplained absences during work hours throughout the year, but did not find these absences to be improper by speculating, without supporting evidence, that it was "possible" SE1 and SE2 "may have been working or attending meetings outside of SEC offices" during that time.[11] Conversely, the SEC ROI found SE1 and SE2 "occasionally exceeded" the time permitted by SEC OIG policy for physical fitness.[12] Finally, the SEC ROI found that SE2 received no actual preferential treatment from SE1, although "the appearance of the inappropriate relationship" caused many OIG employees to believe they had. SEC OIG concluded the matter by entering into a settlement agreement with SE1 and giving SE2 a letter of censure.

The minimal disciplinary action against SE1 and SE2 and the lack of recusals by key SEC OIG managers resulted in multiple complaints that SEC OIG management conducted a biased and substandard investigation, which was orchestrated to contain the facts and limit the professional harm to favored employees. (b) (6), (b) (7)(C), who replaced (b) (6), (b) (7)(C) after he retired, imposed

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[7] In a 2015 email exchange, SE1 characterized (b) (6), (b) (7)(C) as "my boss, mentor, and more importantly my good friend. You have played a major part in my professional and personal growth as a man." (b) (6), (b) (7)(C) responded by saying, "I am fortunate to have crossed paths with you and often rejoice in the success of your career achievements." ROI, Exhibit 43.

[8] ROI, Attachment 1, IG Hoecker's Comments on the Draft ROI, p. 18.

[9] ROI, Exhibit 44.

[10] ROI, Exhibit 4.

[11] The ROI found SE1 had 144 hours (18 days) of unexplained absences and SE2 had 126 hours (over 15 days). ROI Exhibit 4.

[12] *Id*. The SEC ROI found that, in one year, SE1 exceeded the physical fitness policy by 304 minutes (over 5 hours) and SE2 exceeded the policy by 426 minutes (over 7 hours).

the discipline.

Conclusions of the Integrity Committee

After a thorough review of the evidence, including each of the subject's comments on the draft ROI, the IC concludes the actions by (b) (6), (b) (7)(C) do not meet the IC's threshold standard for wrongdoing. Additionally, since (b) (6), (b) (7)(C) retired from federal service in June 2016, the IC determines it is not in the public's interest to further investigate his actions or make findings regarding his conduct.[13] Conversely, the IC finds IG Hoecker abused his authority in the exercise of his official duties and engaged in conduct that undermines the independence and integrity reasonably expected of an IG, including a lack of candor.[14]

IG Hoecker Initiated and Oversaw an Internal Investigation that was Inadequate, Flawed, and Lacking in Objectivity

Pursuant to the Quality Standards for Federal Offices of Inspector General (Silver Book), IGs and their staff must be independent in fact and appearance from personal, external, and organizational impairments.[15] Accordingly, IGs and their employees should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude the OIG is not able to maintain independence in conducting specific work.[16] The totality of the facts and circumstances in this matter clearly demonstrates that IG Hoecker's actions created the appearance that he attempted to conceal potential wrongdoing within the OIG by ordering and overseeing a remarkably biased and flawed internal investigation, and a third party with knowledge of the relevant facts and circumstances might reasonably question the independence and objectivity of the investigation. The IC finds these actions constitute an abuse of his authority and undermine the independence and integrity reasonably expected of an IG.

IG Hoecker asserts the internal SEC OIG investigation "complied with the Silver Book, as well as the IG Act and CIGIE standards and guidelines."[17] Furthermore, IG Hoecker denies that he had a personal relationship with anyone involved in the internal investigation and states (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) relationship with SE1 and SE2 "was not close and personal" but a "typical professional relationship that exists in any office."[18] IG Hoecker also denies (b) (6), (b) (7)(C) relationship with SE1 and SE2 presented a conflict because "the appearance is for knowledgeable third parties."[19]

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[13] (b) (6), (b) (7)(C) elected not to be interviewed by the IC investigators and because he is no longer in government service, the investigators could not compel his interview.

[14] "Abuse of authority" is an arbitrary or capricious exercise of power that adversely affects the rights of any person or that results in personal gain to the subject or other preferred persons. *Ramos v. Dep't of the Treasury*, 72 M.S.P.R. 235, 241 (1996) (citation omitted).

[15] Quality Standards for Federal Offices of Inspector General (The Silver Book, 2012), https://www.ignet.gov/content/quality-standards.

[16] Silver Book, p. 10.

[17] ROI, Attachment 1, p. 10.

[18] ROI, Attachment 1, p. 19; ROI, Exhibit 38.

[19] ROI, Exhibit 38, p. 394.

The IC finds IG Hoecker's response to be unpersuasive and inconsistent with the facts developed in the investigation. First, IG Hoecker chose to have his office conduct an internal investigation, over the concerns of (b) (6), (b) (7)(C) .[20] IG Hoecker claims that (b) (6), (b) (7)(C) never expressed concerns about handling the matter internally nor did he advise him of an impartiality problem or an appearance issue that would require recusal;[21] however, (b) (6), (b) (7)(C) testified that he did raise such concerns to IG Hoecker at the outset of the investigation.[22] Moreover, the whistleblower who originally brought the complaint to SEC OIG's attention raised concerns about the close relationships between the subjects and IG Hoecker and (b) (6), (b) (7)(C) in the whistleblower's initial interview.[23]

Furthermore, IG Hoecker selected (b) (6), (b) (7)(C) to lead the internal investigation, despite [redacted] longstanding and widely known relationship with the two subjects who worked for him and contrary to well-established investigative standards.[24] Six SEC OIG employees interviewed in the IC's investigation did not believe the internal investigation was impartial or independent, and several of these employees expressed concerns regarding the lack of impartiality during the internal investigation. These witnesses based their opinion on their daily observations of the close relationships among IG Hoecker, (b) (6), (b) (7)(C) SE1, and SE2, and one witness stated that there would have been more investigative activity if the investigation had involved someone other than SE1 or SE2.[25]

IG Hoecker attempts to minimize the issue of independence by stating the investigation was assigned to (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) was merely assisting for his last 30 days in office. While IG Hoecker denies (b) (6), (b) (7)(C) was the lead investigator or had any supervisory role in the internal investigation,[26] the evidence and IG Hoecker's prior statements indicate otherwise. During the IC's investigation, both (b) (6), (b) (7)(C) and IG Hoecker acknowledged that it was (b) (5), (b) (7)(C) who led the effort in gathering evidence and conducting interviews for the internal investigation.[27] Specifically, IG Hoecker told IC investigators that he wanted [redacted] to "get the bulk" of the interviews finished and that when (b) (6), (b) (7)(C) retired, "(b) (6), (b) (7)(C) would complete the investigation" and that "the cleanup could be really [in] the swim lane of [(b) (6), (b) (7)(C)] to do that."[28]

In addition to lacking an appearance of impartiality, the evidence shows IG Hoecker and [redacted] (b) (6), (b) (7)(C) relationship with SE1 and SE2 impacted the quality of the internal investigation. In

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[20] ROI, Attachment 1, Tab A.

[21] ROI, Attachment 1, p. 20. This was not the only instance in which IG Hoecker disregarded the advice of [redacted] (b) (6), (b) (7)(C), (b) (5) [redacted]. ROI, Exhibit 37, Interview of (b) (6), (b) (7)(C) on June 12, 2018, p. 234 to 236.

[22] ROI, Exhibit 37, p. 35 to 37.

[23] ROI, Exhibit 11.

[24] ROI, Attachment 1, p. 13 to 14; ROI, Attachment 1, Tab B.

[25] ROI, Exhibits 11, 15, 19, 20, 28, and 29.

[26] ROI, Attachment 1, p. 20.

[27] ROI, Exhibit 37, p. 167 to 168.

[28] ROI, Exhibit 38, p. 203 to 204, 208, 317. IG Hoecker even sought to recognize [redacted] for his work on the investigation. ROI, Exhibit 37, p. 18 to 19.

addition to evidence that obvious leads were not pursued, (b) (6), (b) (7)(C) failed to advise SE1 and SE2 of their 5th Amendment right not to incriminate themselves before he interviewed them, thereby jeopardizing the ability of the U.S. Attorney's Office to use their statements if the case were accepted for prosecution.[29] Omitting this routine and required warning is highly unusual for someone who had served (b) (6), (b) (7)(C) for seven years, and it is an error that had not occurred in the prior 59 SEC OIG investigations of SEC officials, including matters with identical allegations.[30] This serious omission suggests a predisposition to limit the investigation to administrative channels, no matter what the evidence showed and despite the potentially criminal nature of the allegations of time and attendance fraud.

(b) (6), (b) (7)(C) also failed to address additional credible allegations that SE1 had engaged in sexual harassment, which were reported prior to and during the internal investigation.[31] In fact, the misconduct was reported to (b) (6), (b) (7)(C), and IG Hoecker; however, the complaining witness was never interviewed, and no one followed up on the allegations. Moreover, under IG Hoecker's supervision, (b) (6), (b) (7)(C) was both the principal investigator and a critical fact witness for the internal investigation. (b) (6), (b) (7)(C) provided testimony and evidence as a witness in the investigation, including a memorandum to (b) (6), (b) (7)(C) that interpreted the SEC OIG policy on physical fitness in a manner that SEC OIG employees viewed as favorable to SE1 and SE2 and included an evaluation of SE1 and SE2's work performance.[32] This memo had a direct effect on the investigation since (b) (6), (b) (7)(C) performance evaluation of SE1 and SE2 was used in the SEC ROI to justify and minimize their unexplained absences, which stated, without supporting evidence, that SE1 and SE2 could have been working during the missing hours given their high level of individual performance results. (b) (6), (b) (7)(C) provided this assessment despite failing to interview SE1 and SE2 on this issue.

The IC finds IG Hoecker's assertions that the internal SEC OIG investigation was conducted independently and objectively to be unpersuasive and lacking in credibility. IG Hoecker has been employed as an investigator in the Federal government for over 40 years and has over a decade of experience as an IG. He has opened and closed over 150 investigations at SEC and at the time of the internal investigation, IG Hoecker served as the Chairperson of CIGIE's Investigations Committee and was responsible for advising the IG community on issues involving investigations and establishing investigative guidelines.[33] The IC is therefore troubled that someone with IG Hoecker's extensive experience would maintain, even in hindsight, that the internal SEC OIG investigation was impartial, thorough, and free of conflicts of interest.[34]

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[29] Department of Justice guidance calls on investigative personnel to administer these so-called *Garrity* warnings routinely in voluntary interviews of Federal employees.

[30] Investigators found that, during the three years preceding this matter, there were 12 subjects in 59 SEC OIG investigations with similar allegations and each subject was given a rights advisement.

[31] ROI, Exhibit 31.

[32] ROI, Exhibit 44.

[33] ROI, Attachment 1, Tab B. IG Hoecker served as the Chairperson of CIGIE's Investigations Committee from 2009 to 2019.

[34] The IC is likewise unpersuaded by IG Hoecker's contention that a finding against him in this matter would effectively preclude any IG from handling an investigation of a longtime employee in-house. ROI, Attachment 1, p. 5. The relationships in this matter were not merely those of longtime workplace colleagues but of mentor-protégé and trusted right-hand.

Further, IG Hoecker's strenuous efforts to withhold the internal investigation from scrutiny by CIGIE's investigative peer reviewers support an inference that he was aware of its manifest defects. He could have quickly established that the report was outside the review period by producing it and related data to the peer reviewers, but he chose instead to engage in protracted discussions and to offer a sequence of non-meritorious rationales for withholding it entirely. Only when faced with the prospect that an inconclusive peer review outcome might lead to revocation of SEC OIG's law enforcement authority did IG Hoecker turn over the report. The peer reviewer agreed that the report was beyond the review period, but also noted numerous irregularities in it.[35] While the IC does not rely on the peer reviewer's substantive analysis of the report, we find IG Hoecker's course of conduct to be probative of his knowledge that the internal investigation was substandard and would not withstand independent scrutiny.

While IGs have broad discretion in the performance of their mission, the IC determines that a reasonable person with knowledge of the underlying facts and circumstances in this matter would have questioned the objectivity and independence of an internal investigation. IG Hoecker's decision to overlook the threats to (b) (6), (b) (7)(C) independence and prominently include him in the investigation into SE1 and SE2, and to disregard advice of (b) (6), (b) (7)(C) and complaints from other employees, constituted an abuse of his authority and undermined the independence and integrity reasonably expected of him.

IG Hoecker Improperly Confronted and Questioned a Subordinate Witness

The IC also finds that IG Hoecker engaged in wrongdoing when he contacted a witness in the IC's investigation to ask questions about statements that witness made to IC investigators. On October 10, 2018, IG Hoecker contacted a subordinate employee and witness in the IC investigation on their personal cell phone after business hours and questioned the witness about certain statements attributed to the witness in the draft ROI that IG Hoecker had recently reviewed. During the conversation, IG Hoecker told the witness that he would be able to view the transcript of the witness's testimony and asked the witness if the statements the witness made to investigators would be consistent or inconsistent with the information the witness had just described to him on the phone. The witness was surprised and reluctant to answer IG Hoecker's questions and was concerned enough to report the conversation to (b) (6), (b) (7)(C) the following day. The witness also provided (b) (6), (b) (7)(C) a detailed memorandum documenting the conversation, which (b) (6), (b) (7)(C) promptly forwarded to the IC.[36]

When questioned by investigators, IG Hoecker acknowledged that he was able to deduce the witness's identity despite redactions in the draft ROI and claimed he contacted this individual only to ensure that there were no unresolved workplace issues that he needed to address, and that he was concerned the witness may have a diminished trust in him.[37] IG Hoecker denied asking the witness if the transcript would match their conversation and he did not believe contacting the

[35] ROI, Exhibit 51.
[36] ROI, Exhibit 68.
[37] ROI, Exhibit 70, Interview of IG Hoecker, December 6, 2018, p. 7 to 8; ROI, Attachment 1, p. 39.

witness violated any rule or IC direction[38] stating, "I wouldn't have taken retaliatory action on [witness]. I think [witness is] doing a great job. I just finished an evaluation and [witness is] top notch."[39] Notably, the favorable evaluation issued by IG Hoecker occurred after the phone call.

The IC finds IG Hoecker's reasons for contacting the witness to be lacking in credibility. The witness created a memorandum of the conversation shortly after the call and was concerned enough to describe the phone call to (b) (6), (b) (7)(C) the next day and provide him with a copy of the memorandum. This contemporaneous account carries more weight with the IC than IG Hoecker's later justifications. In addition, the witness's account that IG Hoecker asked about details in the witness's statement and whether they would match the transcript of the witness's interview is highly credible because this information would only be known by IG Hoecker, which undercuts his denial.

Moreover, as IG Hoecker should know from his extensive investigative experience and as the then-Chairperson of the CIGIE Investigations Committee, it is highly improper for the subject of the investigation to contact a witness and press them on what they said to investigators – this conduct may even constitute obstruction of an investigation. That type of behavior—made during the pendency of an investigation—is widely known to be unacceptable in the IG community as it can be reasonably construed as coercive or retaliatory in nature, especially in an ongoing workplace setting. Therefore, the IC determines that by improperly contacting this subordinate witness IG Hoecker abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of an IG.

IG Hoecker Exhibited a Lack of Candor

The IC is further troubled IG Hoecker's lack of candor throughout the IC process. It is clear from the record that IG Hoecker changes his story depending on what is most advantageous to him at the time. In addition to his misrepresentations about not receiving advice from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and his reasons for questioning a witness in the IC's investigation, IG Hoecker also mischaracterized the nature of the SEC internal investigation depending on his audience, calling it a thorough "investigation" in initial statements to the IC, but later telling CIGIE peer reviewers and IC investigators it was a "management inquiry" and therefore not subject to CIGIE's Quality Standards for Investigations.

Recommendation

The IC concludes that IG Hoecker engaged in wrongdoing in that he abused his authority and engaged in misconduct that undermines the independence and integrity reasonably expected of an IG, including showing a lack of candor. Furthermore, the sustained inappropriate nature of

[38] The IC's written communications to IG Hoecker included the following language: "Finally, it is important to ensure that appropriate measures are in place to prevent retaliation or other prohibited personnel practices from being taken against an employee based on the employee's disclosure of information that he or she reasonably believes evidences administrative misconduct as defined above." ROI, Exhibit 70.
[39] ROI, Exhibit 70, p. 14 to 15.

his actions throughout this matter, such as contacting a subordinate witness about their participation in the IC's investigation, were wholly inconsistent with fundamental standards expected of an IG. These serious violations are aggravated by IG Hoecker's extensive experience and the leadership role entrusted to him by the IG community. Accordingly, the IC recommends you consider appropriate disciplinary action for this serious misconduct, including removal.

The IC has also provided its findings, conclusions, and recommendations to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure: Report of Investigation

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

REFERRAL

REPORT OF INVESTIGATION

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY: INTEGRITY COMMITTEE REQUEST IC890 AND IC909

I18EAS00388

APRIL 5, 2019

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REFERRAL

REPORT OF INVESTIGATION

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY: INTEGRITY COMMITTEE REQUEST IC890 AND IC909

EXECUTIVE SUMMARY

The United States (U.S.) Department of Education (ED) Office of Inspector General (OIG), conducted an investigation at the request of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Integrity Committee (IC), into claims of wrongdoing against senior management officials at the U.S. Securities and Exchange Commission (SEC) OIG regarding the handling of an employee investigation within SEC OIG. The specific allegations and their respective findings follow:

Allegation 1

The investigation was a whitewash[1]: Inspector General Carl Hoecker (Hoecker), SEC OIG, caused and (b) (6), (b) (7)(C) SEC OIG, conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) , SEC OIG, and (b) (6), (b) (7)(C) SEC OIG, that understated the significance of the evidence and seriousness of the misconduct.

Allegation 1.1

Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) , was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C), in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew.

[1] The complainant characterized SEC OIG's investigation as a "whitewash." ED OIG did not attempt to confirm or refute the complainant's subjective characterization of the investigation. Instead, ED OIG focused on the specific instances of misconduct the complainant alleged to have occurred, and which investigators could substantiate or not substantiate using investigative methods and criteria.

Finding 1.1.a

ED OIG substantiated that Hoecker assigned the investigation to [redacted] and [redacted], although [redacted] and SEC OIG were not free in appearance from impairments to independence. We did not find that [redacted] had impairments in fact or appearance.

Finding 1.1.b

ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's Quality Standards for Investigation (QSI) or the SEC OIG Investigative Policy.

Allegation 1.2

The report stated the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It did not address a third alternative—circumstantial evidence of a sexual relationship. The report appeared to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of:

a. The unusual amount of time that [redacted] and [redacted] spent together, exceeding the time that they spent with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which [redacted] and [redacted] were found in the evidence room and the door was blocked, where one witness observed [redacted] zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f. The claim that [redacted] gave [redacted] an expensive birthday present.

Finding 1.2

Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) ED OIG could not substantiate whether the report of investigation (ROI) understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

Allegation 1.3

The SEC OIG report's author speculated in a manner favorable to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who "could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].

Finding 1.3

ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) time out of the office was spent on official activities. Instead, the SEC OIG planned to include the missing time in proposals for discipline for response, but the proposals were never issued, as (b) (6), (b) (7)(C) entered into a settlement agreement and (b) (6), (b) (7)(C) was issued a memorandum of censure.

Allegation 1.4

The sanction developed and agreed on by (b) (6), (b) (7)(C), SEC OIG, did not address or correct all of the circumstances that reportedly contributed to the appearance of an inappropriate relationship. SEC OIG management did not:

a. Separate the subjects' offices which are next door to each other;

b. Prohibit or limit them (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) from meeting off-premises alone from work;

c. Prohibit them from private closed door meetings;

d. Require them to limit their (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) meetings alone together to OIG space;

e. Prohibit or limit (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) from traveling together;

f. Require them (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to stay in the same hotels as other OIG staff when on travel.

Finding 1.4

ED OIG did not substantiate that [redacted] failed to separate [redacted] and [redacted] offices. [redacted] did not prohibit or limit [redacted] and [redacted] from conducting official business together.

Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG

ED OIG also developed the following information in the course of its investigation:

1. Additional allegations of inappropriate comments made by [redacted] to [redacted] were not addressed as part of the SEC OIG investigation.
2. [redacted].

Allegation 2

The respondents (identified as Hoecker, [redacted]) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, [redacted] improperly excluded the investigation from the peer review conducted by the National Science Foundation (NSF) OIG, which prevented NSF OIG from completing the peer review.

Allegation 2.1

They offered shifting (and potentially pretextual) justifications for SEC OIG's position that the investigation was not subject to peer review.

Finding 2.1

ED OIG substantiated that the SEC OIG offered varying justifications for why the investigation should not have been subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

Allegation 2.2

Hoecker and [redacted] modified or manipulated the date of completion of the investigation to place it outside the review period.

Finding 2.2

ED OIG did not substantiate that the date of completion was modified or manipulated. The investigation had been appropriately closed outside of the period covered by the peer review.

Allegation 2.3

The respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an "investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an "inquiry" and therefore outside the scope of peer review.

Finding 2.3

ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by (b) (6), (b) (7)(C)). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Allegation 2.4

Respondents designated or allowed (b) (6), (b) (7)(C) to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

Finding 2.4

ED OIG substantiated that (b) (6), (b) (7)(C) served as the SEC OIG's liaison to the NSF OIG peer review team when placed into a new role following a realignment in the SEC OIG, but did not substantiate his serving in this role obstructed the peer review.

Allegation 3

Hoecker, assisted by (b) (6), (b) (7)(C) misused his position as Chair of CIGIE's Investigations Committee to sponsor revisions to CIGIE's Qualitative Assessment Review Guidelines for Investigations (investigations peer review standards) to exclude internal OIG investigations from peer review, without (1) disclosing that the changes had the potential to affect a pending peer review of SEC OIG and allegations before and likely to come before the IC or (2) recusing himself from consideration of those proposed changes.

Finding 3

ED OIG did not substantiate that Hoecker, assisted by (b) (6), (b) (7)(C) misused his position. The changes approved by the CIGIE on July 18, 2017, would not have applied to the NSF OIG peer review of the SEC OIG and provided an option for covering internal investigations.

Allegation 4

The SEC OIG may not have conformed with its Giglio policy requiring disclosure of impeachable information to the U.S. Department of Justice (DOJ) in anticipation of offering (b) (6), (b) (7)(C) as a witness for sworn testimony or statements in criminal cases.

Finding 4

ED OIG did not substantiate that the SEC OIG failed to conform with its Giglio policy requiring disclosure of impeachable information to the DOJ in anticipation of offering (b) (6), (b) (7)(C) as a witness for sworn testimony or statements in criminal cases.

Allegation 5

On or about October 10, 2018, Hoecker engaged in wrongdoing. This allegation arose out of information provided in an email, received by the IC on October 12, 2018, containing information that, on October 10, 2018, Hoecker contacted (b) (6), (b) (7)(C) SEC OIG, and questioned her regarding information she provided to ED OIG during the IC investigation.

Finding 5

ED OIG substantiated that Hoecker contacted (b) (6), (b) (7)(C) on October 10, 2018, regarding statements attributed to (b) (6), (b) (7)(C) in the draft ROI. Hoecker stated that he did not contact any other witnesses about the IC investigation or their interviews.

VIOLATIONS

The violations identified in this report include:

- Lack of compliance with SEC OIG investigative policy.
- Lack of compliance with Quality Standards for Federal Offices of Inspector General (Silver Book) and CIGIE QSI.

PREDICATION

This case was predicated on a request received on November 8, 2017, from CIGIE's IC for ED OIG to conduct an independent administrative investigation into allegations of wrongdoing by Hoecker and [redacted] (Exhibit 1). On November 15, 2017, the IC notified Hoecker and [redacted] of these allegations. On November 27, 2017, [redacted] was added as a subject to IC890 and additional allegations regarding obstruction of a peer review and Hoecker's misuse of his position were added as IC909 (Exhibit 2). On March 6, 2018, based on information ED OIG received, an additional allegation was added to IC890 (Exhibit 3) that the SEC OIG did not disclose potential impeachment information (Giglio information) concerning one of the subjects of the SEC OIG investigation.

On August 21, 2018, ED OIG provided a draft report of investigation (draft ROI) to the IC addressing the specific allegations of IC Requests IC890 and IC909 and the respective findings. On October 19, 2018, the IC requested ED OIG expand the scope of its investigation regarding an additional allegation of wrongdoing by Hoecker involving him contacting a witness to the IC investigation and questioning her regarding information she provided to ED OIG (Exhibit 67).

BACKGROUND

SEC OIG's Investigation

On January 19, 2017, [redacted] issued a ROI to Hoecker regarding, "Allegations of Misconduct related to [redacted] and [redacted]." The report was amended for administrative and clerical oversight errors and reissued on March 3, 2017 (Exhibit 4). The investigation was conducted by [redacted] SEC OIG.

According to the report, the investigation focused on allegations [redacted] and [redacted] (respectively direct supervisor and subordinate) maintained the appearance they were having a sexual relationship in the office, while on official travel, and during official paid work time. As a result, [redacted] received preferential treatment. The investigation also focused on allegations that [redacted] and [redacted] were frequently absent from the office for one or two hours, or more, during lunch time, left and returned together, and engaged in physical fitness time in excess of the time permitted by the policy. It also focused on allegations that [redacted] and

(b) (6), (b) (7)(C) potentially increased travel costs and wasted government funds by staying at hotels separate from other SEC OIG Office of Investigations (OI) staff.

Additional allegations investigated by the SEC OIG included: (b) (6), (b) (7)(C) committed a prohibited personnel practice as a result of the relationship by excluding a potentially qualified applicant because she was a friend of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not want someone reporting on his activities to (b) (6), (b) (7)(C); (b) (6), (b) (7)(C) ridiculed a subordinate's religion and made inappropriate and unsolicited sexually explicit remarks to an OI staff member; (b) (6), (b) (7)(C) created a hostile work environment by instructing individuals not to provide information to (b) (6), (b) (7)(C); (b) (6), (b) (7)(C) disregarded SEC policies by erroneously approving a travel authorization; (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) obstructed justice by concealing records and withholding information from a U.S. Attorney's Office (USAO); (b) (6), (b) (7)(C) transmitted a sexually suggestive email message to (b) (6), (b) (7)(C); (b) (6), (b) (7)(C) instructed a subordinate employee to violate the SEC Rules of the Road policy; and (b) (6), (b) (7)(C) wasted federal procurement funds by refusing to properly construct an interview room.

The SEC OIG's investigation developed additional allegations including: more conduct related to the appearance of an inappropriate sexual relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (the two were found together in the evidence room); (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) a gift potentially violating the ethics regulations regarding gifts between a supervisor and a subordinate employee; (b) (6), (b) (7)(C) made inappropriate comments about a co-worker's religion and (b) (6), (b) (7)(C) made inappropriate sexual comments; and in November 2017, OI staff members had observed (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) entering and leaving the SEC's Division of Enforcement testimony rooms together, indicating the possibility of an ongoing sexual relationship occurring in the workplace on official government time.

The ROI concluded there was no direct evidence to support a conclusion (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had a sexual relationship. However, the evidence did support a finding that (b) (6), (b) (7)(C) created the appearance he had an inappropriate relationship with (b) (6), (b) (7)(C) As a result of that appearance, employees in OI believed (b) (6), (b) (7)(C) received preferential treatment. The evidence did not show (b) (6), (b) (7)(C) actually received preferential treatment.

The ROI concluded evidence supported (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were absent from the office together around lunch time for extended periods, but did not support a finding this was improper. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were out of the office but could have been conducting official business. However, the evidence did suggest (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) occasionally exceeded the time permitted by policy for physical fitness.

The ROI further concluded evidence did not exist to support (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) increased travel costs to the government and wasted government funds by staying at hotels separate from other OI staff. Similarly, evidence did not support (b) (6), (b) (7)(C) committed a prohibited personnel practice as a result of the inappropriate relationship.

Additionally, the ROI concluded evidence did support (b) (6), (b) (7)(C) made inappropriate sexual comments to and about subordinate employees and that (b) (6), (b) (7)(C) made remarks that were not appropriate in a professional environment.

On March 24, 2017, SEC OIG entered into a settlement agreement with [redacted] (Exhibit 5)
[redacted]
On March 30, 2017, [redacted] issued a Memorandum of Censure to [redacted] (Exhibit 6).

OIG Professional Standards

Quality Standards for Federal Offices of Inspector General (Silver Book)

The Quality Standards for Federal Offices of Inspector General (Silver Book) sets forth the overall quality framework for managing, operating, and conducting the work of Offices of Inspector General (Exhibit 42, p. Foreword).

Quality Standards for Investigations

According to the QSI, "Recognizing that members of the OIG community are widely diverse in their missions, authorities, staffing levels, funding, and day-to-day operations, certain foundational standards apply to any investigative organization. As such, the standards outlined here are comprehensive, relevant, and sufficiently broad to accommodate a full range of OIG criminal, civil, and administrative investigations across the CIGIE membership" (Exhibit 41, p. Preface).

At the time of this investigation, Hoecker served as the Chair of CIGIE's Investigations Committee responsible for advising the IG community on issues involving criminal investigations and criminal investigative personnel, and on establishing criminal investigative guidelines. As the chair, Hoecker's message included in the updated QSI in 2011, emphasized the QSI will continue to guide the community in high-quality investigative work, and that members of CIGIE shall adhere to professional standards developed by the CIGIE as stated in the IG Reform Act of 2008 (Exhibit 41).

SEC OIG Policy

According to SEC OIG policy, Chapter 1, "OI Investigative operations are required to be conducted in accordance with the general and qualitative standards that have been adopted by the CIGIE, entitled Quality Standards for Investigations" (Exhibit 39, p. 3).

Expanded Scope of the IC Investigation

On October 12, 2018, CIGIE IC received an email, "Referral of Complaint," from [redacted] with an attached copy of an email dated October 11, 2018, with subject, "Memo for the Record – October 10, 2018, Phone Call from IG," from [redacted] to herself. The email detailed an October 10, 2018, telephone discussion [redacted] had with Hoecker (Exhibit 68 - "Memo"). According to the memo, Hoecker initiated the call to her. In substance, the memo detailed [redacted] recollection of the 11 minute telephone call in which Hoecker questioned [redacted] about the basis for certain statements attributed to her in ED OIG's draft ROI, "Additional Allegations of

---

[redacted]

Misconduct Related to Allegation 1, not Addressed by SEC OIG"). Specifically, [redacted] wrote that the IG asked her about statements attributed to her in the draft ROI regarding her reporting to the IG unwelcomed attention and comments from [redacted] and how the IG handled the situation with [redacted] Hoecker questioned whether [redacted] told the ED OIG investigators that the events occurred on the same day (July 1, 2016), as that was not his recollection.[3] [redacted] stated that Hoecker also questioned whether she was making a formal complaint against [redacted] when she reported [redacted] behavior to [redacted] The following day, October 11, 2018, [redacted] described the telephone call to [redacted] who told [redacted] she should document the conversation she had with Hoecker. [redacted] documented the discussion in an email memorandum to herself and forwarded the email to [redacted] who then forwarded it to the IC.

METHODOLOGY

ED OIG requested and SEC OIG provided the following data (Exhibits 7-9):

- the complete and un-redacted official case file for the subject investigation (electronic and hardcopy);
- SEC OIG policies and procedures/standard operating guidelines;
- SEC OIG personnel and contact information;
- records supporting the qualifications, training, or experience of [redacted] and [redacted] to conduct internal employee investigations;
- final ROI and any supporting documentation on the external Quality Assurance Review (Peer Review) of the SEC OIG's investigative function conducted by NSF OIG in 2017.
- digital forensic images of calendars, contacts, and emails for any and all email addresses assigned to Hoecker, [redacted], from April 1, 2016, to June 30, 2017, and Deputy IG Harrell, from April 1, 2016, to April 30, 2017.

ED OIG processed over 2.25 terabytes of data, including digital documents and emails from SEC OIG and conducted an in-depth review of the information received. ED OIG's Technology Crimes Division also conducted an internet profile of relevant SEC OIG employees to determine the existence, or a lack thereof, of any online evidence of relationships or friendships (Exhibit 10).

ED OIG conducted 26 witness interviews (Exhibits 11-35 and 69). ED OIG made numerous attempts to contact [redacted] for an interview, to include; email, telephone calls (including voicemail), and an in-person visit to his [redacted] residence (a business card was left with [redacted] at his residence). [redacted] did not acknowledge or respond to ED OIG's requests for contact.

[3] The draft ROI did not, nor does the final ROI, indicate the events in question took place on the same day.

ED OIG interviewed [redacted] on June 8, 2018 (Exhibit 36), [redacted] on June 12, 2018 (Exhibit 37), and Hoecker on June 13, 2018 (Exhibit 38) and December 6, 2018 (Exhibit 70).

INVESTIGATIVE FINDINGS

Allegation 1

The investigation was a whitewash: Hoecker caused and [redacted] conducted an irregular substandard investigation of allegations of sexual misconduct between [redacted] and [redacted] that understated the significance of the evidence and seriousness of the misconduct.

Allegation 1.1

Although each of the 15 staff members in the Office of Investigations was a potential witness, and [redacted] was about to retire, Hoecker assigned this investigation to [redacted] and [redacted] tasking [redacted] to complete it after the retirement of [redacted] in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew existed.

Finding 1.1.a

ED OIG substantiated that Hoecker assigned the investigation to [redacted] and [redacted], although [redacted] and SEC OIG were not free in appearance from impairments to independence. We did not find that [redacted] had impairments in fact or appearance.

The Silver Book states the IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence (Exhibit 42, p. 10). The QSI further states that investigative work and investigative organizations must follow the same standard (Exhibit 41, p. 6).

Hoecker assigned the investigation to [redacted] and [redacted]

According to SEC OIG policy, Chapter 1: Investigative Policies and Standards,[4] "upon receipt of an allegation of misconduct by OIG staff other than designated staff members, the Inspector General will review the allegation and make a preliminary determination whether the allegation should be handled administratively by the appropriate OIG management official or should be further investigated. When an allegation is determined to require further investigation, the AIGI will conduct the investigation" (Exhibit 39, p.2).

According to his response letter to the IC on June 29, 2017, Hoecker initially assigned [redacted] to conduct the investigation jointly with [redacted] and SEC OIG's Office of Counsel ([redacted]) assumed sole responsibility for the investigation once [redacted]

[4] The 2013 version of this policy, quoted here, was applicable to the time period of the SEC OIG investigation and the decision not to assign the investigation to an outside agency.

retired. Hoecker stated, "As the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement, I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation" (Exhibit 40).

SEC OIG policy, Chapter 1, continues, "if, in the circumstances of the case, it could appear that the AIGI has a conflict of interest, the IG will either select another individual internally to conduct the investigation or request that an external agency conduct the investigation" (Exhibit 39, p.2). According to Hoecker, (b) (6), (b) (7)(C) had no such conflicts. In his June 29, 2017, letter to the IC, Hoecker stated, "(b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) was not close and personal and it was determined that it did not present a conflict" (Exhibit 40).

As outlined below, there is evidence (b) (6), (b) (7)(C) longstanding relationship with the subjects of the SEC OIG investigation, and with (b) (6), (b) (7)(C) in particular, created the appearance that he had impairments to his independence, which may have limited the extent of the investigation. Some SEC OIG staff perceived that impairments, such as the relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) could limit the extent of the investigation.

We referred to CIGIE's Silver Book (Exhibit 42), CIGIE's QSI (Exhibit 41), and SEC OIG policy to review the standards applicable to OIGs and OIG staff "to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties" (Exhibit 42, p. 10).

There was an appearance that impairments to independence existed

Quality Standards for Federal Offices of Inspector General (Silver Book)

The Silver Book states that, "[t]he IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The IG and OIG staff should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work" (Exhibit 42, p.10).

Quality Standards for Investigations

The QSI state that, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude." According to the QSI, "[t]his standard places upon agencies, investigative organizations, and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties" (Exhibit 41, p. 6-7).

Personal impairments are circumstances that may occur in which an investigator may experience difficulty in achieving impartiality because of their views and/or personal situations and relationships. This includes, "[o]fficial, professional, personal, or financial relationships that might affect the extent of the inquiry; limit disclosure of information; or weaken the investigative work in any way" (Exhibit 41, p. 7).

SEC OIG Policy

SEC OIG's policy on independence mirrors the independence standards outlined in the QSI and adds, "Investigators should notify the AIGI and/or Counsel to the IG whenever they believe that they have any of these impairments" (Exhibit 39, p. 3-4).

Professional History

Hoecker, (b) (6), (b) (7)(C) had previously worked together at the U.S. Department of Treasury (Treasury) OIG. Without being interviewed, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were hired by Hoecker in 2013 to rebuild SEC OIG. (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) direct supervisor at SEC OIG from 2013 until (b) (6), (b) (7)(C) retirement in 2016. (b) (6), (b) (7)(C) was also (b) (6), (b) (7)(C) direct supervisor at SEC OIG from 2013 until (b) (6), (b) (7)(C) promotion (b) (6), (b) (7)(C), then making (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) second line supervisor.

The following table provides a timeline of the employment and supervisory roles for Hoecker, (b) (6), (b) (7)(C), at Treasury OIG and SEC OIG, from 2003 through 2013:

Table 1: Employment and supervisory roles for Hoecker, (b) (6), (b) (7)(C) 2003-2013[5]

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	TREASURY OIG										SEC OIG			
Hoecker	DAIGI	DAIGI	DAIGI	DAIGI							IG	IG	IG	IG
(b) (6), (b) (7)(C)														

	Hoecker 1st line supervisor to (b) (6), (b) (7)
(b) (6), (b) (7)	1st line supervisor to (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C)
(b) (6), (b) (7)	2nd line supervisor to (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C)

[5] Positions with other agencies excluded.

Professional Relationships

and

According to she maintained a supervisor, subordinate relationship with while at Treasury OIG and SEC OIG. She described the relationship as friendly but strictly professional. When left Treasury OIG, she and kept in touch via telephone and have continued to stay in touch through his retirement (Exhibit 25, p. 1). According to SEC OIG, she and visited at his home . The reason for the visit was because just gave birth and they were bringing gifts to celebrate. described the gift giving and visit as a personal gesture out of friendship (Exhibit 21, p. 3).

and

was at Treasury OIG From 2003 to 2007. . returned to Treasury OIG in 2010 (Exhibit 27). From 2010 to 2013, served at Treasury OIG. According to at Treasury OIG, was known as "right hand" (Exhibit 25, p. 1). According to he was characterized as right hand because of their long working relationship. He was trusted, needed little supervision and was known to get the job done, when others could not (Exhibit 27, p. 2).

In a 2015 email, wished a happy birthday and stated, "It has been nine years now and we have come a long way…I am appreciative to call you my boss, mentor, and more importantly my good friend. You have played a major part in my professional and personal growth as a man." replied, "I am fortunate to have crossed paths with you and often rejoice in the success of your career achievements. You are a fine man with a bright future that will certainly exceed my ceiling. Thanks again for all that you do for me and the OIG" (Exhibit 43).

Subject of the investigation, perceived relationship with as close

When she was interviewed on June 21, 2016, as part of the SEC OIG investigation, stated to "[Because] everybody knows I'm girl, just like everybody knows your boy. I mean, it is what it is" (Exhibit 49, p. 49).

as investigator and witness in SEC OIG investigation

Despite his role conducting the material interviews, including the subject interviews, and major document reviews until his departure, also provided factual information to the investigation, which made him a witness.

As direct supervisor and second line supervisor (and previous direct supervisor), was involved in decision-making that was considered during the investigation and in subsequent decisions regarding the appropriate discipline to impose on and On June 15, 2016, while still conducting the investigation, provided

a memo to [redacted] titled, "Supervisory Clarification of Issues Related to the Performance of [redacted] and [redacted]." He provided an evaluation of [redacted] and [redacted] work performance and interpreted SEC OIG's policy on physical fitness to provide an additional 40 minutes of "reasonable" time (in excess of actual fitness time) to commute from the front of Station Place 1 (SEC OIG office) to the end of Station Place 3[6] (where the gym is located) coupled with changing into PT gear, showering, and returning to proper work attire (Exhibit 44).

The performance evaluation that [redacted] provided was not only considered during the discipline process for [redacted] and [redacted] but also was provided as information to the USAO during the presentation of the case for criminal prosecution consideration on June 15, 2016 (Exhibit 45). [redacted] interpretation of the SEC OIG's physical fitness policy had a direct effect on the investigation since one of the supported findings in SEC OIG's report of investigation was that [redacted] and [redacted] exceeded the allowable physical fitness time. The calculations of the amount of time exceeded was offset by the 40 minutes which [redacted] interpreted to be a "reasonable time" for agents to travel to and from the fitness location and to change clothes (Exhibit 4, p. 25).

After his retirement, on November 2, 2016, [redacted] was interviewed by [redacted] as a witness, regarding allegations of [redacted] cancelling training to travel with [redacted] the withholding of information from an Assistant U.S. Attorney; and the existence of bias during the SEC OIG hiring process (Exhibit 46).

[redacted] expressed to [redacted] and [redacted] his concerns about impairments

On May 16, 2016, [redacted] SEC OIG, brought the initial complaint to Hoecker and stated in the complaint that he feared retribution and reprisal in bringing the complaint forward (Exhibit 47, p. 5). During his interview on May 18, 2016, conducted by [redacted] and [redacted], [redacted] expressed SEC OIG special agents were concerned about reprisal for bringing information forward about an alleged inappropriate relationship between [redacted] and [redacted] because of [redacted] and [redacted] perceived relationships with [redacted] and Hoecker. Memorandum of Activity (MOA) for interviews of OI staff that were used as exhibits in SEC OIG's ROI did not indicate the OI staff were questioned about reprisal concerns. [redacted] made the following statements during his interview to [redacted] that should have alerted [redacted] and [redacted] to [redacted] perception of impairments within SEC OIG (Exhibit 48):

1. "And I think the world of you and what you've built here. But others and myself, they know you brought [redacted] and [redacted] over." [redacted] acknowledged the statement, saying "Right" (p. 29).

2. "And there's a feeling that, you know, [redacted] your guy" (p. 30).

[6] Identified as suites occupied by SEC OIG in Washington, DC.

3. "You said something there that, I think, made people concerned…you said something like you owe the world to [redacted]." [redacted] clarified his statement then, stating "we wouldn't be here today without [redacted]" (p. 33).

4. "I believe only a fair and objective investigation could provide you evidence to make that determination" (p. 43).

5. "They're afraid of [redacted] But they feel that [redacted] is protected by you and Carl (Hoecker)" (p. 70).

6. "Someone told me, and I don't know if this is accurate, that Carl was like literally his ([redacted] godfather, or if that means godfather in that like I've got people that I'm the godfather of their, you know, their federal career. I brought them in, I've mentored them, I've taken care of them, you know, helped develop people. So, I don't know if that was an allegation or if that just means, you know, Carl supporting [redacted] professional development, because that can be okay totally. But I think to the extent that that information may be out there, people are concerned, well, he is protected which is why he's behaving in this way, and if I report it, it's not going to go so well for me" (p. 70-71).

7. "I think you're very perceptive…How could you not have a sense something was going on?" (p. 71).

8. "That's what [sic] people are concerned, that either [redacted] doesn't see it, so are they hiding it from you, or has it gone on…how is it possible that you don't see it…" (p. 72).

9. "I think people have a sense that he ([redacted] operates with impunity, or that he feels that way. So, I think people connect the dots to, I mean not my words, someone else's, hey, he must have some pictures of Carl and [redacted] hugging it out in the locker room or something… But I think people are looking to see how you're going to resolve this" (p. 110).

10. Regarding one on one interviews of OI staff by [redacted], [redacted] stated "I think that no one wants to challenge what you've built here…I think everyone wants to just come in and say everything is okay from the one-on-ones and move on" (p. 109).

When presented with the above remarks made by [redacted] Hoecker stated it was the first time he heard of such remarks (Exhibit 38, Tr. 39)[7]. When asked if hearing those remarks would have made him concerned about whether or not an objective investigation could have been conducted within SEC OIG, Hoecker stated, "No. Witnesses say a lot of things, as you know, some of them self-serving, for other reasons. Some of them not. I know [redacted], and I know

[7] Tr. – Page of the transcript attachment in the exhibit.

what he stands for. I know what I stand for. And, you know, people may say this, but it's, it wouldn't affect the investigation" (Exhibit 38, Tr. 39-40).

Some SEC OIG staff ED OIG interviewed did not believe the investigation was impartial or that it should have been conducted within SEC OIG

In his interview, Hoecker asserted that there was not an appearance of impairments because, "the appearance is for knowledgeable third parties" (Exhibit 38, Tr. 203).

However, interviews with SEC OIG OI staff regarding the investigation substantiated that the appearance of impairments to independence on the part of [redacted] and SEC OIG as an organization, did exist. The SEC OIG OI staff had a general knowledge of the past and current professional relationships between Hoecker, [redacted], as well as a general knowledge of conducting internal investigations and what impairments to independence were.

1. According to [redacted], [redacted] could not have conducted a fair and objective investigation because of his long work history with [redacted] and [redacted] In addition, [redacted] was [redacted] immediate supervisor who had hired him to work at the SEC OIG. She did not know how [redacted] could have separated any personal bias. She advised if it was her decision, she would have gone outside the agency (Exhibit 15).

2. According to [redacted], [redacted] was the "heir apparent" to [redacted] citing [redacted] expected retirement. [redacted] and [redacted] had an established relationship at Treasury OIG and [redacted] was [redacted] "go-to" person. Regarding the friendship between Hoecker, [redacted] SEC OIG, [redacted] explained the perception among the line agents was that "these were the people we trusted from the past," [redacted]. [redacted] stated that management activities at SEC OIG were unethical, immoral, and borderline criminal. When asked what she meant by "criminal" [redacted] explained that the investigation into [redacted] and [redacted] was a cover-up (Exhibit 19).

3. According to [redacted], he did not believe SEC OIG could have conducted the investigation objectively because [redacted] had known the subjects ([redacted]) for years. It would be difficult to overcome the perception the investigation lacked objectivity. In addition, [redacted] was [redacted] direct supervisor and [redacted] second line supervisor. As such, [redacted] would not have been able to conduct an objective investigation and if necessary implement disciplinary actions. [redacted] advised, the reason SEC OIG employees may not have come forward was because the perception was that [redacted] was hand-selected by [redacted] and Hoecker to work at SEC OIG and coming forward would result in professional harm (Exhibit 20).

4. According to [redacted], [redacted] conducting the investigation of a subordinate and someone with whom he had a long work history raised the

question of impartiality and created the appearance of a lack of objectivity (Exhibit 28).

5. According to (b) (6), (b) (7)(C) he did not believe a fair and objective investigation could have been conducted. He believed no one within SEC OIG would have been able to conduct a fair and objective investigation due to the small size of SEC OIG, the work history of SEC OIG management and the subjects of the investigation and the perception of loyalty (Exhibit 29).

6. According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) had a close working relationship where it almost seemed like they were really good friends. He believed the investigation could have been conducted fairly, however, he had not known (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to conduct investigations into inappropriate relationships. He did think the investigation could have appeared to lack objectivity if (b) (6), (b) (7)(C) solely conducted the investigation. However, this perception was mitigated by having (b) (6), (b) (7)(C) assist. He stated he believed the investigation was conducted above board (Exhibit 35).

7. According to (b) (6), (b) (7)(C) he was not concerned about the appearance of objectivity affected by (b) (6), (b) (7)(C) relationships with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) due to (b) (6), (b) (7)(C) integrity. However, when asked about perceived impairments (b) (6), (b) (7)(C) stated that he once recused himself from an investigation of an OIG auditor that he used to supervise and socialize with (Exhibit 16).

8. According to (b) (6), (b) (7)(C) she thought that it was good that (b) (6), (b) (7)(C) was asked to conduct the investigation with (b) (6), (b) (7)(C) for objectivity purposes. (b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) should have been raised or disclosed. Although, (b) (6), (b) (7)(C) could have disclosed the relationship and received direction to proceed from Hoecker. (b) (6), (b) (7)(C) added that it was hard to miss the relationships between (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) because everyone was co-located in the office (Exhibit 21).

9. (b) (6), (b) (7)(C) stated in his interview, "I believe that in hindsight with everything I know now, I believe this should have been handled differently from day one. And that perhaps an outside investigative agency should have been brought in, and none of these issues would be here as we're sitting here today" (Exhibit 36, Tr. 80).

(b) (6), (b) (7)(C) *expressed concerns about the investigation being conducted internally*

According to (b) (6), (b) (7)(C) he recalled an initial discussion with Hoecker about whether the matter should be handled internally or referred out. At that time, factors regarding impairments to independence, including (b) (6), (b) (7)(C) previous work history with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and his direct supervision of (b) (6), (b) (7)(C) at SEC OIG were discussed. (b) (6), (b) (7)(C) remembered (b) (6), (b) (7)(C) concerns as factors discussed in the initial meeting with Hoecker about the complaint.[8] However, (b) (6), (b) (7)(C)

[8] During his interview, Hoecker clarified that the initial meeting regarding the complaint was between him, (b) (6), (b) (7)(C) and probably (b) (6), (b) (7) (exhibit 38, Tr.111).

stated that he did not remember discussing those concerns again with Hoecker. (b) (6), (b) (7)(C) added, "So if I've advised a client, look, I think, you know, one course of action is better than another, but they've decided on the other course of action, at some point I become insubordinate if I keep going back to my supervisor arguing the point" (Exhibit 37, Tr. 34).

(b) (6), (b) (7)(C) stated that he expressed to Hoecker concerns about appearance issues regarding the investigation. He stated that, "I was concerned about resources and I was concerned about appearances" (Exhibit 37, Tr. 35). When asked if he made the recommendation to Hoecker to have an outside agency conduct the investigation, (b) (6), (b) (7)(C) stated, "I believe so. Did I use the word, well Carl, my recommendation is? I don't remember. Did I say, you know, I think this would be better if we let somebody outside handle it? Yeah, I expressed concerns along those lines" (Exhibit 37, Tr. 36-37).

Regarding the decision to have (b) (6), (b) (7)(C) conduct the investigation, (b) (6), (b) (7)(C) said that he thought SEC OIG's experience with outside investigators reviewing matters, particularly after the investigation into SEC OIG under former IG David Kotz by the U.S. Postal Service OIG, which was reported in Rolling Stone (Exhibit 50), caused Hoecker to be reluctant to request another outside investigation (Exhibit 37, Tr. 31).

Additionally, (b) (6), (b) (7)(C) was concerned that he and (b) (6), (b) (7)(C) were conducting the investigation and would also be responsible for advising the proposing and deciding officials during the disciplinary process. When asked if it was standard practice to have both roles, (b) (6), (b) (7)(C) stated "absolutely not," and "it was an uncomfortable position to be in. It is one I would have preferred not to have been in" (Exhibit 37, Tr. 68).

Hoecker said no concerns about impairments regarding the investigation were brought to his attention

During his interview on June 13, 2018, Hoecker stated he could not recall if concerns of impairments were brought to his attention (Exhibit 38, Tr.16). Hoecker stated concerns regarding (b) (6), (b) (7)(C) conducting the investigation and also advising the proposing and deciding officials were not brought to his attention (Exhibit 38, Tr. 96). Additionally, according to Hoecker, nobody offered to recuse themselves from the investigation (Exhibit 38, Tr. 16). Our investigation confirmed that no one recused themselves from the SEC OIG investigation.

SEC OIG's efforts to address independence and objectivity

Assignment of the OIG Office of Counsel

Hoecker assigned the OIG Office of Counsel to work alongside (b) (6), (b) (7)(C) in conducting the investigation and when (b) (6), (b) (7)(C) retired, he assigned sole responsibility to the Office of Counsel. According to his letter to the IC on June 29, 2017, Hoecker stated that, "[a]s the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement, I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation. (b) (6), (b) (7)(C) had prior experience conducting and overseeing highly

sensitive internal investigations and (b) (6), (b) (7)(C) was relatively new to the OIG and therefore presented limited, if any, independence and objectivity concerns" (Exhibit 40, p. 2).

While we did not find evidence that (b) (6), (b) (7)(C) had personal impairments, OIG Counsel were not trained to conduct, or experienced in conducting, OIG investigations. In their interviews, neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) reported any training in conducting criminal or administrative investigations. During his interview, (b) (6), (b) (7)(C) stated, "I haven't conducted internal affairs investigations. I've done, throughout my career, internal management inquiries" (Exhibit 37, Tr. 10). According to (b) (6), (b) (7)(C) prior to the investigation into (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) she did not conduct any investigations at SEC OIG, nor did she write any MOA or ROIs. (b) (6), (b) (7)(C) provided legal advice to SEC OIG special agents during the course of her employment at SEC OIG and conducted investigations on behalf of firms' clients in private practice as a litigation associate (Exhibit 34).

Although OIG Counsel was involved in the investigation, Hoecker and (b) (6), (b) (7)(C) acknowledged that (b) (6), (b) (7)(C) conducted the bulk of the interviews and gathered evidence and information for the investigation. In an email dated June 28, 2016, Hoecker sought to recognize (b) (6), (b) (7)(C) for his work and stated that (b) (6), (b) (7)(C) "conducted all material interviews and major document reviews" in regards to the internal investigation (Exhibit 37, attachment 3).

Review of the draft ROI by an outside party

In his response to the IC on June 29, 2017, Hoecker stated that, "as an added step to help ensure thoroughness and impartiality, an outside party, an Acting Inspector General (Acting IG) of another agency was asked by the CIG to review a draft of the investigatory report and provide input into the thoroughness and impartiality of the report" (Exhibit 40, p. 2).

ED OIG identified (b) (6), (b) (7)(C) as the outside party asked to review SEC OIG's ROI. (b) (6), (b) (7)(C) stated he was provided the SEC OIG's ROI without the exhibits. His understanding was the request to review the ROI was not a formal request and was not considered to be for quality control. He stated he was providing informal advice. He reiterated that his role was informal and to ensure the SEC OIG was not, "missing the boat on matters that would come back through a Merit System Protection Board." (b) (6), (b) (7)(C) provided his opinion that the ROI appeared to be fairly balanced, and did not show favoritism or rely on subjective fact (Exhibit 24).

When asked about the purpose of (b) (6), (b) (7)(C) review, (b) (6), (b) (7)(C) stated that it was for, "more logic, flow, you know, when you read it, does it make sense? Are there, are there gaps where things are unaddressed? Did we cover all the allegations?" (Exhibit 37, Tr. 65).

Hoecker requested DOJ OIG conduct the investigation

During his interview on June 13, 2018, Hoecker confirmed that he made a request to DOJ OIG to take over the internal investigation. According to Hoecker, the reason he requested DOJ OIG

conduct the investigation was because he was not satisfied with the progress of the investigation. More specifically, Hoecker stated "I was unhappy with the progress of the investigation. In other words, it wasn't happening fast enough for me," (Exhibit 38, Tr. 84) and that he was "impatient" (Exhibit 38, Tr. 138).

However, earlier in the interview, when Hoecker discussed the option of asking another OIG to conduct the investigation, he stated, "I feel that we ended up in a place where we should have…in a shorter time period than we normally would have taken… It would have taken me thirty days at least to get some outside entity in. These internals you, you have to get on them and get through them so that people can get back to normal life" (Exhibit 38, Tr. 56-57).

During his interview, (b) (6), (b) (7)(C) indicated that DOJ OIG was asked to conduct the investigation due to concerns about conducting the investigation internally. (b) (6), (b) (7)(C) stated, "I raised concerns. I remember there was a discussion about who could do it. And I do remember, I don't know that it was specifically because of these statements of (b) (6), (b) (7)(C), but at one point, we talked to Department of Justice OIG about whether or not they could pick it up and take it on" (Exhibit 37, Tr. 36).

During his interview on June 22, 2018, (b) (6), (b) (7)(C) DOJ OIG, stated that on October 24, 2016, Hoecker contacted IG Michael Horowitz (Horowitz), DOJ OIG, to discuss whether DOJ OIG could take over the SEC OIG's investigation. Horowitz asked (b) (6), (b) (7) and (b) (6), (b) (7)(C), DOJ OIG, to speak with (b) (6), (b) (7)(C) regarding the request. In contrast to Hoecker's statements provided during his interview, (b) (6), (b) (7) stated that Horowitz was advised by Hoecker that SEC OIG had allegations of improper relationships and a variety of collateral allegations, including allegations against Hoecker that were referred to CIGIE. (b) (6), (b) (7) did not recall (b) (6), (b) (7)(C) telling him a specific reason for SEC OIG's request to DOJ OIG, but based on the information provided to him, (b) (6), (b) (7) inferred that there were issues related to objectivity and impairments in SEC OIG's investigation. (b) (6), (b) (7) reasoned that typically, an OIG would ask for an external agency to conduct an investigation on its behalf if there were internal impairments. DOJ OIG declined to take over the investigation over concerns that there would be impairments to independence because former DOJ OIG employees were working for SEC OIG and were potential witnesses or subjects of the investigation (Exhibit 14).

Around the same time SEC OIG contacted DOJ OIG (October 21, 2016 to October 24, 2016), the IC received additional allegations against Hoecker for reprisal, due to alleged relationships between Hoecker, (b) (6), (b) (7)(C), including ones forwarded from (b) (6), (b) (7)(C) and SEC's Office of General Counsel.

Furthermore, in his response to the IC on June 29, 2017, Hoecker stated that he believed that the investigation was both timely and thorough, which conflicts with his stated reason for requesting DOJ OIG's assistance (Exhibit 40, p. 2).

Finding 1.1.b

ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's QSI or the SEC OIG Investigative Policy.

Hoecker said it was an investigation but QSI did not apply because the investigation was conducted under the supervision of counsel

Hoecker stated that the examination of the allegations involving [redacted] and [redacted] was an investigation, but that the QSI did not apply to it because the investigation was conducted under the supervision of the OIG Office of Counsel. Hoecker stated he did not require or expect the internal investigation to follow QSI or SEC OIG investigative policy. Hoecker advised that although [redacted] a criminal investigator, he was not required to conduct his investigation within the QSI because it was conducted under the supervision of SEC OIG's Office of Counsel (Exhibit 38, Tr. 186).

Under the same premise, SEC OIG's Office of Counsel was not expected to adhere to QSI when conducting the investigation (Exhibit 38, Tr. 34). He stated that, "This was not an investigative operation. You know, investigations can be done outside of investigative operations. And, you know, between seventy-three IGs, you know, maybe somebody does it this way. Maybe somebody does it that way. It's, it's the IG's, that's the independent, professional judgment that we exercise" (Exhibit 38, Tr. 59).

Hoecker was asked whether standards that were put in place by CIGIE to ensure that the OIGs conduct criminal investigations within a certain framework should be followed in criminal investigations conducted by the OIG. Hoecker answered, "No. Anybody could do the investigation. You can have an 1810 (non-criminal investigator job series) do an investigation. And when it comes to making an arrest or serving federal paper, then you get your 1811s. So, so you can assign it outside of Investigations if you want" (Exhibit 38, Tr. 66). Hoecker acknowledged that he had 1810 investigators at SEC OIG who conduct investigations under the QSI framework, because they are under the investigations operation (Exhibit 38, Tr. 67).

Hoecker also explained that the investigation "wasn't necessarily criminal," despite being presented to the USAO for criminal prosecution consideration. Hoecker stated, "that constitutes an abundance of caution. Like the IG Act says if we have something that's technically a violation, then we run it by the DOJ. And I'm not sure if they did that before or after they interviewed [redacted] and [redacted]" (Exhibit 38, Tr. 63).

When discussing the changes to CIGIE's investigations peer review standards in July 2018, which included creating a mechanism for a peer review team to review investigations that may not fall under the OIG's primary investigations office, such as internal affairs investigations, Hoecker stated that, "if you have an internal affairs function and you don't think it should be peer reviewed, well, you don't have the assurance, and if one of our stakeholders asks some questions, then that IG has to answer the question" (Exhibit 38, Tr. 195).

When asked if he chose not to have the assurance by following the QSI, Hoecker stated, “No. This is, I look at this investigation that you referenced that (b) (6), (b) (7)(C) did as a “one-off” for me… It's a “one-off.” It means that it's, it's probably not going to happen again” (Exhibit 38, Tr. 198).

Hoecker further explained, “But at the same time, I think down the road if we do internals, we, we have made decisions to go outside. We had NASA do an investigation, I'm sure they've talked to you, instead of doing it inside or having counsel do it. So, when I say “one-off,” I think that this is probably, I needed to get it done. I needed to get across the goal line. I needed to be, be thorough, fair, objective, and I need some action taken. And I think that's what I got” (Exhibit 38, Tr. 199).

Counsel believed that they were conducting a management inquiry and the QSI did not apply

The OIG Office of the Counsel believed the examination of the allegations involving (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was a “management inquiry.” (b) (6), (b) (7)(C) reported during his interview that he did not have great clarity in what was expected of them ((b) (6), (b) (7)(C)) regarding the investigation (Exhibit 37, Tr. 27). (b) (6), (b) (7)(C) thought she was conducting a management inquiry. She described a management inquiry as something management asks her to look into. She did not see a distinction between a management inquiry and an investigation. Asked whether the Office of the Counsel typically investigated criminal allegations, (b) (6), (b) (7)(C) stated she assumed that a criminal allegation would not come to counsel for inquiry. She did not believe that would be a standard practice (Exhibit 34).

In their interviews, (b) (6), (b) (7)(C) both stated that the investigation was not conducted according to the QSI. (b) (6), (b) (7)(C) stated, “I'm not an 1811 (criminal investigator job series). I'm not going to do an investigation pursuant to QSI standards” (Exhibit 37, Tr. 20). When asked if SEC OIG would have been required to collect evidence and perform investigative steps within the QSI prior to presenting it to the USAO, (b) (6), (b) (7)(C) stated, “I believe so. With respect to what (b) (6), (b) (7) was doing as an 1811” (Exhibit 37, Tr. 44).

(b) (6), (b) (7)(C) previously referred to the matter as an investigation in his email to the USAO regarding its June 15, 2016, declination of the investigation. (b) (6), (b) (7)(C) stated, “[t]his email will serve to confirm the overview of the factual evidence developed in an [sic] preliminary investigation of (b) (6), (b) (7)(C) , and (b) (6), (b) (7)(C) of the SEC OIG” (Exhibit 45).

There was no SEC OIG policy on management inquiries or on Counsel conducting investigations

Based on SEC OIG employee and subject interviews, along with a review of SEC OIG policy, ED OIG did not find any SEC OIG policy on management inquiries. When asked what standards OIG Counsel would use in order to conduct high-quality investigations, Hoecker responded, “Well, they're lawyers, so they would use the law. They would, they would use rule, regulation, and everything that lawyers do” (Exhibit 38, Tr. 61). When asked how many other criminal investigations he assigned to OIG Counsel, Hoecker stated, “I don't think I've assigned any criminal investigations to counsel” (Exhibit 38, Tr. 62). When asked if there was any policy used

as a guideline for (b) (6), (b) (7)(C) to conduct the investigation, Hoecker stated, "there is no policy for doing an investigation in my shop as counsel" (Exhibit 38, Tr. 129).

Absent another standard governing the investigation, ED OIG used the QSI to determine whether the investigation was substandard, as alleged

ED OIG concluded that reviewing the investigation against the QSI would enable us to determine whether the investigation was substandard, as alleged. We believe this method was appropriate because (1) the QSI are designed to accommodate a variety of types of investigations (2) the investigation the SEC OIG conducted involved potential criminal conduct (time and attendance fraud) until it was declined on June 15, 2016, by the USAO, and such allegations generally are investigated in accordance with the QSI; (3) a criminal investigator trained to conduct investigations according to the QSI conducted the majority of the investigation.

ED OIG found the following areas of non-compliance with the QSI

Independence

The QSI state, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence…will be impartial and will be viewed as impartial by knowledgeable third parties" (Exhibit 41, p. 6-7).

As previously noted under Finding 1.1.a, (b) (6), (b) (7)(C) and SEC OIG were not free in appearance from impairments to independence and the investigation was not viewed as being impartial by some SEC OIG staff.

NSF OIG's peer review also noted (b) (6), (b) (7)(C) involvement in the investigation raised concerns about his independence (Exhibit 51).

Due Professional Care

The QSI states that due professional care must be used in conducting investigations and in preparing related reports. This standard requires a constant effort to achieve quality and professional performance (Exhibit 41, p. 8). ED OIG's investigation found the following non-compliance with the due professional care standard.

1. Legal Requirements—Investigations should be initiated, conducted, and reported in accordance with (a) all applicable laws, rules, and regulations; (b) guidelines from the DOJ and other prosecuting authorities; and (c) internal agency policies and procedures... with due respect for the rights and privacy of those involved (Exhibit 41, p.8).

No warnings were given to either subject ((b) (6), (b) (7)(C)*), which is inconsistent with SEC OIG policy.*

Prior to the presentation to the USAO for consideration of criminal prosecution, the subjects should have been advised of their rights using Garrity warnings.

SEC OIG Investigations Policy, Chapter 4, Interviews and Advice of Rights (3/2014 version applicable to the investigation) states that unless it is clear that the employee has no criminal exposure, the Special Agent should give the Garrity warning before the employee is interviewed (Exhibit 52, p. 13).

Following the declination, the subjects could have been given rights advisements using Garrity or Kalkines warnings.

SEC OIG Investigations Policy, Chapter 4, also states, "situations may arise where criminal prosecution is unlikely, declined, or where it is advisable to forgo the possibility of pursuing criminal action against an employee in order to compel the employee's cooperation. The Kalkines warning is a means of requiring an employee to make a statement concerning his/her work-related actions by removing the possibility that the statement or the fruits of the statement will be used against the employee in a criminal proceeding. In doing so, SEC OIG asserts its right to require the employee to explain his/her work-related actions or face disciplinary action (including termination) for failure to do so. Before Kalkines warnings are given, the matter must be presented to, and criminal prosecution declined by, the USAO that has jurisdiction over the matter. The Special Agent will give the Kalkines warning to the employee prior to questioning. A refusal to sign the Kalkines form should be noted on the form" (Exhibit 52, p. 14).

That subjects were not given proper warnings was a finding on NSF OIG's D1 checklist during its peer review of SEC OIG (Exhibit 51).

(b) (6), (b) (7)(C) *was not advised of her rights*

(b) (6), (b) (7)(C) was interviewed on May 18, 2016 (Exhibit 53), May 24, 2016 (Exhibit 54), and June 21, 2016 (Exhibit 49). ED OIG's review of the case file and June 21, 2016, transcript of (b) (6), (b) (7)(C) interview, as well as interviews of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) corroborated that (b) (6), (b) (7)(C) was not provided rights advisements for any of her interviews.

As the subject of an investigation, which included criminal allegations of time and attendance fraud, (b) (6), (b) (7)(C) should have been advised of her rights under Garrity. Furthermore, she stated that she felt like she could not leave during the first interview, which raises the question of whether this was a custodial interview. After the declination by the USAO, and before sitting for other interviews with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was not advised of her rights under Garrity or Kalkines. During her interview with ED OIG, (b) (6), (b) (7)(C) stated that she had no intention of providing certain corroborating information to SEC OIG investigators unless she was compelled (Exhibit 25, p. 3).

(b) (6), (b) (7)(C) *was not advised of his rights*

During his interview with ED OIG, (b) (6), (b) (7)(C) indicated that he was interviewed by SEC OIG on June 3, 2016, and June 21, 2016 (Exhibit 27). (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) was also interviewed during the time of the initial May 18 2016, OI staff interviews (Exhibit 37, Tr. 51). ED OIG's review of the case file and the June 3, 2016, and June 21, 2016, transcripts of (b) (6), (b) (7)(C)

interviews, as well as [redacted] and [redacted] interviews with ED OIG corroborated that [redacted] was not provided rights advisements at the time of his interviews.

During his June 3, 2016, interview, without any rights advisement (Garrity), [redacted] admitted to occasions where he may have exceeded physical fitness time and allotted break time (Exhibit 55, starting on p. 25). The failure to provide a Garrity advisement potentially jeopardized the use of [redacted] admissions had the USAO agreed on June 15, 2016, to prosecute the matter.

According to [redacted], NSF OIG, when asked during the SEC OIG peer review about the lack of warnings, [redacted] advised, in essence, that they ([redacted]) were not perfect and were not experienced in conducting employee investigation interviews (Exhibit 33).

In his interview, Hoecker stated that he did not know why rights advisements were not given to [redacted] or [redacted] (Exhibit 38, Tr. 132).

SEC OIG's not providing rights advisements to [redacted] or [redacted] was not consistent with similar SEC OIG cases

ED OIG reviewed 59 investigations of SEC employees (OIG and non-OIG) with similar allegations to the internal investigation.[9] A review of those cases, showed a total of 12 subjects interviewed.[10] Of the 12 subjects interviewed, each was provided a rights advisement and each interview was recorded. An exception was noted that in the first interview of the subject in case #[redacted], the subject was not provided a rights advisement. That interview was conducted by [redacted] and noted that the matter was a management inquiry. For the subject's second interview, conducted by SEC OIG special agents, a Garrity warning was provided. For case #[redacted], for the first interview, the subject was not provided warnings. The subject was advised that the investigation was administrative only. During the subject's second interview, he was provided a Garrity warning based on allegations of an unauthorized disclosure.

2. Accurate and complete documentation – The QSI state that investigative report findings and accomplishments must be supported by adequate documentation and maintained in the case file (Exhibit 41, p.9).

[9] Case numbers: [redacted]

[10] Case numbers: [redacted]

Two of three interviews of [redacted] *were not documented in the ROI*

[redacted] was interviewed on May 18, 2016 (Exhibit 53), May 24, 2016 (Exhibit 54), and June 21, 2016 (Exhibit 49). However, only her June 21, 2016, interview was audio recorded and transcribed. [redacted] June 21, 2016, interview is the only interview included as an exhibit to the ROI.

When asked about it during her interview, [redacted] did not know why [redacted] interviews prior to June 21, 2016, were not documented. She did not ask [redacted] or [redacted] why reports of the interviews were not written. [redacted] stated that she only documented [redacted] June 21, 2016, interview in the ROI because it was the only interview she used information from (Exhibit 34).

Two of three interviews of [redacted] *were not documented in the ROI*

According to [redacted] he was interviewed two times, June 3, 2016 (Exhibit 55), and June 21, 2016 (Exhibit 56). However, [redacted] recalled interviewing [redacted] with [redacted] around the time of the May 18, 2016, staff interviews. Only the June 3, 2016, and June 21, 2016, interviews were audio recorded and transcribed. Only the June 3, 2016, interview was included as an exhibit to the ROI.

According to [redacted] the June 21, 2016, interview being excluded from the ROI, was "not intentional" and an "oversight" (Exhibit 37, Tr. 59 and 63). Although [redacted] indicated to ED OIG that [redacted] was interviewed around May 18, 2016, no documentation of the interview was located in SEC OIG's case file.

The following information from the June 21, 2016, interview was not addressed or documented in the ROI (Exhibit 56):

a. [redacted] was recorded during his interview of [redacted] stating that he did not find [redacted] credible in his answers (p.20).

b. [redacted] refused to provide information that would corroborate who he was staying at a hotel with during SEC OIG training travel in Charleston, SC (p.20).

c. During his June 3, 2016 interview, [redacted] stated that he did not stay at a hotel in Fredrick, MD after an SEC OIG in-service training on April 28, 2016 (Exhibit 55, p. 10). However, after the interview, on June 6, 2016, he sent an email changing his story. (Exhibit 57) [redacted] discussed this during his June 21, 2016, interview and admitted to staying over at a hotel in Frederick, MD. [redacted] admitted to meeting with [redacted] to eat at a restaurant but was inconsistent on whether [redacted] ever met him at his hotel (Exhibit 56, p.5-13). During her June 21, 2016, interview, [redacted] admitted to meeting [redacted] at his hotel, but could not recall whether she went to his room (Exhibit 49, p. 6-11).

During his interview, Hoecker stated knowledge of inconsistent statements could have been important to proposing officials (Exhibit 38, Tr. 92). He did not recall being notified of the inconsistencies (Exhibit 38, Tr. 95).

3. Planning - According to the QSI, organizational and case-specific priorities must be established and objectives developed to ensure that individual case tasks are performed efficiently and effectively. If the decision is to initiate an investigation, the organization should begin any necessary immediate actions and establish, if appropriate, an investigative plan of action (Exhibit 41, p. 10).

There was no investigative plan

SEC OIG policy, Chapter 2: Case and Administrative Management[11], states that an investigative plan must be prepared within 5 business days of opening the case (Exhibit 58, p. 7). The case file or documents reviewed did not contain an investigative plan. This was also a finding on NSF OIG's D1 peer review checklist (Exhibit 51).

Executing Investigations

The QSI state that investigations must be conducted in a timely, efficient, thorough and objective manner (Exhibit 41, p. 11). ED OIG's investigation found the following non-compliance with executing investigation standards:

1. Conducting Interviews - According to the QSI, appropriate warnings should be provided to those individuals suspected of violating law or regulation. Additionally, all interviews are subject to inclusion in reports and should be properly documented (Exhibit 41, p. 12).

No rights advisements were provided to (b) (6), (b) (7)(C) *or* (b) (6), (b) (7)(C)

SEC OIG Investigations Policy, Chapter 4, Interviews and Advice of Rights states that unless it is clear that the employee has no criminal exposure, the Special Agent should give the Garrity warning before the employee is interviewed (Exhibit 52, p. 13).

In accordance with SEC OIG Investigations Policy, Chapter 4, Garrity or Kalkines warnings could have been provided to the subjects after the declination by the USAO. As previously discussed, no rights advisements were provided to (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C)

Three subject interviews were not memorialized in accordance with SEC OIG policy

Chapter 4 of SEC OIG policy requires interviews be memorialized in a Memorandum of Activity (MOA) within 5 business days (Exhibit 52, p. 5). As previously discussed, two interviews for (b) (6), (b) (7)(C) were not memorialized by audio recording or MOA and not documented in the ROI.

[11] 6/2014 version is applicable to the timeframe of the investigation.

(b) (6), (b) (7)(C) May 18, 2016, interview was not memorialized or documented in the ROI. (b) (6), (b) (7)(C) June 21, 2016, interview was not documented in the ROI.

Five witness interviews from May 2016 were not memorialized into MOAs until approximately 9 months after the interviews

Based on a review of case documents and Hoecker's response to IC890, witnesses were initially asked to provide written statements of their accounts of the interviews in lieu of the interviewer writing an MOA. On February 27, 2017, after the ROI was initially issued, MOAs of five witnesses[12] were completed by (b) (6), (b) (7)(C) and added as exhibits to the ROI. (b) (6), (b) (7)(C) however, was not present during those interviews and relied on the interviewers' notes to write the MOAs. During his interview on June 12, 2016, (b) (6), (b) (7)(C) stated that the interviews were written up and added to the March 3, 2017, version of the ROI to add exculpatory information (Exhibit 37, Tr. 62). (b) (6), (b) (7)(C) stated that around December 2016 and January 2017, the ROI was "rushed…because Hoecker wanted it done" (Exhibit 37, Tr. 61).

One of the five MOAs from witness interviews from May 2016 did not reflect all relevant information provided by the witness.

According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) relationship was not equitable compared to (b) (6), (b) (7)(C) relationships with other subordinates. (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) had greater access to (b) (6), (b) (7)(C) as a supervisor than (b) (6), (b) (7)(C) other subordinates did. When (b) (6), (b) (7)(C) was asked to review the MOA of her interview on May 19, 2016, she believed that she conveyed the inequity of (b) (6), (b) (7)(C) relationships and support for (b) (6), (b) (7)(C) during that interview, but it was not captured in the MOA (Exhibit 21, p. 3).

Hoecker conducted witness interviews that were not documented

(b) (6), (b) (7)(C) both advised during their interviews that, on May 18, 2016, Hoecker interviewed them separately from their interviews with (b) (6), (b) (7)(C) and OIG Counsel regarding (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (Exhibit 20 and 35). Hoecker advised in his interview that he did conduct those interviews, stating, "I think it was shortly after we got the complaint, and it was part of a triage that I felt I needed to do to get an assessment of what needed to happen" (Exhibit 38, Tr. 19). These interviews were not documented in the case file or ROI.

2. <u>Conducting Progress Reviews</u>

No supervisory reviews were documented in the case file

Supervisory reviews of case activities should occur periodically to ensure that the case is progressing in an efficient, effective, thorough and objective manner (Exhibit, 41 p.13).

This was also noted in NSF OIG's D1 checklist (Exhibit 51). During his interview, Hoecker stated that (b) (6), (b) (7)(C) was the level of supervision for this investigation (Exhibit 38, Tr. 121). However, no

[12] SEC OIG ROI exhibits 59 (b) (6), (b) (7)(C) 60 (b) (6), (b) (7)(C) 61 (b) (6), (b) (7)(C) 62 (b) (6), (b) (7)(C) and 63 (b) (6), (b) (7)(C)

documentation of supervisory reviews by [redacted] were found. Additionally, during his interview, [redacted] stated that he conducted the investigation and noted that Hoecker received "metadata" type status briefings (Exhibit 37, Tr. 46). However, no supervisory reviews were documented by Hoecker either.

Reporting

The QSI state that reports must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, logically organized, timely and objective. All reports should accurately, clearly and concisely reflect the relevant results of the investigator's efforts (Exhibit 41, p.13).

The ROI did not include [redacted] June 21, 2016, interview as an exhibit

The June 21, 2016, interview was only one of four interviews in the case file that was recorded and transcribed. However, it was not included as an exhibit to the ROI. When asked who made the decision to leave this information out, [redacted] stated that she did not know and did not remember if it was ever discussed (Exhibit 34, p. 4). [redacted] stated that its exclusion from the ROI was an oversight. [redacted] agreed that the interview was important (Exhibit 37, Tr. 63-64).

Allegation 1.2

The report states the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It does not address a third alternative—circumstantial evidence of a sexual relationship. The report appears to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of:

a. The unusual amount of time that [redacted] and [redacted] spend together, exceeding the time that they spend with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which [redacted] and [redacted] were found in the evidence room and the door was blocked, where one witness observed [redacted] zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f. The claim that [redacted] gave [redacted] an expensive birthday present.

Finding 1.2

Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) ED OIG could not substantiate whether the ROI understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

ED OIG found the following:

1. The SEC OIG did not develop information related to the April 2016 meeting between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in Frederick, MD and the inconsistent accounts of that meeting.

2. The SEC OIG did not address (b) (6), (b) (7)(C) refusal to corroborate his account regarding a hotel guest in Charleston, SC.

3. The SEC OIG did not corroborate information received about other possible hotel stays by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) by requesting information, including possible security video recordings, from the hotels. In her June 21, 2016, interview, (b) (6), (b) (7)(C) was questioned about her March 16, 2016, stay at the Marriott Marquis in Washington, DC, upon her return home from a work related trip with (b) (6), (b) (7)(C) to Boston, MA. (b) (6), (b) (7)(C) stated that she did not meet (b) (6), (b) (7)(C) and was supposed to meet her cousin for the stay, but her cousin cancelled via phone or text. (b) (6), (b) (7)(C) was unable to provide her cousin's telephone number to the interviewers at that time (Exhibit 49, Tr. 27-28). After (b) (6), (b) (7)(C) interview, the interviewers never asked for the telephone number to corroborate the planned stay. During her interview with ED OIG, (b) (6), (b) (7)(C) stated that she had no intention of providing that information to SEC OIG investigators since she was not compelled (Exhibit 25, p. 3).

According to (b) (6), (b) (7)(C) she did not know why (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not attempt to corroborate information about (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) hotel stays by contacting the hotels. (b) (6), (b) (7)(C) said that they may have discussed gathering information from hotel video but it was outweighed by concerns of resources, time, and the possible value of the evidence that would be collected. (b) (6), (b) (7)(C) said she would have liked to do more work with regard to the time and attendance allegations, such as going through (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) emails in an effort to corroborate dates and times (Exhibit 34, p. 3).

During his interview, (b) (6), (b) (7)(C) stated he did not follow up on information regarding hotel stays because he was not sure that activities, such as hotel stays outside of SEC OIG work time, was relevant to determining employee misconduct related to SEC OIG work. (b) (6), (b) (7)(C) stated, "I do recall some conversations about how far can you push into someone's personal life when what they're doing doesn't actually violate anything? If they were having sex, so what. What we focused on after this point, in looking at the records, was there any evidence that she got

different assignments, that he went easier on her on deadlines? Did she get awards that others didn't? Did she get a promotion that others didn't? Right? Or was there some type of prohibited personnel practice that was occurring as a result of the relationship that would establish some type of quid pro quo" (Exhibit 37, Tr. 56).

(b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C) could have been compelled to provide information. The June 21, 2016, transcripts of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) make reference to both interviews being voluntary. Consideration for use of a Kalkines advisement should have been made because both subjects provided inconsistent statements and showed a lack of cooperation providing information to the interviewers. In fact, during (b) (6), (b) (7)(C) June 21, 2016, interview, (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) whether she needed to be compelled to provide information based on the answers she was providing (Exhibit 49, p. 16-17). As previously reported, (b) (6), (b) (7)(C) stated she had no intention of providing certain corroborating information to the SEC OIG investigators unless she was compelled.

After (b) (6), (b) (7)(C) stated he did not find (b) (6), (b) (7)(C) credible and (b) (6), (b) (7)(C) refused to provide requested information, the SEC OIG did not attempt to compel (b) (6), (b) (7)(C) by using a Kalkines advisement.

Allegation 1.3

The SEC OIG report's author speculated in a manner favorable to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who "could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].

Finding 1.3

ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) time out of the office was spent on official activities. Instead, the SEC OIG planned to include the missing time in proposals for discipline for response, but the proposals were never issued, as (b) (6), (b) (7)(C) entered into a settlement agreement and (b) (6), (b) (7)(C) was issued a memorandum of censure.

According to (b) (6), (b) (7)(C) investigators did not attempt to corroborate (b) (6), (b) (7)(C) statements about conducting official liaison activities when out an extended time from the office. (b) (6), (b) (7)(C) did not know why. On the decision not to corroborate time and attendance issues, (b) (6), (b) (7)(C) stated that the time and attendance was difficult to figure out. The information received regarding the swipe cards was "tricky." Her plan was to compile the universe of missing time and provide this to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) as part of any proposed disciplinary action and allow them the opportunity to respond and corroborate the information. Ultimately, however, neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) received any proposed disciplinary action (Exhibit 34, p. 3).

According to (b) (6), (b) (7)(C) SEC OIG reviewed internal records (time and attendance submissions, travel documents, emails and calendar appointments) to attempt to corroborate that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) time out of the office was spent on official duties, but they did not contact

external parties (Exhibit 37, Tr. 114). (b) (6), (b) (7)(C) advised that it was a resource issue that prevented them from corroborating (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) time out of the office spent on official duties. (b) (6), (b) (7)(C) also stated there was an inconsistency issue because the card swipe data was generally not used to account for time and attendance (Exhibit 37, Tr. 115-116).

Additionally, ED OIG's investigation determined SEC OIG special agents were not required to use a mechanism to log time dedicated to specific investigations or other official activities.

Allegation 1.4

The sanction developed and agreed on by (b) (6), (b) (7)(C) did not address or correct all of the circumstances that reportedly contributed to the appearance of an inappropriate relationship. SEC OIG management did not:

1. Separate the subjects' offices which are next door to each other;
2. Prohibit or limit them ((b) (6), (b) (7)(C)) from meeting off-premises alone from work;
3. Prohibit them from private closed door meetings;
4. Require them to limit their ((b) (6), (b) (7)(C)) meetings alone together to OIG space;
5. Prohibit or limit (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) from traveling together; or
6. Require them ((b) (6), (b) (7)(C)) to stay in the same hotels as other OIG staff when on travel.

Finding 1.4

ED OIG did not substantiate that (b) (6), (b) (7)(C) failed to separate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) offices. (b) (6), (b) (7)(C) did not prohibit or limit (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) from conducting official business together.

(b) (6), (b) (7)(C) was relocated to an office away from (b) (6), (b) (7)(C) since receipt of the allegations

Before SEC OIG received the allegations, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) offices were adjacent to each other. According to (b) (6), (b) (7)(C) upon receipt of the allegations in May 2016, (b) (6), (b) (7)(C) office was moved to a different suite within SEC OIG, away from (b) (6), (b) (7)(C) When (b) (6), (b) (7)(C) moved back to the OI suite in April 2017, his office was relocated next to (b) (6), (b) (7)(C) away from (b) (6), (b) (7)(C) (Exhibit 36, Tr. 84).

(b) (6), (b) (7)(C) did not prohibit or limit (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) from meeting for official purposes

According to (b) (6), (b) (7)(C) he directed (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that they could only interact for official purposes during duty hours. However, (b) (6), (b) (7)(C) was removed from (b) (6), (b) (7)(C) supervision upon receipt of the allegations. Based on (b) (6), (b) (7)(C) and an expanded case

inventory, [redacted] had difficulty prohibiting [redacted] and [redacted] from working together (Exhibit 36, Tr. 88).

[redacted] did not prohibit [redacted] and [redacted] from private, closed door meetings if it was for official purposes only

According to [redacted] he did not prohibit [redacted] and [redacted] from private, closed door meetings if it was for official purposes only, citing his limited resources and expanding case inventory (Exhibit 36, Tr. 89).

[redacted] did not limit [redacted] and [redacted] from meetings for official purposes

According to [redacted] he did not limit [redacted] or [redacted] official activities (Exhibit 36, Tr. 90).

[redacted] did not prohibit or limit [redacted] and [redacted] from traveling together for official purposes

[redacted] was not aware of [redacted] and [redacted] traveling together following the receipt of the May 2016 allegations. Since April 2017, [redacted] has approved [redacted] travel requests. [redacted] explained that he did not think to prohibit or limit [redacted] travel with [redacted] in her memorandum of censure (Exhibit 36, Tr. 90).

[redacted] did not address in [redacted] discipline a requirement for [redacted] and [redacted] to stay in the same hotels as other OIG staff when on travel

[redacted] did not address this during the discipline process. However, he did state that, in all practicality, he would not allow [redacted] and [redacted] to travel together, if requested (Exhibit 36, Tr. 91).

[redacted] official role in the discipline process for [redacted] and [redacted] was providing [redacted] with a memorandum of censure based on the findings in the ROI. The settlement agreement for [redacted] was authorized by Hoecker (b) (6), (b) (7)(C) . [redacted] stated in his interview that he did not recall being given access to the ROI exhibits, nor did he recall requesting the exhibits (Exhibit 36, Tr. 26). [redacted] stated he thought the memorandum of censure for [redacted] was an appropriate action in response to the findings in the ROI (Exhibit 36, Tr. 74).

Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG

Additional allegations of inappropriate comments made by [redacted] to [redacted] were not addressed as part of the SEC OIG investigation.

On or around July 1, 2016, [redacted] met with [redacted] and Hoecker separately and informed them that on more than one occasion [redacted] had made comments to her regarding how she looked and dressed that made her uncomfortable. In 2014, she had shared information with [redacted]

regarding other comments [redacted] made to her that made her uncomfortable. [redacted] did not follow up with [redacted] nor did [redacted] go back to [redacted] According to [redacted] in the third quarter of 2017, she told Hoecker that she did not think that the incidents with [redacted] and her reporting of them was handled well. [redacted] recalled that Hoecker acknowledged [redacted] position and apologized for how he handled the matter (Exhibit 31).

When asked about [redacted] claims during his interview, Hoecker stated that, "I said, what do you want to do? And she didn't want to do anything. I believe it was after the, I think there's a time period involved where you have to report these things, and I think that had expired" (Exhibit 38, Tr. 98) Regarding his alleged apology to [redacted] Hoecker stated, "I don't know how the OIG handled these remarks. I may have apologized that it had happened to her. But the handling of it, I, I don't think we actually handled it because it was reported after a certain time" (Exhibit 38, Tr. 99).

[redacted] recalled that in the spring or summer of 2017, [redacted], SEC OIG, informed her that her assistance may be necessary regarding additional allegations against [redacted] explained that everyone else was "conflicted out." [redacted] understood this to mean that senior staff, Hoecker, [redacted], all had potential or actual conflicts of interest. [redacted] explained to [redacted] that she would have a potential or actual conflict if she were to have any role regarding the additional allegations against [redacted] and advised him of the incidents regarding [redacted] behavior toward her. [redacted] was unaware of the information provided by [redacted] and indicated there was no documentation of her reported incidents in the investigation conducted involving [redacted] and [redacted] told [redacted] that [redacted] communicated to him that her reported incidents of [redacted] behavior towards her were taken into consideration in the "Douglas factors" for [redacted] in relation to the investigation (Exhibit 31).

When asked if [redacted] reporting was considered in the Douglas factors for [redacted] proposed discipline, [redacted] explained that he did not know if it was specifically listed, but it was generally considered among [redacted] interactions (Exhibit 37, Tr. 74).

Hoecker stated that he did not know whether [redacted] reported information about [redacted] comments was considered in relation to the settlement agreement SEC OIG negotiated with [redacted] (Exhibit 38, Tr. 101). Although her allegations were made to Hoecker and [redacted] while the investigation of [redacted] and [redacted] was active, [redacted] was not interviewed for that investigation.

[redacted] **However, Hoecker made the decision to continue with the settlement.**

On March 23, 2017, [redacted] created a "memorandum for file" documenting an event that occurred on March 21, 2017, [redacted]. (Exhibit 37, attachment 13) According to [redacted] memorandum, on March 21, 2017, he attempted to meet with [redacted] regarding the draft settlement agreement. Because [redacted]

office door was "fully closed," [redacted] knocked on it and heard a voice believed to be [redacted] stating, "I need a minute." After waiting for two minutes, [redacted] opened the door partially. He was holding his iPhone facing towards his chest and appeared to be interrupting a call. He pointed to the phone and said he was on a call. [redacted] handed him the folder with the draft settlement agreement and told him to review it.

Later that afternoon [redacted] stopped by [redacted] office to discuss the draft settlement agreement. [redacted] asked [redacted] who was in his office with him when [redacted] dropped off the agreement. [redacted] said, "No one. I was by myself."

According to the memorandum, because of two additional hotline complaints that had been received related to the internal investigation, [redacted] asked the Office of Security Service to provide him security camera footage between March 16 and March 21. The footage covered the area outside [redacted] office. The memorandum further noted that a review of the video footage from the camera showed [redacted] entering [redacted] office about an hour before [redacted] knocked on the door and leaving shortly after [redacted] left [redacted] office.

(b) (6), (b) (7)(C), (b) (5) [redacted] (Exhibit 37, Tr. 93).

(b) (6), (b) (7)(C), (b) (5) [redacted] (Exhibit 37, attachment 9, p. 7) During his interview, [redacted] also expressed concerns about [redacted] likelihood for rehabilitation (Exhibit 37, Tr. 80).

During his interview with ED OIG, Hoecker – who confirmed he has final settlement authority for the SEC OIG (Exhibit 38, Tr. 32 and 100) – stated [redacted] told him about the March 21, 2017, event but made the decision to proceed with the settlement. He stated, "I told [redacted] that I thought this conduct was similar to what we have in the investigation and the agreement. And I wanted to get this agreement finished and executed so that if he had any misconduct in the future, we would, we would do progressive discipline and, and hammer him more" (Exhibit 38, Tr. 102).

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[13] [redacted] was the planned proposing official for [redacted] discipline.

Allegation 2

The respondents (identified as Hoecker, (b) (6), (b) (7)(C)) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) improperly excluded the investigation from the peer review conducted by the NSF OIG, which prevented NSF OIG from completing the peer review.

Allegation 2.1

They offered shifting (and potentially pretextual) justifications for SEC OIG's position that the investigation was not subject to peer review.

Finding 2.1

ED OIG substantiated that the SEC OIG offered varying justifications for why the investigation should not have been subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

NSF OIG conducted its on-site peer review of SEC OIG during the week of May 22, 2017. (b) (6), (b) (7)(C) NSF OIG, was the team leader of the peer review. At the end of the on-site review, an exit conference was conducted and SEC OIG passed the peer review in accordance with CIGIE standards, with some items of improvement suggested (Exhibit 33).

In June 2017, while preparing the peer review report, NSF OIG received multiple allegations that the investigation into (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was conducted below (not in accordance with) CIGIE standards and purposely kept open in order to avoid the case being selected for review during the peer review (Exhibit 33).

In July 2017, NSF received additional allegations that SEC OIG falsified records/information in SEC OIG's semi-annual report to Congress (SAR) and the peer review, possibly in violation of 18 U.S.C. 1519, Destruction, alteration, or falsification of records in Federal investigations and bankruptcy (Exhibit 33).

NSF OIG did not finalize its peer review report and requested SEC OIG provide the case file to NSF OIG in order to resolve the allegations that the peer review was obstructed. However, after multiple meetings between the two OIGs, SEC OIG would not provide NSF OIG with access to the subject case file. On September 14, 2017, unable to resolve this issue, NSF OIG suspended the issuing of the peer review report and forwarded the allegations it received on this case to the IC (Exhibit 33).

(b) (6), (b) (7)(C) was present on a telephone conference between the NSF OIG's IG Allison Lerner (Lerner), NSF OIG counsel, Hoecker and (b) (6), (b) (7)(C) to discuss access to the investigation. During the call, (b) (6), (b) (7)(C) was defensive, arguing that the matter had attorney/client privilege and did not agree with the case law presented by NSF OIG's counsel supporting why there was not

attorney/client privilege. Hoecker was less resistant than [redacted] to negotiating a resolution to the issue (Exhibit 33).

According to Lerner's letter to the IC on September 14, 2017, "[o]ver the course of several conversations, SEC OIG provided differing reasons as to why we could not see the file and proposed work-arounds to avoid sharing the file," which are summarized below (Exhibit 65, p. 3-4):

1. "The IG determines what is covered by the peer review: IG Hoecker informed us that he believed the internal investigation was not relevant to the peer review and offered to give us his representation as to what cases fell within the peer review scope, so we could rely on that. He stated his belief that it is the IG's prerogative to determine whether the investigation in question should be within the ambit of the peer review, and noted that he did not believe that the internal investigation implicated investigative operations because it was performed by [redacted] and [redacted] played no role in it. We noted our disagreement with that approach, given that the SEC OIG itself had reported and described the matter as an investigation in its March 2017 Semi-Annual Report to Congress (SARC) (exhibit 66), that SEC OIG presented the case for prosecution (and therefore appeared to have concluded that it dealt with potentially criminal conduct) and that SEC OIG had recently conducted similar investigations of SEC employees in which they would have had to comply with investigative standards. Choosing not to hold an internal investigation of senior investigative personnel to the same standards to which similar investigations of agency personnel were held did not seem appropriate."

2. "Allowing us to review the file would waive privileges they want to assert in other contexts: According to Hoecker and [redacted] the investigation is privileged because it was conducted by [redacted] and they did not want to waive any privileges by providing us with access to the report in light of ongoing EEO and FOIA matters."

3. "We can't allow you to see the file, but we can give you access to metadata: [redacted] asked if we would accept metadata from their investigative case management system in lieu of access to the report file."

Subsequent discussions between NSF OIG and SEC OIG were conducted and ultimately, SEC OIG agreed to provide NSF OIG access to review the investigation. On October 25, 2017, NSF OIG was given access to the investigative file at SEC OIG and reviewed the file as the 21st case file selected for the peer review (Exhibit 33, p. 2).

According to NSF OIG, Hoecker's above representation to NSF OIG was that he did not believe the internal investigation implicated investigative operations because it was performed by [redacted] and [redacted] played no role in the investigation. However, SEC OIG's ROI reporting (Exhibit 4, p. 2) and Hoecker's response to the IC on June 29, 2017 (Exhibit 40, p. 2) indicated that the investigation was initially started as a joint effort by [redacted] and [redacted]. As previously discussed, ED OIG's investigation established that [redacted] conducted the

material interviews, including the subject interviews, and major document reviews (Finding 1.1.a, p. 20).

Allegation 2.2

Hoecker and (b) (6), (b) (7)(C) modified or manipulated the date of completion of the investigation to place it outside the review period.

Finding 2.2

ED OIG did not substantiate that the date of completion was modified or manipulated. The investigation had been appropriately closed outside of the period covered by the peer review.

NSF OIG's peer review focused on SEC OIG's investigative operations during the period from March 1, 2016, through February 28, 2017 (Exhibit 59, p. 17). Investigations closed during that period would have been subject to review.

According to NSF OIG's letter to the IC, dated December 4, 2017, NSF OIG determined that the investigation was appropriately closed outside of the period covered by the peer review (Exhibit 60). ED OIG's investigation determined that the ROI was initially completed and issued on January 19, 2017, and later amended and re-issued on March 3, 2017. The subjects of the matter were formally disciplined on March 24, 2017, and March 30, 2017.

SEC OIG Investigations Policy, Chapter 7, Investigative Reports, states that there is a 45 day response period after the ROI is issued (Exhibit 61, p. 8). Based on this, even if the ROI remained dated January 19, 2017, it still would not have been subject to the final date of February 28, 2017, for the review period. Additionally, the dates of the employee actions were both outside of the review period time frame. A review of the case file shows investigative activity through December 2016, consistent with a reasonable time needed to complete the ROI.

Allegation 2.3

The Respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an "investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an "inquiry" and therefore outside the scope of peer review.

Finding 2.3

ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by (b) (6), (b) (7)(C)). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Although access was ultimately granted to NSF OIG, Hoecker, (b) (6), (b) (7)(C) were opposed to providing the investigation to the peer reviewers. During his interview, Hoecker

explained that he felt compelled to allow NSF OIG to review the investigation because he needed NSF OIG to complete its peer review of SEC OIG. He stated, "my office needed a peer review. She (Allison Lerner, IG, NSF) wasn't going to do it. I let her look at the case" (Exhibit 38, Tr. 83). Although he identified it as an investigation, Hoecker did not believe the investigation should have been reviewed under the QSI because it was overseen by SEC OIG Counsel.

In response to the investigation being subject to peer review, (b) (6), (b) (7)(C) stated, "my view was I had prepared this product as an attorney. It's attorney work product. It's not even attorney-client privilege. It was not the IG's work product" (Exhibit 37, Tr. 111). Believing the ROI was actually attorney-work product, (b) (6), (b) (7)(C) did not believe the ROI should have been subjected to peer review.

(b) (6), (b) (7)(C) stated he did not discuss with anyone whether or not to include the investigation for peer review. (b) (6), (b) (7)(C) did not object to the NSF OIG reviewing the investigation, but opposed the idea on philosophical grounds, because it was conducted outside of his operation, OI, and he did not want to be judged based on the work of something outside of his supervision. (Exhibit 36, Tr. 96)

Allegation 2.4

Respondents designated or allowed (b) (6), (b) (7)(C) to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

Finding 2.4

ED OIG substantiated that (b) (6), (b) (7)(C) served as the SEC OIG's liaison to the NSF OIG peer review team when placed into a new role following a realignment in the OIG, but did not substantiate his serving in this role obstructed the peer review.

Due to a realignment in OI, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) switched roles (b) (6), (b) (7)(C) . According to (b) (6), (b) (7)(C) upon his return to the SEC OIG OI suites, he was assigned (b) (6), (b) (7)(C) , and as such, assumed the role as point of contact for the SEC OIG upcoming peer review. In his role, he was not responsible for the scope or content that was provided for the peer review. The incoming peer review team had already been provided all documents needed to conduct the peer review. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) needed only to ensure the team had access to the building and workstations. Prior to being placed in the (b) (6), (b) (7)(C) position, (b) (6), (b) (7)(C) already had provided all the necessary documentation to NSF OIG. During his interview on March 27, 2018, (b) (6), (b) (7)(C) stated there was nothing (b) (6), (b) (7)(C) could have done to manipulate the peer review (Exhibit 12, p. 2).

Additionally, NSF OIG ultimately determined that the investigation would not have been selected for review since it did not fall within the scope of the peer review. According to (b) (6), (b) (7)(C) after seeing NSF OIG's list of people to interview during the on-site review, (b) (6), (b) (7)(C)

made suggestions on interviewing other people but NSF OIG did not change its list (Exhibit 33, p. 2).

Allegation 3

Hoecker, assisted by (b) (6), (b) (7)(C) misused his position as Chair of CIGIE's Investigations Committee to sponsor revisions to CIGIE's Qualitative Assessment Review Guidelines for Investigations (investigations peer review standards) to exclude internal OIG investigations from peer review, without (1) disclosing that the changes had the potential to affect a pending peer review of SEC OIG and allegations before and likely to come before the IC or (2) recusing himself from consideration of those proposed changes.

Finding 3

ED OIG did not substantiate that Hoecker, assisted by (b) (6), (b) (7)(C) misused his position. The changes approved by the CIGIE on July 18, 2017, would not have applied to the NSF OIG peer review of the SEC OIG and provided an option for covering internal investigations.

ED OIG reviewed the changes to CIGIE's Qualitative Assessment Review Guidelines for Investigations approved by CIGIE's Executive Counsel on July 5, 2017, and by CIGIE's membership on July 18, 2017. The new peer review standards did not take effect until July 2017 (Exhibit 62), after the NSF OIG's on-site review and during their reporting process. Six other AIGIs were on the working group and all members of the CIGIE community were provided with drafts prior to approval.

A review of the new standards showed that, contrary to the allegation, they do not exclude internal OIG investigations from peer review. Rather the standards state, "if the reviewed OIG's structure consists of investigative operations reporting to the AIGI and other investigative activity reporting outside of the AIGI's chain of command (e.g., internal affairs or special investigative unit), the reviewed OIG may want to include those internal and special investigations to be subjected to the QAR process. An OIG may forego a CIGIE peer review where an investigative function outside the Office of Investigations (or equivalent) had minimal activity, does not operate under the guidelines established by the QSI, or is subject to other sufficient or regular scrutiny and review" (Exhibit 62, p. 6).

Allegation 4

The SEC OIG may not have conformed with its Giglio policy requiring disclosure of impeachable information to the DOJ in anticipation of offering (b) (6), (b) (7)(C) as a witness for sworn testimony or statements in criminal cases.

Finding 4

ED OIG did not substantiate that the SEC OIG failed to conform with its Giglio policy requiring disclosure of impeachable information to the DOJ in anticipation of offering (b) (6), (b) (7)(C) as a witness for sworn testimony or statements in criminal cases.

According to SEC OIG Investigations Policy, Chapter 8, Employee Responsibility and Conduct, OI Investigative Personnel are obligated to inform prosecutors with whom they work of potential impeachment information as early as possible prior to providing a sworn statement or testimony in any criminal investigation or case, in accordance with DOJ's "Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses" (DOJ Giglio Policy), effective July 11, 2014 (Exhibit 63, p. 8-9).

SEC OIG's policy, Chapter 8, states that potential impeachment information may include, but is not limited to:

1. Any finding of misconduct that reflects upon the truthfulness or possible bias of the employee, including a finding of lack of candor during a criminal, civil, or administrative inquiry or proceeding;

2. Any past or pending criminal charge brought against the employee;

3. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;

4. Prior findings by a judge that an agency employee has testified untruthfully, made a knowing false statement in writing, engaged in an unlawful search or seizure, illegally obtained a confession, or engaged in other misconduct;

5. Any misconduct finding or pending misconduct allegation that either casts a substantial doubt upon the accuracy of any evidence—including witness testimony—that the prosecutor intends to rely on to prove an element of any crime charged, or that might have a significant bearing on the admissibility of prosecution evidence. Accordingly, agencies and employees should disclose findings or allegations that relate to substantive violations concerning:

    a. Failure to follow legal or agency requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications;

    b. Failure to comply with agency procedures for supervising the activities of a cooperating person (Confidential Informant, Sources, etc.); or

    c. Failure to follow mandatory protocols with regard to the forensic analysis of evidence.

6. Information that maybe used to suggest that the agency employee is biased for or against a defendant (See U.S. v. Abel, 469 U.S. 45, 52 (1984)). The U.S. Supreme Court

has stated, "Bias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias maybe induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest."; and

7. Information that reflects that the agency employee's ability to perceive and recall truth is impaired.

ED OIG found one request by DOJ for Giglio information for [redacted] and determined that SEC OIG properly notified DOJ of the investigation into [redacted] (Exhibit 64). According to [redacted] while the investigation was still ongoing, [redacted] was scheduled to testify, and SEC OIG received a Giglio request for her. After SEC OIG provided a response to the prosecutor, [redacted] was not chosen to testify and somebody else was chosen (Exhibit 36, Tr. 77). No additional written requests by DOJ since the commencement of the investigation have been identified.

Allegation 5

On or about October 10, 2018, Hoecker engaged in wrongdoing. This allegation arose out of information provided in an email, received by the IC on October 12, 2018, containing information that, on October 10, 2018, Hoecker contacted [redacted] and questioned her regarding information she provided to ED OIG during the IC investigation.

Finding 5

ED OIG substantiated that Hoecker contacted [redacted] on October 10, 2018, regarding statements attributed to [redacted] in the draft ROI. Hoecker stated that he did not contact any other witnesses about the IC investigation or their interviews.

Purpose of the call

[redacted] memo stated, “the IG [Hoecker] explained that he was calling to question me [redacted] about the basis for certain statements attributed to me that apparently appear in a report he is in possession of from a recent CIGIE Integrity Committee (IC) investigation conducted by the Department of Education OIG. (NOTE: I have not seen the report in question.) Specifically, he stated that the IC report states that, according to me, on the same day that I reported to the IG unwelcome attention and comments from [redacted] that he (the IG) apologized to me for how he (the IG) handled the situation with [redacted].”

In her interview on November 5, 2018, [redacted] stated that her understanding of Hoecker’s purpose for questioning her was to clarify what she said to ED OIG, because what Hoecker said was reported in the ROI did not match his recollection of events. [redacted] also stated that Hoecker questioned whether she was making a formal complaint against [redacted] when she reported [redacted] behavior to [redacted]

In his interview on December 6, 2018, Hoecker stated that while reviewing the draft ROI, he noticed a statement inconsistent with his recollection and wanted to ensure there was not an underlying issue that needed to be addressed. Hoecker stated, "I saw what was reflected of something about a complaint, or allegations that we didn't consider during our internal investigation… I didn't know if my subordinate, (b) (6), (b) (7)(C) , still had an issue out there that I needed to act upon as, as a manager, because a manager has certain responsibilities. That was the purpose of the call" (Exhibit 70, Tr. 7-8).

When asked if he discussed with (b) (6), (b) (7)(C) her interviews with ED OIG, Hoecker stated, "I discussed the issue, it may have got into what she spoke to you guys about, but I, I don't know" (Exhibit 70, Tr. 8). When asked if he talked to (b) (6), (b) (7)(C) about what reports from her interviews with ED OIG would say if he were to look at them, Hoecker stated, "I don't recall saying that at all. No. Or asking that" (Exhibit 70, Tr. 10). Hoecker further stated, "You mentioned when I asked her about her conversation with the Department of Education, I don't think that's the way I asked the question" (Exhibit 70, Tr. 17).

When asked why he contacted (b) (6), (b) (7)(C) instead of referring to the draft ROI exhibits that he could have access to, Hoecker (and his attorney) explained that exhibits have been requested but have not been received (Exhibit 70, Tr. 10-11).

(b) (6), (b) (7)(C) stated that she was reluctant to answer Hoecker's questions but responded honestly.

(b) (6), (b) (7)(C) stated in her memo, "Despite my surprise at being asked to discuss statements I made to Education OIG investigators with the IG (who is my supervisor and whom I am aware was a subject of the IC investigation) and my reluctance to do so, I answered his questions honestly." During her November 5, 2018, interview, (b) (6), (b) (7)(C) stated that she was very surprised Hoecker was questioning her, but she was aware that Hoecker was working on something related to the IC investigation, perhaps a response to the draft ROI. (b) (6), (b) (7)(C) stated that she did not express to Hoecker her reluctance to speak at that time. (b) (6), (b) (7)(C) explained that she was not sure what she could or should say regarding her statements to ED OIG. She thought that Hoecker questioning her, as a witness, was "ill-advised" and not something she would have done if she were in Hoecker's place (as the subject of an IC investigation). (b) (6), (b) (7)(C) stated that Hoecker did not make any statements to her regarding her obligation to answer his questions. (b) (6), (b) (7)(C) felt that she could have told Hoecker that she did not want to answer his questions and end the conversation if she wanted to.

During her interview, (b) (6), (b) (7)(C) stated that she felt uncomfortable being questioned by Hoecker but she was not coerced into the conversation. She attributed her discomfort to being asked about a document (the draft ROI) she did not see. She believed that Hoecker's questioning her was "not a good idea" and "bad judgment."

Hoecker's statements regarding the IC's notifications and redactions to the draft ROI

ED OIG asked Hoecker to review language in the subject notification letters dated November 15, 2017 and November 27, 2017, that he received from the IC, which advised, "it is important to ensure that appropriate measures are in place to prevent retaliation or other prohibited

personnel practices from being taken against an employee based on the employee's disclosure of information that he or she reasonably believes evidences administrative misconduct." When asked if he considered the potential impact, or perception that contacting [redacted] could have had, Hoecker stated, "I contact these people every day for work, so in my mind this was not about the Integrity Committee investigation, this was about work, this was about whether there was some action I needed to take. And not retaliatory action, action that is required under policy, and good governance, and good management" (Exhibit 70, Tr. 13).

During his interview, Hoecker acknowledged that the draft ROI that he received had redactions and that based on the particular circumstance described in the draft ROI, he was able to deduce that [redacted] provided the information to ED OIG. Regarding [redacted] personal information being redacted, Hoecker stated that he was not concerned that calling [redacted] could have had an impact or perception of any kind of violation of the direction from the IC, because he would not have taken retaliatory action against her (Exhibit 70, Tr. 14-15).

Hoecker also stated that he did not contact any other SEC OIG employees or individuals interviewed by ED OIG pursuant to the IC investigation, except for [redacted] Regarding his contact with [redacted] Hoecker explained, "He's a respondent… I didn't think he was a witness. But when I got the e-mail from [redacted] about you guys [ED OIG] wanted [sic] to talk to me today about this I asked him, I said what is, what is this, and then he explained that, you know, he had referred something to Integrity Committee, I didn't know he did, which is fine" (Exhibit 70, Tr. 21-22).

ADMINISTRATIVE STATUS

The findings detailed in this report are referred to the IC for its consideration.

SUBJECTS OF INVESTIGATION

1. Carl Hoecker, Inspector General, U.S. Securities and Exchange Commission
2. [redacted] Office of Inspector General, U.S. Securities and Exchange Commission
3. [redacted], Office of Inspector General, U.S. Securities and Exchange Commission

EXHIBITS

1. IC890 Request to ED OIG for Investigation 11/8/17
2. IC Notification to Subjects 11/27/17
3. IC Notification re: Giglio Allegations 3/6/18
4. SEC OIG Report of Investigation, 3/3/17
5. Settlement Agreement with (b) (6), (b) (7)(C) 3/24/17
6. Memorandum of Censure to (b) (6), (b) (7)(C) 3/30/17
7. Initial Document request 11/22/17
8. Forensic Request 11/30/17 (amended from 11/22/17)
9. Supplemental Request 2/22/18
10. Memorandum of Activity - Internet Profile 3/7/18
11. Memorandum of Interview, (b) (6), (b) (7)(C), 1/25/18
12. Memorandum of Interview, (b) (6), (b) (7)(C), 3/27/18
13. Memorandum of Interview, (b) (6), (b) (7)(C), 6/21/18
14. Memorandum of Interview, (b) (6), (b) (7)(C), 6/22/18
15. Memorandum of Interview, (b) (6), (b) (7)(C), 3/13/18
16. Memorandum of Interview, (b) (6), (b) (7)(C), 4/10/18
17. Memorandum of Interview, (b) (6), (b) (7)(C), 6/21/18
18. Memorandum of Interview, (b) (6), (b) (7)(C), 3/13/18
19. Memorandum of Interview, (b) (6), (b) (7)(C), 2/13/18
20. Memorandum of Interview, (b) (6), (b) (7)(C), 2/13/18
21. Memorandum of Interview, (b) (6), (b) (7)(C), 3/14/18
22. Memorandum of Interview, (b) (6), (b) (7)(C), 4/16/18
23. Memorandum of Interview, (b) (6), (b) (7)(C), 4/20/18
24. Memorandum of Interview, (b) (6), (b) (7)(C), 5/30/18
25. Memorandum of Interview, (b) (6), (b) (7)(C), 4/12/18

26. Memorandum of Interview, (b) (6), (b) (7)(C), 5/21/18
27. Memorandum of Interview, (b) (6), (b) (7)(C), 4/30/18
28. Memorandum of Interview, (b) (6), (b) (7)(C), 3/15/18
29. Memorandum of Interview, (b) (6), (b) (7)(C), 2/14/18
30. Memorandum of Interview, (b) (6), (b) (7)(C), 4/6/18
31. Memorandum of Interview, (b) (6), (b) (7)(C), 3/19/18
32. Memorandum of Interview, (b) (6), (b) (7)(C), 3/27/18
33. Memorandum of Interview, (b) (6), (b) (7)(C), 12/20/17
34. Memorandum of Interview, (b) (6), (b) (7)(C), 5/1/18
35. Memorandum of Interview, (b) (6), (b) (7)(C), 3/14/18
36. Memorandum of Interview, (b) (6), (b) (7)(C), 6/8/18
37. Memorandum of Interview, (b) (6), (b) (7)(C), 6/12/18
38. Memorandum of Interview, Carl Hoecker, 6/13/18
39. SEC OIG Policy, Chapter 1: Investigative Policies and Standards (2013)
40. Hoecker Response Letter to IC, 6/29/17
41. CIGIE Quality Standards for Investigations (11/15/2011)
42. Quality Standards for Federal Offices of Inspector General (Silver Book) (8/2012)
43. Email between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 1/23/15
44. (b) (6), (b) (7)(C) Memo to (b) (6), (b) (7)(C) - Supervisory Views, 6/15/16
45. Email re: June 15, 2016 Referral to USAO and Declination
46. SEC OIG Memorandum of Interview, (b) (6), (b) (7)(C) 11/2/16
47. Memo from (b) (6), (b) (7)(C) 5/16/16
48. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 5/18/16
49. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 6/21/16
50. Rolling Stone Article, “SEC Rocked by Lurid Sex and Corruption Lawsuit,” 11/19/12
51. NSF OIG Review of File 17-0246-I, 10/26/17

52. SEC OIG Policy - Ch. 4 Inv. Interviews and Advice of Rights (3/2014)
53. Notes of SEC OIG interview of (b) (6), (b) (7)(C) 5/18/16
54. Notes of SEC OIG interview of (b) (6), (b) (7)(C) 5/24/16
55. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 6/3/16
56. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 6/21/16
57. (b) (6), (b) (7)(C) Email Clarification, 6/6/16
58. SEC OIG Policy, Chapter 2: Case and Admin Management (6/2014)
59. Additional Complaint Documents, IC890/901/909
60. IC909 NSF OIG Letter, 12/4/2017
61. SEC OIG Policy, Chapter 7: Investigative Reports (9/2016)
62. Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General (7/2017)
63. SEC OIG Policy, Chapter 8: Employee Responsibility and Conduct (9/2016)
64. Giglio Letter, (b) (6), (b) (7)(C) 11/24/16
65. Letter to IC from Lerner, 9/14/17
66. SEC OIG's March 2017 Semi-Annual Report to Congress
67. IC Request to ED OIG, 10/19/18
68. Email from (b) (6), (b) (7)(C) dated October 12, 2018 with (b) (6), (b) (7)(C) email, dated October 11, 2018
69. Memorandum of Interview with Attachments for (b) (6), (b) (7)(C) 11/5/18
70. Memorandum of Interview with Attachments for Hoecker, 12/6/18

ATTACHMENTS

1. Hoecker response to the Draft ROI, 3/5/19
2. (b) (6), (b) (7)(C)
3. (b) (6), (b) (7)(C)

Kyle Hanley

From: (b) (6), (b) (7)(C) >
Sent: Tuesday, March 5, 2019 9:05 PM
To: Integrity-WG
Cc: (b) (6), (b) (7)(C)
Subject: IG Hoecker Response to IC890.909 Draft ROI and Addendum
Attachments: IG Hoecker Response to Draft ROI_CIGIE IC Request_IC 890 and IC909_030519_SIGNED.pdf; Tab A_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab B_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab C_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab D_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab E_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit List_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 1_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 2_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 3a-e_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 4_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 5_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 6a-c_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 7a-b_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 8_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; IG Hoecker Response to Addendum to Draft ROI_CIGIE IC Request IC890 and IC909_030519_SIGNED.pdf

Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

Please find attached IG Hoecker's Response to the Draft ROI and Addendum thereto in the matters of IC890 and IC909.

The Response consists of the following documents, which are password protected (password to follow in a separate email):

Response to Draft ROI

Letter Response dated March 5, 2019
Tabs A-E
Exhibit List
Exhibits 1-8

Response to Addendum to Draft ROI

Letter Response dated March 5, 2019

A hard copy will be delivered tomorrow, Wednesday, March 6.

If you have any questions, please let me know.

Thank you.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

March 5, 2019

By Email and Overnight Delivery

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington, DC 20006

Re: Draft Report of Investigation, dated August 21, 2018
Ref: Request IC890 and IC909, I18EAS0038

Dear Integrity Committee:

I am writing in response ("**Response**") to the United States Department of Education Office of Inspector General ("**ED-OIG**") Draft Report of Investigation, dated August 21, 2018 ("**Draft ROI**").[1] My decision to investigate a staff matter internally, through my Office of Counsel (also "**Counsel**"), in the best interests of my office is the reason this matter is before you. Our actions were proper, as I discuss below.

I. Executive Summary

This matter has profound policy implications. As such, it is critical that the Integrity Committee carefully consider the wide latitude and judgement statutorily granted to an Inspector General ("**IG**") and the information in this Response when examining the findings in the Draft ROI. The outcome will affect the entire IG community in areas of discretion and independence; the practice of the Council of Inspectors General on Integrity and Efficiency ("**CIGIE**") on adopting standards and guidelines; and the Integrity Committee's investigative process.

The first established principle that is at jeopardy is an Inspector General's statutory independence, discretion, and judgment. Here, I used my discretion and professional judgment to conduct an internal investigation of allegations of staff misconduct in order to assess their credibility and to determine whether further investigation or discipline was warranted. I assigned the internal matter to (b) (6), (b) (7)(C) and received his 51-page completed report of investigation,

[1] I designated (b) (6), (b) (7)(C) to serve as my representative in this matter. On September 28, 2018, I advised the Integrity Committee of this designation in an email, which the Integrity Committee acknowledged. See email string between me and the Integrity Committee, dated September 28, 2018, Exhibit ("**Exh.**") 1. This response was prepared with the advice of counsel from (b) (6), (b) (7)(C) .

which was sufficient for me to take corrective action in the matter ("**Internal Investigation")**. The Inspector General Act of 1978, as amended[2] ("**the IG Act**"), assigns to each IG the responsibility to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of in their agency or department.[3] The Act also grants the authority to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the IG, necessary or desirable. Yet the Draft ROI second guesses my valid discretionary judgment.[4]

The next issue at stake is whether an Integrity Committee investigation can create new policies, thereby upending a long-standing CIGIE policy and circumventing the well-established CIGIE practice of having the entire CIGIE membership vote on changes to CIGIE policies and guidelines.[5] First, the Quality Standards for Investigations ("**QSI"**), since its inception in 1997, have been designated for those investigations under the auspices of the Assistant Inspector General for Investigations ("**AIGI**") and *are not mandatory* across every function within an OIG. Functions and units outside of the AIGI *may voluntarily* adopt the QSI for their work products. Exh. 62 to Draft ROI at 6 (articulating existing practice).[6] Second, there is absolutely no CIGIE requirement that internal matters be conducted by an external entity.[7]

Closely related is whether an IG conducting an investigative peer review *can circumvent the Qualitative Assessment Review Guidelines* ("**QAR Guidelines**") for Investigative Operations of Federal Offices of Inspector General *and simultaneously investigate and peer review an OIG*.

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[2] 5 U.S.C. App.

[3] 5 U.S.C. App. 3 § 6(a); see also Council of the Inspectors General on Integrity and Efficiency, "The Inspectors General," July 14, 2014 ("CIGIE 'The Inspectors General' Paper"), Exh. 2, at 9.

[4] See CIGIE "The Inspectors General" Paper, Exh. 2, at 1 ("It is these guarantees of independence that make statutory IGs unique) and 2 n.1 ("this paper summarizes authorities granted by statute to Federal IGs. This is not intended to change the existing authority of each IG to exercise legal discretion and professional judgment to interpret and execute those authorities for his or her Office in particular circumstances.).

[5] See the IG Act, which states that CIGIE's mission is, among other things, to increase the professionalism and effectiveness of personnel *by developing policies, standards, and approaches* to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General. 5 U.S.C. § 11(a)(2)(B) (Emphasis added.)

[6] Note that when an Exhibit to the Draft ROI is cited in this Response, it is referenced as "Exh. [No.] to Draft ROI." Exhibits attached to this Response are simply identified by exhibit number.

[7] The IG Act requires that allegations against an IG or "staff member" who reports directly to the IG be referred to the Integrity Committee for disposition. In the SEC OIG internal matter, there was no such staff member. See 5 U.S.C. § 11.4.

The QAR Guidelines outline a protocol by which disputes between IGs during the peer review process are resolved. See QAR Guidelines at 19, attached as Exh. 62 to Draft ROI. Although this protocol was one of the first things I suggested to the NSF IG when we disagreed over the scope of the peer review, she inexplicably chose to ignore it. Instead, after my staff and I spoke with her on June 29, 2017, and 30, 2017, about the Internal Investigation, the NSF IG waited three months to craft a so-called analysis of the complaint she had received about the Internal Investigation and transmit it to the Integrity Committee on or about September 14, 2017.[8] In October 2017, the NSF OIG reviewed (b) (6), (b) (7)(C) report and determined it was properly closed in June 2017. (The peer review scope was from March 1, 2016 through February 28, 2017.) (b) (6), (b) (7)(C) report was clearly outside of the peer review period, even by the NSF OIG's determination. I received no feedback after their October 2017 review. I did not receive a complete exit briefing and draft report as specified in the QAR Guidelines. I was stunned when I first learned from the Peer Review report in November 2017 that the NSF IG reported on an investigation that they determined should not have been among the cases sampled for review. something that is unprecedented. Finally, and most alarming, I discovered in June 2018 during my interview in this matter that the NSF OIG, nine months earlier, in October 2017, produced a "Memorandum of Investigation" as a result of their review of Counsel's Internal Investigation.[9] I was unaware that the peer review team was conducting an undisclosed investigation in tandem with the peer review. I was not notified by the Integrity Committee that this effort was underway. Endorsement of this apparent NSF investigation will thwart CIGIE's mandate for transparency and its standards and guidelines, including the QAR Guidelines. Ultimately, it will erode IGs' confidence in the integrity of the peer review process.

Lastly, the findings as presented in the Draft ROI remove the discretion and independence granted by the IG Act to an Inspector General to investigate internal administrative matters as he or she sees fit. As the Draft ROI **admits**, the ED-OIG arbitrarily applied the Quality Standards for Investigations ("**QSI**") to an internal administrative matter. They had no basis to do so. Adopting the conclusions and findings in the Draft ROI would substitute the investigating agency's judgment for those of the responsible official at the time and would effectively change the IG authorities granted by the IG Act and the CIGIE standards and guidelines. Imposing new standards and requirements on Inspectors General can only be done by the entire membership of CIGIE. The findings in the Draft ROI should be rejected for this reason alone.

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[8] See Lerner Letter to IC, dated September 14, 2017, Exh. 59 to Draft ROI.

[9] See Digitally Recorded Interview of Carl Hoecker, dated June 13, 2018, at 78, lines 8-22, at 74-78, Exh. 38 to Draft ROI ("***I never received any of that memo there. That's the first time I've seen it***." (emphasis added)) and Attachment 9 thereto ("**NSF Memorandum of Investigation**").

In addition to the above policy issues, the Draft ROI should be rejected because it does not comport with CIGIE's QSI in tone, in substance, and is biased.[10] The Draft ROI's findings and conclusions are flawed and are not supported by preponderant evidence. As discussed below, the Draft ROI reaches its findings based on a one-sided and incomplete version of the facts, faulty conclusions, and a failure to properly consider an IG's role and responsibilities, including his/her discretionary authority. My testimony, as well as favorable testimony by other witnesses, were not adequately presented. Further, there are at least 45 instances in the Draft ROI that violate the QSI.

Finally, when one compares the Draft ROI to the NSF OIG's Memorandum of Investigation and the NSF IG's September 14, 2017, letter, it becomes obvious that the Draft ROI tracks those documents and adopts their faulty information and opinions without independently evaluating and critically analyzing the evidence.

The Draft ROI is antithetical to the values, authorities, standards and guidelines, and norms of CIGIE and the IG Act. As such, I respectfully request that the Integrity Committee reject all findings in the Draft ROI as unsubstantiated and issue an exonerating report.

II. Procedural Background

A. On September 24, 2018, I received from the Integrity Committee the "Draft Report of Investigation" prepared by the U.S. Department of Education, Office of the Inspector General, dated August 21, 2018, Request IC890 and IC909, I18EAS00388. The Draft ROI sets forth several findings relating to four separate allegations arising out of an internal administrative investigation conducted by my office into allegations of misconduct by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). The Draft ROI identifies in a section titled "Violations," violations expressly identified as: 1) Lack of compliance with SEC OIG investigative policy, and 2) Lack of compliance with Quality Standards for Federal Offices of Inspector General (Silver Book) and CIGIE QSI. See Draft ROI at 6. I vehemently disagree with the Draft ROI's contention that there were any violations, as explained further below.

B. My detailed responses to the Draft ROI's findings and conclusions are set forth in Sections I above and IV below. In addition, I incorporate by reference my February 2, 2017, response to the Integrity Committee's Requests regarding IC868 and IC872, as well as my June 29, 2017, letter to the Integrity Committee, both of which also addressed versions of the same Allegation 1 in this Draft ROI (IC870 and 872). I also incorporate by reference the IC's December 23, 2016, February 21, 2017, and May 30, 2017 letters, which relate to the preceding responses that I submitted to the IC. The IC's letter dated February 21, 2017, closed IC872.

[10] The Integrity Committee in its policy has adopted the QSI for investigations done on its behalf. CIGIE Policies and Procedures 2018 at § 9.B, attached as Exh. 62 to Draft ROI.

All of these documents are related to this investigation, IC890 and IC909, and must be incorporated into this matter and considered alongside the allegations. The preceding letters are attached as Exhibit 3 to this Response. Note that my June 29, 2017, letter is also attached as Exhibit 40 to the Draft ROI.

C. I was given a deadline of ten (10) calendar days from the date of receipt of the Draft ROI to submit my comments and supporting evidence.

D. On September 26, 2018, (b) (6), (b) (7)(C), my counsel in this matter, requested the 66 exhibits attached to the Draft ROI, as well as any transcript or summary memorandum. See Exh. 4. On September 28, 2018, the Integrity Committee advised that it would provide the Exhibits after performing necessary redactions. See id. On February 1, 2019, the Integrity Committee advised that it had completed the necessary redactions and would make the redacted Exhibits available for our review at CIGIE's offices from February 6, 2019, until February 19, 2019. See Exh. 5. Pursuant to my counsel's request, the Integrity Committee provided copies of certain Exhibits to us, provided additional time to review the Exhibits in CIGIE's offices, and extended the time to respond to the Draft ROI to March 5, 2019. See id.

III. IG Hoecker's 40-Year Distinguished and Unblemished Federal Government Career as the IG of the Securities and Exchange Commission, IG of the Capitol Police, Deputy Assistant IG for Investigation ("DAIGI") and Special Agent at the Treasury Department and Law Enforcement positions with the U.S. Army.

A. I have been the Inspector General at the Securities and Exchange Commission ("**SEC**"), Office of the Inspector General (**"OIG**") since February 2013. I was the inaugural IG for the U.S. Capitol Police from 2006 through 2013.

B. I have been on the CIGIE Investigations Committee since 2006 and have been elected and re-elected as Chairman of the Committee since 2009. As the DAIGI, I provided substantive comments for CIGIE's first investigative peer review guidelines, which were issued in 2003. The current version of the Qualitative Assessment Review Guidelines for Investigative Operations of Federal Office of Inspector General (7/2017) is attached as Exh. 62 to the Draft ROI. My first CIGIE project as an IG was to develop CIGIE guidance for reporting peer review results in the IG Semiannual Report to Congress. This guidance was unanimously adopted by CIGIE'S membership in 2009. I have led revisions of the following CIGIE standards and guidelines: QSI (2011); Investigative Peer Review Guidelines (2009, 2011, 2017); Quality Standards for Digital Forensics (co-lead 2012 and current revision); and Undercover Review Guidelines (2010, 2013). The CIGIE membership unanimously adopted all of the aforementioned documents. I have also instituted the only investigative peer review training for the CIGIE community. My most recent CIGIE project was to develop CIGIE guidance pursuant to the Administrative Leave Act. It was also adopted unanimously.

C. I began my federal government service more than 42 years ago in the U.S. Army as a member of the Military Police, Military Police Investigator and Special Agent with the Army Criminal Investigations Command. As a Special Agent, I was hand-picked to conduct investigations of the most sensitive and classified programs within the U.S. government. I concluded my service at the grade of Chief Warrant Officer 4 when I retired from the Army. Some of my military awards are: Global War on Terrorism Service Medal, National Defense Service Medal, Army Meritorious Service Medal, multiple Army Commendation Medals, Army Achievement Medals, Army Good Conduct Awards, Army Service Ribbon, Overseas Ribbon.

D. I have established a commendable record during my federal government tenure. This record includes an unblemished disciplinary record in 40 years, during which I have handled or overseen many investigations and worked with numerous colleagues and agencies throughout the country and overseas. Upon my departure from the US Capitol Police, I was awarded the Distinguished Service Medal, the highest award that can be given to a civilian. During my 6-year tenure at SEC-OIG, I have opened and closed over 150 investigations, including prior internal investigations, without any complaints about those investigations. When I arrived at the SEC in 2013, the Federal Employee Viewpoint Survey ("**FEVS**") scores for the OIG were the second to the last for SEC offices and divisions and the agency had no confidence in the office. I put a management team in place, listened to OIG staff, and made great strides to improve morale. As a result, the 2015 and 2016 FEVS scores put OIG the top two or three offices and divisions at the SEC. In 2015, Chair Mary Jo White presented the Chair's Award for "inspirational leadership of OIG and lifting OIG performance to new levels."

E. I have earned an excellent reputation as an IG and am well-respected for my leadership, knowledge, experience and dedication. I share this expertise with newly appointed IGs.

F. My record reflects that I am a long-time, dedicated government employee who takes my job responsibilities and the SEC's mission very seriously. I have made valuable contributions to the SEC and IG community over my 27-year tenure in the community and consistently represented the SEC well, as evidenced by my record. I enjoy my work and being a part of the IG community immensely. I strive to do my best in advancing the IG missions and goals using the resources and authorities granted to IGs under the IG Act. For this reason, I welcome this opportunity to correct the record and clear any suggestion that there were any violations during the Internal Investigation conducted by my office.

IV. Detailed Response to Draft ROI

The Draft ROI investigated four allegations and found all but one unsubstantiated. The Draft ROI concludes that there were violations, specifying two, i.e., 1) lack of compliance with SEC OIG Investigative policy; and 2) lack of compliance with Quality Standards for Federal Offices of Inspector General ("**Silver Book**") and CIGIE QSI. These findings have no merit. As

discussed below, I, through my Office of Counsel, conducted an objective and extensive investigation in accordance with the IG Act and IG policies, procedures and guidelines.

This response addresses those alleged violations and respectfully requests that the Integrity Committee deem them meritless on the grounds that 1) the Draft ROI cannot set or change CIGIE policy, 2) the findings in the Draft ROI are not supported by the evidence, and 3) the Draft ROI does not comport with CIGIE QSI.

As discussed throughout this response, the Draft ROI jeopardizes CIGIE's structure, standards and guidelines. Substantively, the Draft ROI's findings are incorrect and not supported by the record. A careful review of the Draft ROI shows that it exhibits bias, including, but not limited to, its characterization of the evidence and its inclusion of unsubstantiated allegations. Further, the Draft ROI appears to treat the underlying investigation conducted by my office differently than other IG internal investigations by arbitrarily applying the QSI to it. It also reveals troubling transgressions of IG protocol during the peer-review process, which resulted in a "Memorandum of Investigation" by another IG that was not revealed to me until my June 2018 interview in this matter, violating due process and CIGIE's mandate for transparency. The path of this investigation, as illuminated by the Draft ROI, leaves the impression that I may have been improperly targeted by this investigation.

This response first elaborates on the important policy matters that are in jeopardy here.

A. The Draft ROI Improperly Eliminates IG Authority and Discretion and Sets New Policy

The Draft ROI's enormous policy implications cannot be overstated. As explained above in the Executive Summary, a fundamental issue threatened by the Draft ROI is the underlying autonomy, independence, discretion and judgment that IGs have to objectively conduct internal investigations of alleged misconduct within their individual offices and take appropriate action as 1) provided for by the IG Act, 2) reinforced by the Silver Book, and 3) as an agency head. See Quality Standards for Federal Offices of Inspector General ("Silver Book") (8/2012), Exh. 48 to Draft ROI, at 11.[11] The Draft ROI is fundamentally flawed in that it fails to recognize this discretion, while wrongfully trying to change CIGIE policy through an IC investigation. This undermines CIGIE's well-established framework and contravenes CIGIE's standards, guidelines, and norms. Only CIGIE can approve and adopt policy changes.

A chief flaw of the Draft ROI is that it eliminates the IG's discretion with respect to internal administrative matters. The Draft ROI unilaterally imposes an investigatory framework,

[11] See Silver Book, Exh. 42 to Draft ROI, IG Act, and CIGIE "The Inspectors General" Paper, Exh. 2.

i.e., the QSI, on an IG's internal investigation of its own staff after incorrectly suggesting that no other standards applied to the Internal Investigation. This is without precedent or proper justification, upends the IG's authorities, and offends fundamental notions of fairness. There is no mandate that internal investigations conducted by the Office of Counsel must follow the QSI. **This is a fact that even the Draft ROI admits**. See Draft ROI at 22.[12] The SEC OIG Investigative policy (my office's investigative handbook for the Office of Investigations) and the CIGIE QSI did not apply to the Internal Investigation. The Internal Investigation conducted by the Office of Counsel complied with the Silver Book, as well as the IG Act and CIGIE standards and guidelines.[13] The IC should summarily reject the Draft ROI's attempt to ensnare my office in a series of "gotchas" based on an investigatory framework, i.e., the QSI, that did not apply to the internal investigation and that was not adopted by my Office of Counsel.

To my knowledge, there has been no examination of all investigations conducted by IG Offices of Counsel, including an assessment of the nature of the investigations they conduct and the standards they use. A questionnaire issued to OIGs by the CIGIE Investigations Committee, Peer Working Group ("**IC PWG**"), in 2015 showed the following: 1) "criminal investigations are **generally** handled by an Office of Investigation (OI)" while "employee misconduct investigations (and/or those that **tend** to be administrative in nature) are handled by an Internal Affairs (IA)/Office of Professional Responsibility," 2) regarding the **OI** investigations (by implication not the IA/OPR investigations), the investigations conformed to QSI, and 3) with respect to the IA/OPR investigations, three (3) agencies responded that they were subject to the CIGIE peer review while seven (7) agencies said they were not. See Exh. 6a (PWG questionnaire); see also Exhs. 6b and 6c (11-24-15 AIGI QAR Study, and Peer Review WG Objectives). The IC PWG issued the questionnaire as part of its efforts to examine the peer review process and to assess the types of investigations that IGs were including/not including in the peer review process. This examination revealed that IGs differ in their views and approach regarding which non-OI investigations are included in peer reviews. See Exh. 38 at 192-93.

Should the IC wish to apply the QSI to my office's Internal Investigation, it must ensure that there is no disparate treatment of my office. To do so, the Integrity Committee should propose that the Investigations Committee reverse their long-standing practice of **not** requiring QSIs to apply to the many types of investigations conducted by all functions or components outside of the AIGI. This standards reversal, applicable to all IGs, will be required to ensure a fair and transparent process.

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[12] IGs have the authority and discretion regarding 1) the response and method of investigating administrative matters, and 2) using resources as the IG determines to be necessary in their environment, so long as the IG follows applicable standards and guidelines, which I did here.

[13] To the extent it did not, as must be proven by a preponderance of the evidence, it does not support a finding of any misconduct.

Finally, adoption of the findings in the Draft ROI would put the Integrity Committee in an untenable position. Specifically, it would circumvent established guidelines and policy interpretations codified by CIGIE subject matter expertise committees of jurisdiction and adopted by CIGIE membership. CIGIE policy is set through this committee work and engages the entire CIGIE membership,[14] not through reports of investigation such as the Draft ROI. The Integrity Committee should summarily reject the findings in the Draft ROI on the ground that it would effectively and improperly set new CIGIE policy without CIGIE review and vote, binding the entire IG community. This would be an unwarranted outcome and controversial deviation from CIGIE practice.

B. Key CIGIE Standards and Guidelines Omitted from the Draft ROI

Below are additional CIGIE standards and guidelines that are relevant to this matter, which are not mentioned at all or only in part in the Draft ROI:

Quality Standards for Federal Office of Inspector General, August 2012 ("Silver Book")

The Silver Book mandates that IGs perform their work with integrity. The elements of integrity include not only objectivity, independence, and confidentiality, but professional judgment. See Silver Book at 7, Exh. 42 to Draft ROI. (The Draft ROI fails to consider professional judgment.)

"Professional judgment requires working with competence and diligence. Competence is a combination of education and experience and involves a commitment to learning and professional improvement. . . . . Diligence requires that services be rendered promptly, carefully, and thoroughly, and by observing the applicable professional and ethical standards." Id. at 7-8. (The Draft ROI fails to consider the diligence.)

"The IG and OIG staff must be free both in fact and appearance from personal, external and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence so that opinions, conclusions, judgments and recommendations will be impartial and will be viewed as impartial by ***knowledgeable third parties***. The IG and OIG staff should avoid situations that could lead ***reasonable third parties*** with ***knowledge of the relevant facts and circumstances*** to conclude that the OIG is not able to maintain independence in conducting its work." Quality Standards for Federal Office of Inspector General, August 2012 at 10. (Emphasis added.) (The Draft ROI fails to correctly use this standard, as required, in reaching its findings.)

[14] See Exh. 7 consisting of May 24, 2016 CIGIE Audit Committee Minutes (discussion and vote regarding CPE requirements for Inspectors General) and my email to the Investigations Committee, dated July 7, 2017, discussing CIGIE approval (i.e., voting) process to adopt the new QAR Guidelines.

"Where a situation is not covered by a specific standard set forth in the Ethical Standards or in supplemental agency regulations, the Inspector General and OIG staff shall apply the principles underlying the standards in determining whether their planned or actual conduct is proper. Silver Book at 10." (The Draft ROI fails to consider this.)

"The steps to assessing OIG independence are as follows: a) identify threats to independence; b) evaluate the significance of the threats identified, both individually and in the aggregate; and c***) apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level."*** Silver Book at 12 (emphasis added). (The Draft ROI discounts these steps.)

"Each OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction. OIGs derive much of their credibility to perform their work by demonstrating the ability to efficiently and effectively use and account for public funds." Id at 20. (The Draft ROI fails to consider this.)

C. Background of Internal Investigation

The allegations underlying the Draft ROI involved an investigation conducted by my office into allegations of misconduct by my staff, i.e., the Internal Investigation. The allegation was that the Internal Investigation was a "whitewash," **which the Draft ROI nowhere substantiated**. To the contrary, the evidence shows that we strived to and did conduct an objective and thorough investigation in accordance with the IG Act and CIGIE standards, guidelines and norms. Even so, the Draft ROI contends there were some deficiencies in the Internal Investigation, all of which I disclaim as explained below.

First, however, in order to properly evaluate the information in the Draft ROI, it is important for the Integrity Committee to have an accurate, fair and complete understanding of the Internal Investigation that my office conducted. This Internal Investigation underpins the allegations in this matter. Although the Draft ROI is a lengthy 45 pages, in reaching its conclusions, the Draft ROI fails to accurately portray the Internal Investigation conducted by my office and curiously omits critical facts and context. The Draft ROI fails to clearly articulate my office's decision-making process in its effort to conduct the Internal Investigation in a comprehensive, effective and expeditious manner in accordance with the policy and principles in the Silver Book, as well as my discretionary authority under the IG Act.

In addition, the Draft ROI fails to properly take into consideration our goal to investigate the allegations with minimal disruption to our office morale and productivity during and following the investigation, especially on the heels of a very disruptive and public external investigation by another agency[15]. The Draft ROI also fails to provide the extensive actions we immediately took after receiving the May 16, 2016 complaints. Nowhere does the Draft ROI discuss the mountain of evidence that we collected and analyzed during the investigation, which included interviews of all OI staff (15), record reviews and analysis of thousands of emails, mobile phones, SEC

[15] See Draft ROI at 18, and Digital Transcript of Carl Hoecker Interview, Exh. 38 to the Draft ROI at 56-57 (would have taken at least 30 days to get an outside entity on the case).

Entry and exit swipes, gym access, hiring actions, VPN and internet logs, travel and training records, time and attendance documents and other relevant records. As stated in my June 29, 2017, letter to the IC Chairman, the final report from (b) (6), (b) (7)(C) addressed approximately 34 allegations (some developed by my staff), was 51 pages long, and included 63 exhibits, which amounts to approximately 1,279 pages. These omissions are inexplicable and result in a one-sided and biased portrayal of the Internal Investigation.

I am hopeful that the following background information, which was omitted in the Draft ROI, will be insightful for the Integrity Committee so that they can present a Final Report that is accurate, balanced, and fair. A more detailed overview of my actions and decision making in the Internal Investigation is provided in Tab A to this Response; the following is a summary.

Situation: In May 2016, I received two complaints from OIG investigative staff of misconduct on the part of (b) (6), (b) (7)(C). It was necessary to determine the validity and egregiousness of the complaints quickly and objectively. The complaints received were based on hearsay, not direct evidence of any misconduct, and, therefore, I determined that we needed to conduct an initial investigation to determine if the allegations had any merit.[16]

Context: In February 2013, I took over as the IG at SEC and I inherited an organization whose morale was destroyed by an outside OIG investigation. There was no effective leadership and employee engagement scores ("FEVS") were at the bottom of the agency.

I rebuilt the OIG by hiring staff and good leaders. Our FEVS scores were at the top of the agency for 2015 and 2016. The SEC OIG now had a very good professional reputation.

In May 2016 when I received the complaints, I needed an effective, efficient inquiry to determine the facts and truth so I could swiftly issue discipline, if warranted, and get the organization back to normal[17]. I assigned the matter to Office of Counsel, in particular (b) (6), (b) (7)(C), to examine and follow up on the allegations to determine if there was any merit to them. (b) (6), (b) (7)(C), would assist (b) (6), (b) (7)(C) until he retired within 30 days. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were not identified in the complaints as involved parties, nor did they did have impairments to their independence, in reality or in appearance in my view. As such, I reasonably concluded my office, through (b) (6), (b) (7)(C), with investigative support from (b) (6), (b) (7)(C), could conduct an objective, thorough and efficient

[16] I briefly spoke to two OI staff members about an allegation involving the evidence room to apprise the situation while (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) spoke to the other witnesses. I gave the information to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to include in their interview of those witnesses. Each call lasted about ten minutes. I thanked both for their time and informed them that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) will be talking to him about this issue. The information I obtained during this contact was in the Counsel report. The Draft ROI incorrectly states on page 28 that these conversations were not documented in the case file or ROI.

[17] Exh. 38 to Draft ROI at 56-57.

investigation, with less disruption than if I referred it to an outside OIG[18]. Neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) had a personal or close working relationship that compromised or appeared to compromise the outcome of the investigation.[19] Moreover, (b) (6), (b) (7)(C) was about to retire soon, as all OIG staff were aware, and would have no involvement in the full investigation, or any report or discipline. (b) (6), (b) (7)(C) had announced his retirement in April 2016 at an all hands meeting for OI. My testimony on these facts appear in Exh. 38 to the Draft ROI at 52-56.

Action: To immediately mitigate the situation, we decided to move (b) (6), (b) (7)(C) out of the Office of Investigations. On his first day back from training, which was within six calendar days of receiving the complaints, he physically moved out of the Office of Investigation. Additionally, as the investigation continued on, I sought outside assistance from DOJ OIG should the results of the inquiry merit DOJ attention or should allegations continue to come in, as they had been, which would deplete OIG resources in our small office. Specifically, upon my direction, (b) (6), (b) (7)(C) called DOJ OIG on October 25, 2016, to see if they could assist. My testimony on these facts appears in Exh. 38 to the Draft ROI at 136-153.

Within 30 days of our initial investigation into the allegations to determine if they were unsubstantiated on the one hand or warranted further investigation on the other, it was apparent that the Internal Investigation was not criminal and that it was an administrative matter in nature at best.[20] Thereafter, I decided the inquiry should remain internal with (b) (6), (b) (7)(C) who was conducting an objective, thorough and efficient investigation. During the course of the Office of Counsel's investigation, despite the Draft ROI's suggestion otherwise, we received and developed additional potentially related administrative allegations from the original complainants and anonymous sources. The final complaint was received in November 2016. My testimony on these facts appears throughout Exh. 38 to the Draft ROI.

Interviews of 15 OIG staff and document analyses were conducted for eight months, from May 17, 2016, to January 2017. As discussed above, the Office of Counsel interviewed every person who was in OI when the investigation commenced in May 2016, reviewed relevant

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[18] As one witness confirmed, "the IG chose to conduct the investigation internally because of SEC OIG's previous experience with an outside agency was not good." Exh. 22 at 2; see also Exh. 37 ((b) (6), (b) (7)(C) discussion regarding postal IG investigation). In addition, the witness advised that before SEC OIG employed federal agents, the attorney's employed by SEC OIG conducted investigations. This supports my testimony that it was not out of the ordinary for an attorney to conduct an investigation of this nature at the SEC. Id.

[19] Exh. 37 ((b) (6), (b) (7)(C) testifies "I believed it was objective even doing so as an attorney, as an inquiry, it was objective.")

[20] See Exh. 37 ((b) (6), (b) (7)(C) stating that cases can start as management inquiry and then be handed off for criminal investigating, that "most of the criminal allegations were on their face, frivolous," and that "just because you initially see this shortage [time and attendance] does not automatically make it criminal").

information, documents and records including, but not limited, to emails, cell phone records, SEC entry and exit swipes, gym access records, hiring action records, time and attendance records, travel and training records and security incident reports.

Outcome Results: I received a 51-page completed counsel report of investigation sufficient to take corrective action. See Exh. 4 to Draft ROI. We were left with a few administrative violations, specifically the appearance of improper relationship and improper comments, as we learned within 30 days that the US Attorney's Office had no interest in the matter.[21] In March 2017, (b) (6), (b) (7)(C) entered into a commensurate negotiated disciplinary settlement, which is common in our agency. (b) (6), (b) (7)(C) received a letter of censure.

I stand by my decision in handling this matter through an internal investigation upon receipt of the complaints. I acted with the information that I had, strived to have an objective, thorough and timely investigation conducted, which I believe I got, and resolved the matter appropriately. In the end, based on the limited nature of the sustained administrative allegations, I determined that a negotiated settlement was in the best interest of the organization and the U.S. Government as it reflected the seriousness of the offense, imposed appropriate discipline, and was the least destructive to my office.[22] The Silver Book itself requires "[e]ach OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction." Exh. 42 to Draft ROI at 20.

It cannot be genuinely disputed that the Internal Investigation was anything but a fair, objective and thorough investigation.[23] In the event that the IC believes my decision to handle the matter internally was an erroneous one, there would still be no basis to find misconduct or to

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[21] See Memorandum of Interview, Exh. 23 at 2 (witness, in discussing time and attendance abuse allegations against (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and referral to the USAO, stated that it was normal practice that a referral to the USAO was made even when it was apparent that the USAO would likely not accept prosecution of the matter).

[22] That I could have referred the matter to another IG or that another may have taken another approach for their office is not sufficient grounds to find misconduct or to recommend any discipline. Each IG Office is unique, with its own considerations and circumstances, resources and needs. This is the reason why IGs are afforded discretion, or "management intervention," under the IG Act and IG policies and practices to conduct its work. Management discretion or "intervention" is necessary because it is recognized that policies cannot be designed to anticipate and mitigate every risk. Management discretion/intervention, which is a built-in feature of policies, is qualitatively distinct from an "override" of policies for nefarious purposes. The Draft ROI overlooks the discretion of IGs.

[23] I submit that this is why the Investigators did not attempt to substantiate the allegation that our investigation was a whitewash or find that it lacked objectivity. If they thought there was any merit to those claims, I trust they would have sought to substantiate them, given that they were at the heart of the allegations, rather than sidestep those issues altogether.

recommend discipline as I diligently and in good faith undertook and completed what I believed to be an objective and thorough investigation.

D. Draft ROI Inaccuracies and Inflammatory Language

In addition to the serious policy concerns covered above, I have well-founded concerns about the Draft ROI's purported "substantiated" findings to the allegations, as well as inflammatory language that permeates the report.

First, the Draft ROI uses biased language throughout the report that prejudices the reader. It uses the term "substantiated" when confirming a fact even when it found no violation. The term "substantiated" is commonly used when a finding of wrongdoing is established. I recommend that any resulting report from the Draft ROI adopt the wording "confirmed" when establishing a fact where there is no violation of law, rule or policy rather than the prejudicial wording "substantiated."

The Draft ROI also casually characterizes the Internal Investigation as "substandard," see page 20, presumably because it allegedly did not meet all QSI standards, which I contend do not apply. Nonetheless, this wording suggests that the Internal Investigation was inadequate or poor quality, which is belied by the fact that 1) the Draft ROI in no way shows that the Internal Investigation was a "whitewash," nor does it define or explain what the term means; and 2) my office conducted a successful 8-month long investigation that amassed a large amount of evidence and resulted in disciplinary action. It is important to consider that to the extent any IG investigation falls short of any QSI standard, including as assessed during a peer review, it is at risk of being arbitrarily characterized as "substandard," and subject to an IC investigation. The IC should reject this inflammatory label, which is not explained, clearly defined, or informed by a CIGIE standard or guideline.

Second, as explained below, among other things, the Draft ROI misses the mark in numerous key respects in reaching the conclusion that there were violations. As discussed in more detail below and in Tab B to this response, the Draft ROI omits key information and context, contains significant inaccuracies, including misstatements of sworn witness testimonies, relies on speculation and innuendo to my detriment, and takes statements taken out of context.[24] It also understates testimony and other evidence helpful to me. In this manner, the Draft ROI paints an erroneous and negative picture of the Internal Investigation, as well as my independence and credibility, to support its findings of violations. This narrative comes across as pre-determined, given the careless and biased portrayal of the evidence in a manner and tone that are inconsistent with the QSI. Moreover, the alleged violations are grounded in faulty reasoning.

Given that this information and the findings in the Draft ROI are used to call into question my independence and credibility, I would address each piece of evidence, including every witness statement, that is speculative, vague and ambiguous, unsupported by the evidence, insignificant, opinion and so on, in order to further demonstrate why the Draft ROI's findings

[24] I note that the Draft ROI does not discuss whether it considered the credibility of the witnesses.

should be rejected. Given the breadth of problems, this is not practicable. Tab B highlights many (45), but not all, instances violative of the QSI upon which the Draft ROI's findings and conclusions appear to be based. These examples provide a sufficient basis for the IC to reject the Draft ROI's findings as unreliable. For instance, the Draft ROI claims that a conversation between an unidentified individual and (b) (6), (b) (7)(C) was not memorialized. Id. at 28. That is plainly incorrect; the memorialization is found in Exhibit 59 to the SEC OIG Report. Should the IC have any questions about statements that have gone undiscussed, I would welcome the opportunity to address them.

In addition, the Draft ROI fails to make any of the necessary credibility determinations or to even attempt to explain why certain witnesses were more believable than IG Hoecker and other witnesses. The Draft ROI does not reference any biases or motives that may have underpinned testimonies or why some witnesses testified differently in the Internal Investigation interview in 2016 and the interview with ED-OIG in 2017. Nor does the Draft ROI mention the inconsistencies between the statements given by the other witnesses, as well as internal inconsistent statements given by witnesses in different interviews. For these and other reasons, the Draft ROI presents serious issues of reliability. For instance, see the analysis in Tabs B and D.

E. Response to Investigative Findings

Allegation 1, Finding 1.1a (pages 10-20)

I strongly disagree with these allegations and the resulting finding and urge the IC to reject it as unfounded. As discussed below, (b) (6), (b) (7)(C) and I were impartial and independent and free in appearance from impairments to independence.

First, it is important to note that the Draft ROI portrays part of Allegation 1 that the "investigation was a whitewash" yet nowhere in Allegation 1 or its sub-allegations 1.1-1.4 is the term "whitewashed" defined or the question of "whitewash" resolved. The Draft ROI does not attempt to address the allegation of "whitewash." That is because everyone would agree that our investigation was not a whitewash given our extensive 8-months long investigation. Allegation 1 "the investigation was a whitewash" should be answered as unsubstantiated.

The Draft ROI also fails to show that (b) (6), (b) (7)(C) and SEC OIG had impairments to independence. That is because it could not. Instead, the Draft ROI finds fault with the fact that I decided to investigate the matter through my Counsel Office, with short-term support from (b) (6), (b) (7)(C) concluding that both (b) (6), (b) (7)(C) and SEC OIG were not free "in appearance" from impairments to independence simply because the "SEC OIG OI staff had a general knowledge of the past and current professional relationships between Hoecker, (b) (6), (b) (7)(C)." Id at 15. The Draft ROI refers to the fact that we previously worked together at the U.S. Department of Treasury.

There are three key problems with this conclusion, among others. First, the Draft ROI failed to use the standard mandated by the Silver Book, which requires that impartiality be assessed by an objective standard, i.e., "reasonable third parties with knowledge of the relevant

facts and circumstances." Here, the Draft ROI collects bits and pieces of testimonies (possibly self-serving in many cases) from unnamed OIG staff to weave an inaccurate narrative that there was an appearance issue. It also heavily cites one witness's testimony on pages 14-15, but fails to explain why this witness's testimony should be credited, especially when this witness had not raised any concerns about impartiality during the Internal Investigation to SEC OIG. Assessing impartiality based on OIG staff speculation, as this Draft ROI does, is improper under the Silver Book. The correct test is based on a reasonable third person.

Second, the Draft ROI discounts the fact that the opinions, conclusions, jndgments and recommendations were going to be issued by the Office of Counsel under my purview, even though it agrees that the Office of Counsel had no impairments.

Third, under the Draft ROI's logic, whenever an IG investigation is conducted and any of the subjects, witnesses, investigators, deciding officials, counsel have a prior or current working relationship, there would be an appearance of impairment to independence for this reason alone. This could even impact the ability of a supervisor to discipline, award, or take any action with respect to a subordinate or another co-worker. Recusal and referral would be required in all these instances. In addition, staff could easily make appearance claims based on working relationships, requiring an IC investigation.

On the merits, there is nothing in the Draft ROI that supports a finding that (b) (6), (b) (7)(C) and SEC OIG were not impartial or seen as impartial by knowledgeable and reasonable third parties. I have always conducted internal investigations using internal staff; there were two others before this 3rd internal investigation during my tenure. The prior internal investigations were performed objectively, effectively and efficiently and protected the OIG staff from the potentially destructive effects of an external investigation handled by another OIG office, which had previously undercut the morale of the OIG's office before I became the SEC OIG.

In determining how to conduct the Internal Investigation, I believed that knowledgeable and reasonable third parties who were aware of the relevant facts and circumstances would conclude that the OIG conducting the Internal Investigation was free both in fact and appearance from personal, external and organizational impairments to independence.

I tasked (b) (6), (b) (7)(C) who was one of my best investigators, with doing the investigative legwork (conducting interviews, gathering evidence, etc.) for his remaining time in the agency (30 days) for the following reasons:

a) I had known him professionally for years and was confident in his ability to conduct an objective, thorough and efficient investigation;

b) he was one of the best and toughest interviewers internally and, thus, best positioned to get to the truth of the matter; [25]

[25] The Draft ROI mentions that (b) (6), (b) (7)(C) was interviewed by (b) (6), (b) (7)(C) as a fact witness in the Internal Investigation after his retirement. The Draft ROI also spends significant time outlining numerous statements made by one of the complainants (name is redacted in the

c) he had impeccable credentials and was of the highest integrity, not influenced by anything other than the search for the truth;

d) he had a reputation for treating all persons the same; those he has known or worked with for a long time and those he has known for a short time – holding their feet to the fire of even his longest-tenured professional colleagues. (b) (6), (b) (7)(C) did not play favorites;

e) I was not aware (and am still not aware) of (b) (6), (b) (7)(C) having any personal relationships with those involved in the Internal Investigation, other than the typical professional relationships that exists in any office. Nor did I have any personal relationship with those involved in the Internal Investigation[26];

f) because (b) (6), (b) (7)(C) had already announced his planned retirement one month before the first allegation was made, I concluded that this reinforced his objectivity given that the results of the investigation would have no impact on him professionally and he would not have a stake in its outcome;

g) (b) (6), (b) (7)(C) understood the concept of recusal and never invoked it here, although he could have at any time.

Finally, to the extent there were any concerns about impairment, they should have dissipated by my assignment of the Internal Investigation at the outset to the Office of Counsel. See Draft ROI at 17, #8 (witness "thought that it was good that (b) (6), (b) (7)(C) was asked to conduct the investigation with (b) (6), (b) (7)(C) for objectivity purposes.") I purposefully placed the investigation under the auspices and control of the Office of Counsel, specifically with (b) (6), (b) (7)(C), to ensure independence in fact and in appearance in accordance with the Silver Book. (b) (6), (b) (7)(C) office is physically separated from the Office of Investigations and the lawyers, i.e., (b) (6), (b) (7)(C) did not have daily interactions with the witnesses, subjects and complainants in the Internal Investigation. (b) (6), (b) (7)(C) is outside the Office of Investigations chain of command and directly reports to the IG. See Exh. 38, Digital Transcript of my interview at 13-14. All of these facts and factors were discussed in a meeting that I held with (b) (6), (b) (7)(C)

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report) in his interview to (b) (6), (b) (7)(C) suggesting that there was a perception that (b) (6), (b) (7)(C) impartiality was impaired. As I advised during my interview, I was not aware of some of this information, such as the statements made by a complainant to (b) (6), (b) (7)(C) during their interview, and as I noted to the investigators, witnesses can say many things (hearsay, speculation, etc.), which is why credibility determinations are a must in investigations. Such statements have to be assessed for credibility and motive in view of the evidence. In any case, this information does not alter my position that there was no impairment to independence, either in fact or in appearance.

[26] All of the witnesses who were interviewed confirmed that both (b) (6), (b) (7)(C) and I had a professional working relationship with staff and that neither one of us had a personal or outside relationship with staff, including those investigated.

and (b) (6), (b) (7)(C) at the outset of the Internal Investigation. (b) (6), (b) (7)(C) and I arrived at the decision that conducting the investigation in this manner made the most sense. Even the Draft ROI admits that the investigator "did not find evidence that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had personal impairments." Draft ROI at 18.

(b) (6), (b) (7)(C) who is the focus of this finding in the Draft ROI, was assigned to work on the case for only 30 days and only in support of the Office of Counsel.[27] Indeed, as far as I am aware, 15 persons were interviewed by (b) (6), (b) (7)(C) and no one complained about independence issues during (b) (6), (b) (7)(C) involvement in the matter.[28] Further, when (b) (6), (b) (7)(C) arrived, we decided not to include him in (b) (6), (b) (7)(C) investigation in order to maintain his objectivity in case he was the Deciding Official. See Exh. 37 at 14. Only after the case was closed did I learn of anyone raising impartiality as an issue.

Contrary to the statements in the Draft ROI, at no time did (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) suggest or state that they should recuse themselves, nor did we receive any information from OIG staff that there was a recusal issue due to any impairments, actual or in appearance, of independence.[29]

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[27] (b) (6), (b) (7)(C) was not the lead investigator as claimed in the Draft ROI at 13. He conducted most of the material interviews with (b) (6), (b) (7)(C) and worked under the auspices of (b) (6), (b) (7)(C) which was always responsible for the Internal Investigations. See Exh. 38 to Draft ROI, Digital Transcript of my testimony at 13-14; Exh. 37 to Draft ROI at 12-13 ((b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) oversaw the investigation). Major document reviews were conducted by (b) (6), (b) (7)(C) That my June 29, 2017, response referred to the investigation as a "joint investigation" is of no moment. See Exh. 40 to Draft ROI. I did not use joint to mean that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were equal; rather it was "joint" in that (b) (6), (b) (7)(C) initially conducted the witness interviews and, therefore, participated in the investigation along with (b) (6), (b) (7)(C)

[28] The ROI states that (b) (6), (b) (7)(C) expressed discomfort that he and (b) (6), (b) (7)(C) were conducting the investigation and would also be responsible for advising the proposing and deciding officials during the investigation. (b) (6), (b) (7)(C) did not tell me this; the ROI was the first time I heard of this. This does not impact the validity of the investigation.

[29] The ROI contends that (b) (6), (b) (7)(C) expressed concerns about the investigation being conducted internally. Id at 17. The Draft ROI places undue weight on (b) (6), (b) (7)(C) testimony to support its flawed finding. (b) (6), (b) (7)(C) purported statements were vague and uncertain on this point (perhaps due to the passage of time), as admitted in the ROI, and he testified that the concerns were about being a small IG and resources. On the topic of impartiality, he said he was concerned about appearances but "I don't know that I picked up on it at the time we did the interview" because there were so many other allegations." Exh. 37 (did not state that he actually recommended that the investigation be handled by an outside agency). In any case, whenever a case is handled internally, we consider courses of action, including whether a matter should be referred outside OIG. If (b) (6), (b) (7)(C) had expressed any reservations, he did not communicate to me any significant concerns about handling the matter internally and he certainly did not advise me that there was an impartiality problem or an appearance thereof that dictated our recusal. See

The Draft ROI nonetheless contends there was an appearance of impairments to impartiality because of "(b) (6), (b) (7)(C) longstanding relationship with the subjects of the SEC OIG Investigation, and with (b) (6), (b) (7)(C) in particular," see Draft ROI at 11. The Draft ROI also comments that (b) (6), (b) (7)(C) and I had worked together in the past at the U.S. Department of Treasury, although the evidence shows that I had little interaction, if any, with (b) (6), (b) (7)(C) while I was at Treasury. The Draft ROI focuses its discussion on (b) (6), (b) (7)(C) listing (b) (6), (b) (7)(C) then-current and past working relationship with (b) (6), (b) (7)(C), a single visit by (b) (6), (b) (7)(C) along with an unnamed (redacted) colleague to (b) (6), (b) (7)(C) home right after his wife had a baby to deliver celebratory gifts while he was on leave, (b) (6), (b) (7)(C) trust and reliance on (b) (6), (b) (7)(C) to get work done, and a 2015 email exchange between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in which (b) (6), (b) (7)(C) wished (b) (6), (b) (7)(C) a happy birthday and expressed gratitude that (b) (6), (b) (7)(C) was a boss, mentor and good friend. Upon closer scrutiny of these allegations and the circumstances, it is apparent they do not have significant bearing on the issue of impartiality.[30]

The Draft ROI simply links bits and pieces of witness testimonies together in a manner that leaves the reader with the false impression that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were personal friends or were in close relationships that impaired (b) (6), (b) (7)(C) objectivity. When one reads the witness testimonies in their entirety, it becomes apparent that (b) (6), (b) (7)(C) maintained a professional working relationship with (b) (6), (b) (7)(C) (he did not socialize with them) and questioned them aggressively during the Internal Investigation.[31] A review of the file of the Internal Investigation, including the witness statements, plainly demonstrates as much.

The Draft ROI finds an appearance issue based solely on garden-variety professional work relationships. The implications for the IG community and its work are immense.

I address the allegations underpinning this finding in more detail in Tabs A, B and D to this response. There, I explain why they should be discredited or at least found not to have

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Exh. 38, Digital Transcript of my testimony at 36 ("I'm sure if there was a problem, (b) (6), (b) (7)(C) or (b) (6), (b) (7) would have said I have an impairment or something like that).

[30] I was not aware during May 2016 in initiating the investigation of the following: 1) any visit by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) house to deliver a gift for his newborn child; any "keep in touch" communication that (b) (6), (b) (7)(C) had with (b) (6), (b) (7)(C) any flattering email sent by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) on his birthday. Nonetheless, this information would not have convinced me to change my decision to assign the matter to the Office of General Counsel and have (b) (6), (b) (7)(C) assist for about 30 days, all in the best interest of my office to investigate this matter objectively, thoroughly and expeditiously.

[31] See Exh. 27 ((b) (6), (b) (7)(C) stating that he thought the investigation was conducted objectively, based on how he was treated); Exh. 37 to Draft ROI (in discussing whether there was any favoritism, (b) (6), (b) (7)(C) stated "no, quite the opposite. At time there were conversations where there was extreme displeasure expressed" by those under investigation).

impacted my office's impartiality. For instance, keeping in touch with a professional contact such as networking or having a past and current working relationship does not automatically breach independence or create an appearance issue.[32] A visit to someone's home to drop off a gift exempted by 5 CFR § 2635.304 does not constitute a relationship that would impair [redacted] appearance. Furthermore, the cited visit and exempted gift occurred approximately 10 years ago.

In addition, Tabs A, B, C methodically outline how the Draft ROI leaves out favorable and exculpatory witness statements on the issue of independence. These omissions demonstrate that this Finding 1.1a falls short of the preponderance of the evidence standard. For instance, one witness stated that "they did not have any concerns whether the investigation could be handled objectively because [redacted], was conducting the investigation." Exh. 16 to Draft ROI at 2. Another witness stated that they "never considered whether objectivity would be an issue regarding SEC OIG's investigation of [redacted] and [redacted]" and that they would have expected [redacted] to have conducted an objective investigation into the matter. See Exh. 21 to Draft ROI at 3. [redacted] also saw no objectivity issues, testifying that she did not have any concerns about she and [redacted] conducting the investigation objectively and knew it needed to be conducted outside of SEC OIG's OI. Exh. 34 to Draft ROI at 2. Another witness agreed with these opinions, telling the ED investigators that they "believe[ ] the investigation was conducted above board." Exh. 35 at 2.[33] When viewing the evidence as a whole, it is plain that it does not support a finding that an "appearance of impairment to independence" existed. On page 13, the Draft ROI contends that [redacted] perceived [redacted] and [redacted] relationship as close. A review of her testimony makes clear that in stating that "That's your boy," she was speculating on why [redacted] may have given her preferential treatment and opining that [redacted] went to [redacted] when he wanted to get work done. This in no way equates to being "close," as the Draft ROI states.

Nonetheless, after acknowledging that my Office of Counsel had no impairments, actual or in perception, the Draft ROI attempts to challenge the internal investigation another way. See Draft ROI at 18-19. Specifically, the Draft ROI takes issue with my assignment of the investigation to the Office of Counsel on the ground that counsel was not trained in conducting criminal or administrative investigations.[34] Id. at 18. This has no merit. The Office of Counsel was qualified and competent to conduct the investigation. [redacted]

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[32] Nor should it given the prior and current working relationships that abound in the IG community. For instance, if relationships are a sufficient basis to require recusal, one questions whether the IG on this matter could have handled the investigation and whether IGs should be involved in a host of other matters currently and in the future.

[33] The Draft ROI cites to this witness's testimony on this topic but leaves out this key sentence, giving the reader the impression that the witness had some doubt about the objectivity of the investigation. See Draft ROI at 16-17. This is yet another example of the Draft ROI selecting evidence to support what appears to be a foregone conclusion on regarding certain allegations, rather than engaging in a careful analysis of lack of impartiality.

[34] I note that the underlying allegation does not raise this issue.

(b) (6), (b) (7)(C) has been in the IG Community as counsel for nearly 20 years. (b) (6), (b) (7)(C) is also a very experienced attorney with relevant experience.

Based on my working relationship with (b) (6), (b) (7)(C) I had full faith and trust in his and (b) (6), (b) (7)(C) ability, to complete the investigation and report in an objective and thorough manner. Furthermore, (b) (6), (b) (7)(C) had extensive experience with personnel matters, Merit Service Protection Board proceedings involving federal government employee disciplinary actions, EEO cases, and other employment-HR related proceedings and venues. (b) (6), (b) (7)(C) also had significant relevant experience, which is downplayed and minimized in the Draft ROI. She handled federal personnel actions and litigation at (b) (6), (b) (7)(C), similar to her duties at SEC OIG. Prior to federal employment, she was in private practice as a litigation associate where she conducted internal investigations on behalf of clients. See Exh. 34 to Draft ROI at 1. She told the ED investigators that the interviews were similar to the one they were conducting of her. Id. Both (b) (6), (b) (7)(C) had the necessary experience and ability to conduct an internal investigation into an HR and personnel matter with time and attendance aspects and both testified that they conducted an objective and thorough investigation. Exhs. 34 and 37 to Draft ROI. I agree.

Moreover, (b) (6), (b) (7)(C) testified to the same experience at (b) (6), (b) (7)(C), i.e., regarding "Department of Investigations against IG employees, including 1811s within my office. We handled them both internally within the Office of Investigations and we also handled them by retaining the services of other OIGs. So, in my experience, I have personally handled them in multiple ways, depending on the individual involved, the fact pattern." Exh. 36 at 15.

In final, albeit futile, attempts to discredit the Internal Investigation, the Draft ROI calls into question my credibility on page 20, third full paragraph, which I must address. The Draft ROI suggests that I provided conflicting information about why my office contacted the Office of Inspector General of the DOJ, asking for assistance. We contacted DOJ because the investigation was expanding dramatically, with new allegations being lodged by the same complainants as the investigation went on, and we wanted to move quickly to conclude the matter. We hoped DOJ could assist by providing some resources to help out my team. They could not. Regardless, my team worked hard to and did provide a thorough, complete and timely review. There is nothing inconsistent with those set of facts. To suggest otherwise is to ignore the chronology of events.

Furthermore, on page 20 of the Draft ROI, first paragraph, the Draft ROI recites a series of speculative comments by someone at DOJ OIG regarding the objectivity of the Internal Investigation. For instance, it states that this person "**inferred** that there were issues related to objectivity and impairments in SEC OIG's investigation" and that this person also "**reasoned** that typically, an OIG would ask for an external agency to conduct an investigation on its behalf if there were internal impairments." (Emphasis added). These statements are nothing more than speculation and have no place in the Draft ROI. As such, they should be disregarded by the IC.

I stand by this decision to conduct the Internal Investigation internally through my Office of Counsel with 30 days of support by (b) (6), (b) (7)(C) the best interviewer I know (fair, objective,

and tough with everyone), before he retired from federal government service. It was based on my professional judgment, my experience, my confidence in my staff to conduct an objective investigation, and the experiences of this office predating my arrival at the SEC. I felt it was the best way to proceed.

Allegation 1, Finding 1.1.b (pages 20-28)

This allegation and Finding 1.1b is without merit as it is not supported by the evidence. The claim that the SEC investigation was substandard because it was not conducted in accordance with any standards such as the SEC OIG Policy is incorrect. The IC should summarily reject the Draft ROI's finding that the Internal Investigation was "substandard" because it was not performed under the QSI.

As I have steadfastly stated throughout this investigation, and as the IG community well knows, the QSI does not apply to internal investigations conducted by functions outside of investigative operations, including those conducted by the Office of Counsel, which has not adopted the QSI, nor should it. The Draft ROI completely discounts my testimony and other evidence on this point, fails to examine applicable CIGIE standards and guidelines, and failed to include any testimony from other IGs in this regard. Instead, the Draft ROI conveniently marches through a checklist of QSI factors that match those listed in the "Memorandum of Investigation" and summarily concludes, in lockstep with the NSF "Memorandum of Investigation," that the Internal Investigation fell short in various areas. It would be improper and unfair to measure the investigation against the QSI and its specific framework, as I discussed above.[35]

ED OIG boldly advises in the Draft ROI "***Absent another standard governing the investigation, ED OIG used the QSI to determine whether the investigation was substandard, as alleged***." Draft ROI at 22 (emphasis added). They concluded that "this method was appropriate" for a few different reasons, i.e., the QSI are supposed to accommodate various types of investigations, the Internal Investigation involved potential time and attendance fraud, and a criminal investigator conducted the majority of the investigation. The Draft ROI ignores or fails to ascertain the proper applicability of the QSI. For the reasons stated above, it is wholly improper to simply apply the QSI to investigations they were not meant to cover. The IC should refuse the Draft ROI's invitation to do so as improper on its face and as a wrongful attempt to create policy outside of normal CIGIE standards, guidelines and norms. Further, the Draft QSI fails to acknowledge that the Internal Investigation was overseen and handled by (b) (6), (b) (7)(C)

I address the applicability of the QSI in detail in Tabs B and C and provide a summary here. Nowhere does the Draft ROI state the following relevant information that I provided during my interview, which is concerning. In 2010, the IC, while in the process of the 2011 approved QSI, discussed whether the QSI should apply to every investigation or inquiry done with the OIG

[35] On pages 23-29, the ROI assesses the Internal Investigation against the QSI, which is improper given that the QSI does not apply to the investigations. As such, this analysis should be disregarded. For the reasons discussed above, the Internal Investigation was conducted properly and in accordance with applicable policies and standards.

no matter who conducts it. The IC landed that the QSI should only apply to the investigative operations of an OIG; that means an office of investigations headed up by an AIGI, or any other unit that specifically adopted the QSI. Other Investigative Committee members, which include the approver of the DOE OIG Report, were involved in the 2011 QSI deliberative process, and I would expect would be able to corroborate this. In 2014 and 2015, while updating the 2017 Peer Review Guide, the investigation committee had a discussion about what gets peer reviewed. Again, we landed on the investigations under the control of the AIGI and any other unit with an OIG that has adopted the QSI. These discussions occurred well before the Internal Investigation.

Contrary to the Draft ROI's contention that my office had no standards in place that applied to the Internal Investigation (regardless of what is was called by my staff, i.e., management inquiry or investigation[36]), as discussed below, the IG Act and IG policies and procedures applied to the investigation, as well as other applicable laws and rules as referenced below. The overarching standard or requirement was to conduct a fair and impartial investigation, which we did. Whether the QSI applied turned on who was leading the investigation (and whether their department had adopted the QSI), not on what it was called.

As noted above, my rationale in placing this investigation under the auspices of the Office of Counsel was driven by the goal of ensuring independence and the perception of independence. The fact that the investigation was not conducted pursuant to QSI was never a concern because 1) I believed and had confidence in (b) (6), (b) (7)(C) doing the investigation – in part because of (b) (6), (b) (7)(C) extensive and varied experience with employment law and (b) (6), (b) (7)(C) experience in private sector investigations; and 2) I believed the standards of professional responsibility within the legal profession were very high and had power to ensure an accurate, objective, and professional assessment. I believe that is what I received from my Office of Counsel.

To second-guess what methodology should be employed in these investigations would be comparable to second-guessing whether an audit should be done pursuant to the blue book and an evaluation/inspection pursuant to the yellow book.

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[36] The Draft ROI and underlying investigation's focus on whether the Internal Investigation was a "management inquiry" or an "investigation" is misguided and places undue weight on the mere label applied to the internal investigation. See Exh. 37 to Draft ROI at (b) (6), (b) (7)(C) discussing inquiry versus investigation and referring to Hoecker states, "he's a former 1811. His vocabulary is investigation. . . . But my understanding was that we were conducting an internal inquiry. I'm not a 1811.") (b) (6), (b) (7)(C) own experience prior to joining the SEC reveals that different agencies use different terminology to describe different types of investigations. In discussing the terminology "inquiry" and "investigation," (b) (6), (b) (7)(C) testified that he conducts preliminary "inquiries," which are "essentially a stage 1 of an investigation," and one that he is planning to convert to a Stage 1 investigation, Stage 2 investigation, and that this was language he was used to from his time at (b) (6), (b) (7)(C). He further advised that he believes "preliminary inquiry" is a common usage in the IG community for the equivalent of a preliminary investigation or a Stage 1 investigation.

While it might be argued that under certain circumstances, a criminal investigation can only be conducted using QSI, investigations, including those that involve alleged time and attendance matters (technically criminal), are often conducted by counsel and/or individuals who are not criminal investigators without using QSI. In this case, I asked (b) (6), (b) (7)(C) if they believed there was any criminal activity based on their initial investigation. They said no. To make sure, I personally asked (b) (6), (b) (7)(C) to double-check with the U.S. Attorney's Office. They did. The AUSA confirmed their conclusion that this was not something that required or met the threshold of criminal prosecution.[37]

In conclusion, the outcome was a negotiated settlement and a letter of censure. There is no evidence that the outcome or conclusions would have been any different or the outcome harsher had this been done using QSI standards or reviewed by another OIG. It would be improper to apply the QSI to my office's Internal Investigation here for the reasons given above.

Allegation 1: Finding 1.2 (pages 29-31)

The underlying allegation is without merit. The SEC ROI properly characterized and stated the significance of the evidence. Finding 1.2, which does not address the actual relationship between (b) (6), (b) (7)(C) , suggests, without expressly stating, that the Internal Investigation was not objective or thorough because ED OIG "uncovered" information that was not reported in the SEC ROI and my office did not further investigate certain information (e.g., hotel stays). The term "uncovered" is inflammatory as it suggests that the information was purposely hidden, when it was not, or a lack of thoroughness in conducting the investigation. Although the Draft ROI fails to specify the information that was not included in the SEC ROI, it is apparent that the information was developed by my team, who included that information in the file and/or SEC ROI, and that they had reasonable explanations for why they did not further pursue certain information (while pursuing a host of other information and investigatory leads). All information in the report and file were considered during the issuance of the disciplinary agreement.

This finding is nothing more than second-guessing reasonable investigatory decisions and tactics. We had enough evidence to show appearance of an improper relationship and improper

[37] In trying to support its rationale for employing the QSI, the Draft ROI incorrectly implies that this should have been treated as a full criminal investigation at the outset and that criminal investigations necessarily apply the QSI. See Draft ROI at 20-21. If (b) (6), (b) (7)(C) believed there had been criminal activity or the U.S. Attorney's Office indicated that there might be criminal activity warranting potential prosecution, I would have referred the matter out right away. See also Exh. 37 ((b) (6), (b) (7)(C) discusses fact that cases may start off as an internal management investigation and then be referred out if criminal allegations are developed). Internal investigations must have the leeway to obtain basic facts and to determine if there is any merit to allegations of misconduct, including the extent and type of any misconduct, as a threshold matter. It is common for agency officials to use management to conduct administrative investigations, which underscores the discretion.

comments for which we entered into the disciplinary agreement. Some evidence we did not pursue because it was not necessary to do so, resources did not warrant further development in light of the evidence, and so forth.[38] This suggestion is especially offensive, given that the Draft ROI does not refute my position that the Internal Investigation was thorough, effective and impartial.

This is but one of the Draft ROI's failings. Here, it narrowly focuses on investigative procedures and tactics under specific frameworks, such as the QSI, but loses sight of other policies, procedures and directives under which IGs must operate. One such policy ignored by the Draft ROI is the Silver Book's following language: "Efficient and Effective Operations: "OIGs should strive to conduct their operation in the most efficient and effective manner. Each OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction." Silver Book at 20.

This finding also appears to raise concerns about an "overt investigation" being conducted by my office instead of a "covert, active" (i.e., undercover) investigation and seems to take issue with my briefing of the staff that there was an investigation. To put this into context, I used my professional judgment to notify OI staff that I had received an allegation of misconduct. I was not specific as to the type of allegation. As noted in Tab B, my briefing had multiple legitimate purposes. Further, regarding the cover/overt investigation, a covert operation would not have been successful in light of our resources, nor would it have provided results as outlined in Tab B. This was an appropriate judgment call on my part, which the draft report fails to recognize. As presented in the report, it appears that ED OIG is substituting their judgment for mine. As the IG, I am in the best position to exercise judgment for SEC OIG.

Again, our Internal Investigation was objective and thorough and accurately articulated the significance of the evidence, as discussed above, to take corrective action. The investigation spanned eight months, resulted in 15 interviews and a large record, as underscored by [redacted] detailed 51-page Report of Investigation. Note that we looked into the underlying allegations and could not substantiate many of them, for instance, the claim that [redacted] gave [redacted] an expensive birthday present.

It is important to note that the Draft ROI does not -- and cannot -- substantiate the overarching allegation that the investigation was a so-called whitewash, yet it implies as much throughout the report. Contrary to the Draft Report's suggestion that this investigation was a

[38] As [redacted] noted in her testimony, the team may have discussed gathering hotel video but that was outweighed by certain concerns (records, times) balanced against the possible value of any evidence collected. See Exh. 34 to Draft ROI at 3. [redacted] also confirmed that I did not have day-to-day oversight of the Internal Investigation. See id. at 3; see also Exh. 37 to Draft ROI ([redacted] confirmed that I received progress updates but was not involved in the actual investigative steps.) Regarding the discussion around warnings, I would have expected the interviewers to have given any required warnings. In any event, the failure to give any appropriate warnings does not warrant a finding that the Internal Investigation was "substandard."

whitewash, the fact is that all involved took this investigation seriously and did their best to conduct an objective and thorough investigation. As discussed above, the following sequence of key events not included in the Draft ROI demonstrate that: we received the allegations, took immediate action to move (b) (6), (b) (7)(C) to another office, immediately did triage, began the investigation, developed and added further allegations as the investigation progressed, and engaged in a negotiated settlement, which had the benefit of quick closure, no further lengthy litigation, and the ease of escalated discipline for further transgressions.

Allegation 1, Finding 1.3 (page 31)

The allegation and finding are misguided. First, the SEC ROI does not "speculate" in a manner favorable to (b) (6), (b) (7)(C) . Rather, in evaluating the evidence, the SEC ROI properly set forth plausible explanations based on that evidence about the subjects' activities in view of their work responsibilities. It ultimately concluded that there was an appearance of an improper relationship. In reaching this finding, the Draft ROI states that "[U]ltimately, however, neither (b) (6), (b) (7)(C) received any proposed disciplinary action." Draft ROI at 31, Finding 1.3, ¶ 2. This is incomplete and leaves the misimpression that no corrective action was issued. Rather, (b) (6), (b) (7)(C) entered into a disciplinary settlement and (b) (6), (b) (7)(C) was issued a letter of censure. The Draft ROI fails to acknowledge that proposals for discipline were not issued as we believed a disciplinary settlement and letter of censure were most appropriate based on the strength of our evidence[39] and our need for a prompt resolution in the interests of our office consistent with the SEC's disciplinary process and outcomes.[40]

Allegation 1, Finding 1.4 (page 32)

The underlying allegation is incorrect. Finding 1.4 is correct in not finding any misconduct. That said, I address this finding as it is a good example of the prejudicial use of the phrasing "did not substantiate." ED OIG found that (b) (6), (b) (7)(C) offices were separated expeditiously, which should have resulted in favorable language in the Draft ROI and, thus, made clear that the allegation was disproven. Separately, as noted in the Draft ROI,

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[39] The Draft ROI fails to acknowledge that we developed and evaluated evidence on this issue and found that there was no evidence that (b) (6), (b) (7)(C) were missing time for personal reasons or for work-related reasons. As such, we did not believe that the evidence would be supportable in any future proceedings if we combined the missing time and took disciplinary action of more than 12 days.

[40] (b) (6), (b) (7)(C) made clear during the investigation underlying the Draft ROI that "I never felt that I was being directed, encouraged, induced or influenced to go easy on (b) (6), (b) (7)(C) I did not witness, I did not participate in any meetings nor witness anything that would cause me to believe there was a concerted effort or a conspiracy or a desire to go light on them. See Exh. 36 to Draft ROI at 81-82.

(b) (6), (b) (7)(C) explained that it was impractical to prohibit the two from working together given the small office (12 agents) and an expanded case inventory.

Allegation 1, Additional Allegations of Misconduct Related to Allegation, not Addressed by SEC OIG (pages 33-25)

The Draft ROI wrongfully suggests that my office should have addressed certain allegations of misconduct. We handled the situations appropriately.

Regarding Additional Allegation 1 and the claim that I apologized for how I handled the matter, I apologized for not being more verbally empathetic and sensitive when she told me what had happened weeks before. It was not for how we handled her matter, which I believed we handled appropriately. As I informed ED OIG, I asked the individual what she wanted to do and she said she did not want us to do anything. I understand that she had told (b) (6), (b) (7)(C) via email that she did not welcome those comments and he did not make any further comments to her. In view of the matter, we believed it would be appropriate to respect her wishes. This information should be removed from the Draft ROI as there was nothing to investigate or address in the SEC internal matter.

Regarding Additional Allegation 2, it was within my discretion and judgment to proceed with the settlement option[41]. It is ultimately my job to make these kinds of calls. I advised (b) (6), (b) [redacted] that if we had a settlement agreement and there was a violation, we could impose progressive discipline. It was my view that proceeding with a final resolution was in the best interests of the investigation and my office. None of these allegations demonstrate any misconduct.

However, even if I would have had an outside entity conduct the internal on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) I would have still retained the responsibility to consider disciplinary action. The fact that complainants did not raise independence as an issue until after (b) (6), (b) (7)(C) was reassigned to the Office of Investigations, leads me to believe that the complainants would not have been satisfied with any investigative outcome or disciplinary action taken. No OIG staff member asked during the investigative field work that the matter be taken outside of the agency, which I would expect if they had actual concerns about impartiality. As stated above, the Draft ROI on its face does not represent a thorough, careful and impartial investigation.

Allegation 2.1, Finding 2.1 (pages 36-38)

I vehemently disagree with Allegation 2, 2.1 and Finding 2.1.

As an initial and critical point to this discussion, the Draft ROI, in an egregious oversight, fails to discuss, much less acknowledge, the fact that 1) the Integrity Committee had received a

[41] (b) (6), (b) (7)(C) testified than when he arrived at the SEC OIG, he learned that agreements like this were "extremely common," and that they had just completed an investigation of a senior counsel within SEC for which a similar agreement was reached. Exh. 36 to Draft ROI at 41.

complaint that the Internal Investigation was a whitewash around December 2016, and 2) I had responded to that complaint in February 2017 and offered the entire file of the Internal Investigation to the IC in June 2017.

I have attached a timeline of the following events, along with other significant dates in this matter, as Tab E. In January 2017, I received a letter from the IC with a discussion regarding IC #868 (unrelated to the Internal Investigation) and requesting a response to a new allegation IC #872, which claimed that I "failed to ensure than an appropriate and objective investigation into the complaints took place in a timely fashion. Rather [I] assigned an individual to investigate the complaints who had a close and longstanding relationship with the subjects. . . . The manager conducting the investigation then retired." See Exh. 3.a, which is a copy of the IC letter dated December 23, 2016. I responded to the allegation in a letter dated February 2, 2017, providing background about the investigation and stating that I believed advising that the Internal Investigation was objective and that it was still pending. See Exh. 3.b, which is a copy of my February 2, 2017, letter to the Integrity Committee. In a letter dated May 30, 2017, the IC advised that additional complaints were made in IC #872, which added that I had or was conducting a "phony investigation" and "are engaging in a cover-up to protect your senior managers." The IC asked me to keep them apprised of the status of the investigation, including the outcome, any potential action taken as a result of the findings, and a copy of the report of the investigation. See IC Letter to Hoecker, dated May 30, 2017 (IC #890 Request for Information), Exh. 3.d.

On June 29, 2017, I responded to the Integrity Committee's May 30, 2017 letter regarding the allegations that I "**failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion**" and that I was engaged in a cover-up. In the response, I provided the Integrity Committee with a redacted copy of the internal investigation conducted by (b) (6), (b) (7)(C). Further to expeditiously clarify the issue and be transparent, in my **June 29, 2017**, letter, I expressly offered the Integrity Committee the opportunity to review the unredacted report and all exhibits to resolve the complaint. See Exh 3.e. The Integrity Committee did not review the unredacted report or the exhibits at that time.

Separately, in approximately late June 2017, the NSF IG contacted me and insisted on reviewing the Internal Investigation as part of its peer review, apparently due to similar complaints it had received about the investigation being a whitewash, with the additional allegation that I was purposefully trying to keep the Internal Investigation from being peer reviewed. In the NSF IG's **September 14, 2017**, letter to the IC, IG Lerner expresses concerns about "the lengths" to which I and my senior staff went to keep the Internal Investigation out of the peer review and speculates throughout that " '[t]hese efforts seem to stem from their desire to avoid any external review of the internal investigation," and "[t]heir reluctance to allow us to verify the information they provided about the nature and timing of the closing of the case – at the risk of the peer review process – suggests that they do not believe that the investigation could withstand scrutiny." These speculations are plainly refuted by the record, which shows that I have been transparent about the Internal Investigation, which my entire staff knew about, the IC knew about, and various persons at other agencies knew about (DOJ OIG and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)). See Exhs. 37 and 38 to Draft ROI and Tab E (timeline of events). It was also reported in the SEC OIG Semiannual Report to Congress, October 1, 2016-March 31, 2017, at page 23. In speculating throughout her letter and ascribing ill intent to my office, IG Lerner appears not to have been aware that I had been providing responses to the Integrity Committee about allegations that the Internal Investigation was a "whitewash" and offered the full investigative file to them. Her letter has led to false and damaging allegations that my team and I tried to obstruct the peer review to keep the Internal Investigation from being scrutinized.

Even though the Draft ROI does not make an express finding of misconduct, this allegation and Finding 2.1 connote wrongdoing, i.e., that my staff and I were trying to hide something. This is belied by the record, which the Draft ROI fails to appropriately consider in assessing this allegation.

Finding 2.1 that the SEC OIG offered "shifting" justifications is inaccurate. The implicit suggestion in the word "shifting" is that these reasons were specious at best and fabricated at worst is factually incorrect. The Draft ROI fails to mention, let alone address, my position as set forth in documentary evidence and my interview. In reality, I provided multiple reasons why the Internal Investigation was not subject to peer review. All were applicable and not mutually exclusive. In addition, (b) (6), (b) (7)(C) advised that he was unaware of the peer review. See Exh. 37 to Draft ROI. This finding, which is an insidious attack on my credibility, is significant because the Draft ROI seeks to use it to summarily discount my position, while omitting exculpatory information. Further, this finding is particularly troubling because it is inconsistent with information set forth in Finding 2.4 of the Draft ROI, specifically that "NSF OIG ultimately determined that the investigation would not have been selected for review since it did not fall within the scope of the peer review." Draft ROI at 39, last paragraph. The implicit attack on my credibility is unwarranted and not supported by the record.

It is correct that my office did not include the Internal Investigation in the peer review conducted by NSF OIG during the week of May 22, 2017. However, there were no "shifting" reasons as for why my office did not believe the investigation was subject to peer review. Rather, there were multiple, valid justifications for not including it, which I articulated to the NSF OIG.[42] The Draft ROI's characterization of the reasons as "shifting" implies that my office refrained from including the Internal Investigation in the peer review under pretext. This attack on me and (b) (6), (b) (7)(C) credibility is unwarranted and not supported by the evidence. I had reasonable articulable bases to support my position and the NSF OIG ended up agreeing that the investigation was not appropriate for the peer review as it was outside the peer review time frame. It was within my discretion to determine which investigations were included in the peer review. I also understandably sought to preserve any applicable attorney-related privileges and protections over an investigation (e.g., attorney work product doctrine, attorney-client privilege). Moreover, other functions within an IG, outside of investigative operations, were not included in peer reviews based on the peer review survey that CIGIE had previously conducted. I understand from conversations with other IGs that (b) (6), (b) (7)(C) conducted certain investigations.

[42] See Exh. 8, which consists of various email strings over the course of the NSF peer review that discuss among other things, dispute resolution and the scope of peer review.

Given the genuine disagreement between my office and the NSF's OIG office, the appropriate course of action would have been for the NSF's OIG to enlist help from the investigations committee, which I head, and seek a resolution there. This procedure is not acknowledged in the Draft ROI. I would have recused myself and the vice-chair would have stood in my stead. I suggested this to the NSF's IG in June 2017 and she declined. The investigative peer review resolution process that I described above is clearly articulated in the Quality Assessment Review Guide.

Ultimately, after the NSF OIG OI peer review was complete, the SEC OIG received a "pass," which means NSF OIG OI determined that SEC OIG has adequate internal safeguards and management procedures to ensure that CIGIE standards are followed and that law enforcement powers conferred by the IG Act are properly exercised. Importantly, as noted in the Draft ROI, "NSF OIG ultimately determined that the investigation would not have been selected for review since it did not fall within the scope of the peer review." Draft ROI at 39, last paragraph. This confirmed the position that I had taken all along that the internal should not have been peer reviewed.

In short, The NSF OIG and I had a genuine dispute regarding whether internal investigations of staff conducted outside the auspices of investigative operations are included peer reviews during her pending peer review of my office. I sought to resolve the matter through the available process. At the same time, the IC was well aware of the Internal Investigation, had the SEC OIG report, and could have reviewed the entire file any time. It is absurd to claim that my office obstructed the peer review process to avoid the Internal Investigation from being scrutinized given these facts.

It is apparent that the Draft ROI does not go so far as to find any violations with respect to this allegation and Finding 2.1 because there was no basis to do so. That said, this finding and the negative implication therein should be rejected.

I would be remiss not to discuss what appears to be a serious and explicable departure from CIGIE standards, guidelines and norms l that I did not become aware of until the middle of my first interview with ED OIG. This transgression raises serious questions about transparency, objectivity/fairness, due process and protocol, and whether this investigation has been tainted. This entire investigation should be closed for this reason alone.

The following timeline of events sheds a light on this issue:

- May 26, 2017: Peer Review exit conference with NSF OIG via telephone. NSF completed review of a sample of 20 case files which resulted in a pass.

- June 29-30, 2017: NSF requested access to the Internal Investigation for review base on a complaint they received. I did not provide it for the reasons discussed above, including the fact that it was outside the peer review time frame, which was later confirmed by NSF OIG on October 25, 2017. NSF claims it cannot complete peer review due to our disagreement.

- August 29, 2017: I request and am granted an extension for the peer review completion from Vice Chair of the Investigations Committee.

- September 14, 2017: NSF IG submits a letter to IC, in which she disagrees with my position that the Internal Investigation should not be peer reviewed. The letter, which I had not seen until my interview in **June 2018** in this case, is accusatory. This letter was outside CIGIE standards and guidelines. It lacked transparency and open discussion as required during a peer review as articulated in the peer review guide.

- September 28, 2017: I email the Vice Chair of the Investigations Committee requesting assistance with the dispute with IG Lerner.

- October 16, 2017: I email NSF IG, telling her I will make the Internal Investigation available for her review, otherwise, my peer review was not going to be completed.

- October 25, 2017: NSF OIG reviews Internal Investigation (for 2 hours)

- October 26, 2017, NSF OIG issues a Memorandum of Investigation for Case Number 1-17-0083-O, titled "Review of SEC OIG Case 17-0246-1." **I was not aware of this until 8 months later during my interview as a subject in this case**. The "Memorandum of Investigation" states that the NSF reviewed SEC OIG case File 17-0246-I, i.e., the Internal Investigation, on October 25, 2016, to determine "if the investigation was conducted in an untimely manner; therefore, precluding the case from being included in the universe of cases for peer review" and concluded that "the investigation was conducted in a timely manner; therefore, it should not have been included in the peer review scope" Inexplicably, the unnamed "Investigator" then used the QSI checklist D-1 (inapplicable to QSI investigations) to assess the Internal Investigation and concluded that there were certain deficiencies in Q1, Q3, Q7, Q9-10, Q12, Q22, Q24, Q30, and Q31. Note that this Memorandum is incorrectly described as "NSF OIG Review of File 17-0246-I, 10/26/17," Exhibit 51 in the Draft ROI. Tellingly, the accompanying checklist rates every category except for the first one, which concerns objectivity, which it leaves blank. If there was truly a concern with independence, why did NSF IG not rate that category? In any case, the comments in Q1 do not articulate any basis or analysis to conclude lack of independence.

- November 13, 2017: I received a peer review report and letter of observations from IG Lerner, with the results of the peer review. The team identified several best practices and positive attributes of our OI, a few areas for improvement/efficiency/effectiveness, and concluded that the SEC OIG was in compliance with internal safeguards and management procedures for its

investigative function. I note that the peer review included investigations performed by (b) (6), (b) (7)(C) . IG Lerner stated that she hoped the "review team's suggestions [are] helpful" and that "**implementation of the suggestions is done at [your] discretion**," which included suggestions for complying with QSI (investigative plans for all cases (4 out of 21 did not have a plan), notifying the FBI of opening a criminal case (of 21 cases, 6 late notifications and 1 without a notification), and certain updates to the evidence inventory and voucher process).[43] The NSF OIG did not find a deficiency or non-compliance issue with any investigation.[44] I note that that the Internal Investigation was the 21st case they reviewed even though NSF OIG confirmed the Internal Investigation was outside the peer review time frame.

- November 15, 2017: I sent a letter to IG Lerner, NSG OIG, thanking her for the peer review, unaware of the September 14, 2017 side letter and Memorandum of Investigation.

- November 15, 2017: IC notifies me of Allegation 2.

- December 4, 2017: NSF IG Lerner sends letter to Chairman Dahl, apprising him of additional developments since her September 14, 2017, letter, i.e., that I had provided the file to her team so that "they could verify the assertion that the matter had been legitimately closed outside of the period covered by our peer review," which they had. Although her letter suggests that that we had agreed her staff would assess the Internal Investigation against the QSI, that statement is too simplistic. As stated above, I did not expect the NSF team to apply the QSI to the Internal Investigation other than to confirm that the matter fell outside the peer review period and was surprised they had done so.

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[43] Even though the QSI did not apply to the Internal Investigation here, the peer review guidelines underscore the fact that QSI compliance issues are and should not be treated as misconduct issues on the part of anyone at the SEC OIG.

[44] Section 8 (a) of the peer reviews guide states: An "observation" generally occurs when one or more "No" answers are recorded for questions in a peer review checklist (e.g., Appendices B, C and D). Section 10 states: observations. All preliminary observations, findings, deficiencies or significant deficiencies must be presented during the review to the officials) designated by the reviewed OIG prior to issuing the draft report. This action will help avoid any misunderstandings and aid in ensuring that all facts are considered before a formal draft report is prepared. On page 14, Section 2 states: A supplemental observations letter may optionally be furnished to the IG of the reviewed office. 2 (a) Peer review teams may offer suggestions for improvement or increased efficiency/effectiveness based on observations, findings and deficiencies identified.

- June 13, 2018: The ED Investigators confronted me with the above Memorandum of Investigation (MOI) during my interview. I was very surprised, as this was the first time I had seen the MOI. MOIs are used during investigations, not peer reviews (which use checklists). I was not given a copy of the document during my interview.

The NSF IG September 14, 2017, letter and the October 26, 2017, NSF IG Memorandum of Investigation are very troublesome. These documents indicate that the NSF IG undertook some sort of investigation, either on its own initiative or at some unspecified person's direction, while conducting the peer review. This is highly inappropriate and outside of protocol. If the NSF had concerns, they should either have shared them with me during the peer review or, after recusing itself from the peer review, provided them to the Integrity Committee, which could have formally opened an investigation to review our Internal Investigation. These actions by the NSF have infected this Integrity Committee investigation. The Draft ROI's findings look suspiciously similar and, in some instances, they mirror the notes in the October 26, 2017, Memorandum of Investigation, which also assessed, in a very cursory way, the Internal Investigation against QSI. Both share many of the same findings and both assessed the Internal Investigation using the QSI. It appears that the investigators here did not independently and objectively evaluate the evidence. Instead, because the NSF Memorandum of Investigation used the QSI, the Draft ROI used the QSI. Because the NSF stated that "(b) (6), (b) (7)(C) involvement in the investigation raises concerns about his independence," the Draft ROI finds that there is an appearance of lack of impartiality without critical analysis. I urge the IC to compare the allegations and findings in this Draft ROI against these NSF IG documents.

I also urge the IC to consider the chronology above and query 1) since NSF OIG concluded that the Internal Investigation was outside of the peer review time frame, why did it look at and opine on the Internal Investigation; 2) why did the NSF OIG not discuss any independence issues with me before finalizing its peer review; 3) why was the process not transparent; 4) can an IG conduct a peer review and also investigate the IG at the same time, and 5) what is the "Memorandum of Investigation" issued by NSF OIG; and 6) how is it used, how is a subject given notice and why was I not provided notice of it.

Allegation 2.2, Finding 2.2 (page 38)

This allegation is not only unsubstantiated but is without merit. The IC should accept this finding. No further response is necessary.

Allegation 2.3, Finding 2.3 (pages 38-39)

This finding does not expressly contend that there was any violation or wrongdoing although it suggests as much, nor does it explain why (b) (6), (b) (7)(C) called the Internal Investigation an inquiry. The allegation, coupled with the finding, a) implies that my staff and I used different labels to describe the Internal Investigation as a pretext to avoid peer review, and b) implies that my agreement to include the Internal Investigation was an admission of some sort, i.e., that my office offered pretextual reasons for excluding the Internal Investigation from peer review when we knew it should have been included, which I strongly dispute. Any such

implications should be dismissed as unfounded and improper given the evidence. That I referred to the Internal Investigation as an investigation and (b) (6), (b) (7)(C) referred to it as an inquiry had no substantive impact on the Internal Investigation, including whether or not it was included in the peer review. As I explained to NSF OIG and CIGIE, internal investigations conducted outside investigative operations, whether called an investigation or inquiry, conducted by [redacted] were not subject to peer review. The key factor is who was responsible for the investigation, not what is was labeled. Further, see Tab B, page 2, to this response, which explains the reason why we placed this matter in the "Investigations" section rather than create a new section for internal or counsel investigations. This was a judgment call on my part, which the Draft ROI fails to appreciate. This allegation is unsubstantiated and should be dismissed.

Allegation 2.4, Finding 2.4 (page 39)

As ED OIG correctly found, this allegation is unsubstantiated. Accordingly, it should be dismissed.

Separately, I note that the Draft ROI acknowledges that the "NSF OIG ultimately determined that the investigation would not have been selected for review since it did not fall within the scope of the peer review." Draft ROI at 39, last paragraph. This is a key point that must be taken into account in considering the Draft ROI's allegations and findings regarding the peer review process.

Allegations and Findings 3 and 4

There were no findings of violations. Tab B further discusses Finding 3, which supports my response to Allegations 1 and 2 that investigative functions outside the Office of Investigation (or equivalent) "do[ ] not operate under the guidelines established by the QSI"; and 2) that internal OIG investigations conducted outside of investigative operations (that is under the AIGI) are not required to be included in a CIGIE peer review. These allegations were not substantiated and, in any case, are without merit and, therefore, should be dismissed.

V. Conclusion and Requested Relief

The conclusions and findings in the Draft ROI are antithetical to an IG's statutory independence. Adopting the Draft ROI's findings of violations would be contrary to the IG Act and CIGIE standards and guidelines and result in wide-reaching and unintended consequences across the IG community. Further, the Draft ROI is not credible as it appears to have stemmed from the NSF IG September 14, 2017, letter and Memorandum of Investigation that influenced the findings. Even if that had not been the case, the Draft ROI has failed to establish the facts of alleged wrongdoing by a preponderance of the evidence and those facts fail to provide a reasonable basis to conclude that I engaged in the alleged violations. As such, the allegations and purported violations should be dismissed as unsubstantiated and this investigation closed, with

an appropriate exonerating report from CIGIE. See Integrity Committee Policies and Procedures 2018 at 10.C.i.[45]

I submit that should CIGIE believe that the investigations similar to those referenced in this section that may forego peer review should instead be included in peer review, CIGIE has the option to change its policies and procedures to reflect this. Further, if CIGIE believes that OIGs should not conduct internal investigations of its OIG staff any time there is evidence of prior or current work history among staff or that QSI should apply to internal investigations, it can expressly specify this in its policies and procedures. Any changes to CIGIE policy or narrowing of an IG's discretion should not take place by way of a Draft ROI that has far reaching implications across the IG community.

Should the IC believe any recommendations are necessary, I suggest that they should be in the nature of recommendations to improve or clarify the peer review process and recommendations regarding the scope and applicability of the QSI, which is within the scope of its authority. See Integrity Committee Policies and Procedures 2018 at 10.C.ii.

In short, I have fully cooperated with the investigation and provided truthful, accurate, and complete information in this matter, as evidenced by my written statements and interview. [46]

I respectfully request that the Integrity Committee conclude that a) I did not engage in any violations or fall below applicable standards in my handling of the Internal Investigation, and b) that I did not engage in any violations by taking the position that the Internal Investigation was not subject to CIGIE peer review.

I look forward to your careful consideration of the allegations and findings in the Draft ROI and the due process required under the Integrity Committee's procedures.

[45] Even if the evidence is "equipoise," i.e., equally worthy of belief, the ROI still has failed to meet its burden.

[46] I recognize that the ROI disagrees with some of my team's investigatory processes and tactics and that some IC members may have approached the investigation differently. These differences in opinion are common and do not constitute misconduct.

If you have any questions about this response or require more information, please do not hesitate my counsel, (b) (6), (b) (7)(C) .

Sincerely,

(b) (6)

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission

Cc: (b) (6), (b) (7)(C)

Encls.: Tabs A-E
Exhibits 1-8

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

March 5, 2019

By Email and Overnight Delivery

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington, DC 20006

Re: Addendum to Draft Report of Investigation
Ref: Request IC890 and IC909, I18EAS0038

Dear Integrity Committee:

I am writing in response ("**Response**") to the United States Department of Education Office of Inspector General (**OIG**") Addendum to the Draft Report of Investigation in Request IC890 and IC909 (**"Addendum to Draft ROI")**.[1]

I. Procedural Background

A. On February 1, 2019, I received the Addendum to Draft ROI from the Integrity Committee. I was interviewed in advance of the Addendum on December 6, 2018, after being notified on November 16, 2019, through my counsel (b) (6), (b) (7)(C) , that the ED OIG expanded the scope of its investigation to include an additional allegation, as described below.

II. Response to Addendum to Draft ROI

I informed (b) (6), (b) (7)(C) regarding the contact underlying the allegations, as discussed below, and the reason for it. I respectfully submit that there was no wrongdoing, as I only contacted this individual to ensure that there were no unresolved workplace issues that I needed to address. The allegations and my detailed response are as follows:

Allegation: On or about October 10, 2018, IG Hoecker, SEC OIG, engaged in wrongdoing. This allegation arose out of information provided in an email, received by the IC on October 1 2, 2018, containing information that, on October 10, 2018, Hoecker contacted [redacted] SEC OIG, and questioned [redacted] regarding information [redacted] provided to ED OIG during the IC investigation.

[1] This Response was prepared with the advice of counsel from (b) (6), (b) (7)(C) .

Finding: ED OIG substantiated that Hoecker contacted [redacted] on October 10, 2018, regarding statements attributed to [redacted] in the draft ROI. Hoecker stated he did not contact any other witnesses about the IC investigations or their interviews.

General Response:

In the afternoon and into the evening of October 10, 2017, when I reviewed pages 33-34 of the Draft ROI IC890 and IC909, dated August 21, 2018, I noted that an unnamed person claimed:

> On or around **July 1, 2016** [unnamed person] met with (b) (6), (b) (7)(C) and Hoecker separately and informed them that on more than one occasion (b) (6), (b) (7)(C) had made comments to her regarding how she looked and dressed that made her uncomfortable. **In 2014, she had shared information with (b) (6), (b) (7)(C) regarding other comments (b) (6), (b) (7)(C) made to her that made her uncomfortable.** (b) (6), (b) (7)(C) did not follow up with [unnamed person] nor did [unnamed person] go back to (b) (6), (b) (7)(C) According to [unnamed person] in the **third quarter of 2017**, she told Hoecker that she did not think that the incidents with (b) (6), (b) (7)(C) and her reporting of them was handled well. [Unnamed person] recalled that Hoecker acknowledged [unnamed person] position and apologized for how he handled the matter (Exhibit 31) . When asked about [unnamed person] claims during his interview, Hoecker stated that, "I said, what do you want to do? And she didn't want to do anything. I believe it was after the, I think there's a time period involved where you have to report these things, and I think that had expired " (Exhibit 38, Tr. 98) Regarding his alleged apology to [unnamed person] Hoecker stated, "I don't know how the OIG handled these remarks. I may have apologized that it had happened to her. But the handling of it, I, I don 't think we actually handled it because it was reported after a certain time." Exhibit 38 to at Tr. 99 (emphasis added).

Summary of phone call:

My memory was that (b) (6), (b) (7)(C) was a person who talked to me about (b) (6), (b) (7)(C) comments to her fitting the above passage. After thinking about the way the draft ROI presented the information, I was concerned as a leader that (b) (6), (b) (7)(C) still was receiving unwelcome remarks from (b) (6), (b) (7)(C) and/or perhaps she had a diminished trust of me. I had no concern that she (or any other witnesses for that matter) had spoken to ED OIG during the Integrity Committee investigation or with her testimony. By making this phone call, I had no intention of intimidating, threatening, or retaliating against (b) (6), (b) (7)(C). (In fact, in November 2018, I rated (b) (6), (b) (7)(C) performance at the top of the scale.) I work with (b) (6), (b) (7)(C) and wanted to ensure that there were no outstanding issues that I needed to address (and to address any that did exist). I decided to call her in the late afternoon or early evening of October 10, 2018, on her personal cell as is customary. I also occasionally call her and (b) (6), (b) (7)(C) at this time to catch up on issues of the day or to learn about emerging issues.

When she answered the phone, I asked her if she would talk to me about the information in the draft ROI. She agreed. I told her that way I read the draft ROI, it appeared that when she met with me in July 2016 that she may have been making a complaint and if so, she might have expected me to take requisite action. I was also concerned about the way the draft ROI

characterized my apology to her as it seemed to suggest that I had been made aware of a complaint against [redacted] but did not address it.

What I took away from our conversation is that she made no complaint to me in July 2016, just as I recalled. If she had made a complaint (and I had misunderstood any request for action), I would have addressed it now. Further, she told me that I apologized during her subsequent quarterly performance couversation, probably a month later. This apology was for the way I handled our conversation in July 2016 for not being as empathetic as I felt I could have been. After reflecting on my interaction with her in July 2016 in preparation for her performance conversation, I thought I could have shown more empathy and I apologized for that. I also wanted to make sure that our July 2016 conversation did not adversely affect her trust in me [redacted].

The following workday I proactively informed [redacted] what I had done and the reason for the phone call. The Addendum to the Draft ROI does not articulate any violations and I respectfully submit that there were none.

If you have any questions about this response or require more information, please do not hesitate my counsel, [redacted].

Sincerely,

[redacted]

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission

Cc: [redacted]

TAB A

TAB A

Additional Background Information re Internal Investigation

In February 2013, when I took over as the IG at SEC, I inherited an organization whose spirit and morale were broken in the aftermath of an outside OIG investigation of IG SEC staff and the abrupt departure of the IG and the Deputy IG. There was no effective leadership, and employee engagement scores ("FEVS") were at the bottom of the agency. The SEC viewed the OIG as not competent and, instead, bent on embarrassing the agency without cause.

I helped rebuild the OIG by hiring staff and good leaders. Our FEVS scores moved to the top the top of the agency for 2015 and 2016, as did our professional reputation.

During May 2016, the SEC OIG had a total of 51 full time employees (FTE). The OIG Office of Investigations consisted of 18 people. The Office of Investigations was led by an SK-17 AIGI with three SK-15 SACs. There was one administrative assistant, two investigative analysts, one IT specialist, one administrative investigator, and 9 criminal investigators.

As the SEC IG, I have used internal staff to conduct objective *internal* OIG inquiries and investigations of allegations against OIG employees without issue. More specifically, prior to the (b) (6), (b) (7)(C) matter that resulted in the Internal Investigation, I had two other instances in which I used internal staff for this purpose. Both internal investigations were executed effectively, efficiently, and fairly.

In May 2016, I received two complaints from OIG investigative staff of misconduct on the part of (b) (6), (b) (7)(C). I had to determine the validity and egregiousness of the complaints quickly and objectively. The complaints received were from non-direct witnesses and did not provide corroborating evidence nor details of personal knowledge of the alleged wrongdoing.

There were no prior conduct issues with (b) (6), (b) (7)(C). In fact, they had the reputation of being "go to" agents—able to get things done, particularly new initiatives and special projects. Prior to the two complaints, I had no reason to believe there were any issues with their professional and personal conduct.

Upon receipt of the allegations, I wanted an effective, efficient inquiry to determine the facts and truth so that I could make a proper disposition while minimizing any disruption to our office. I assigned the matter to the Office of Counsel, in particular (b) (6), (b) (7)(C) and asked (b) (6), (b) (7)(C) to assist (b) (6), (b) (7)(C) until he retired, within 30 days. Everyone in OIG knew (b) (6), (b) (7)(C) was departing. He had announced it in April 2016. Since he was departing, (b) (6), (b) (7)(C) had no interest or stake in the outcome of the investigation other than to assist (b) (6), (b) (7)(C) in obtaining the facts. Neither (b) (6), (b) nor (b) (6), (b) (7)(C) were identified in the complaints and (b) (6), (b) (7)(C) was retiring in 30 days. Nor did they have an independence impairment, whether actual or in appearance.

As far as I knew at the time and even today, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not have any personal relationships with (b) (6), (b) (7)(C), other than, at most, the typical professional relationships that exist in any office. There had been no previous complaints about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) independence or objectivity. They did not recuse themselves from the investigation (nor did they ask) as they certainly could have done. In fact, a review of

their interviews of (b) (6), (b) (7)(C) revealed that (b) (6), (b) (7)(C) were aggressive in their search for the truth.

When the investigation began, I promptly tried to defuse the situation by moving (b) (6), (b) (7)(out of the Office of Investigations. I did so on Monday, May 23, 2016, within six calendar days of receiving the complaints. This date was (b) (6), (b) (7)(C) first day back to the office following training/leave. Within 30 days of starting the investigation and based on the evidence that had been gathered to date, we concluded that this matter was not criminal, but rather administrative in nature—at best. Upon (b) (6), (b) (7)(C) advisement that the case was not criminal, in an abundance of caution and to reinforce that (b) (6), (b) (7)(C) were not being given any preferential treatment, we sought an USAO decision. It was declined. At this point, had this matter involved agency employees, the most I would have done would be to refer it to agency management for action.

Given that the matter was administrative in nature, that I had prior success with conducting *internal* OIG inquiries, and given the morale-deflating experience from a previously conducted *outside* OIG investigation, I decided the inquiry should remain internal with (b) (6), (b) (7)(C) who I believed could conduct an objective investigation.

During the course of (b) (6), (b) (7)(C) investigation, we identified and developed, on our own, additional, potentially related administrative allegations from the original complainants and anonymous sources. The final complaint related to this matter was made in November 2016; allegations continued to come in as we investigated the matter. Planning ahead, I took further steps to seek outside assistance from DOJ OIG in the event the results of the Internal Investigation merited DOJ action or taxed our internal resources through the continuing allegations. Ultimately, DOJ OIG was not able to assist, but (b) (6), (b) (7)(C) was able to properly and professionally complete the investigation.

On January 19, 2017, I received a completed Counsel report of investigation which resulted in corrective action. Each page of that report was marked "Attorney Work Product." (b) (6), (b) was the action official. We were left with a few administrative violations: an appearance of improper relationship and making improper comments on the part of (b) (6), (b) (7)(C). In the end, based on the limited nature of the sustained administrative allegations, I determined that a negotiated settlement was in the best interest of the OIG. In March 2017, (b) (6), (b) (7)(C) entered into a commensurate negotiated disciplinary settlement. (b) (6), (b) (7)(C) received a letter of censure.

I stand by my decision to internally investigate the allegations against the OIG staff when the complaints were received. It was based on my professional judgment; my experience in leadership and the investigative process; and the experiences of this office where another OIG conducted an investigation that predated my arrival at the SEC. It was the best way to proceed and was consistent with the discretion provided by the IG Act and the Silver Book.

TAB B

TAB B

Draft ROI Does Not Adhere to QSI

This document depicts some of the inaccurate, incomplete, and mischaracterized facts, which do not adhere to the Quality Standards for Investigations (QSI), that are contained in the Draft Report of Investigation Integrity Committee IC 890 and 909, dated August 21, 2018 (Draft ROI).

Standards Applicable to the Draft ROI

QSI Page 8, DUE PROFESSIONAL CARE

Due professional care must be used in conducting investigations and in preparing related reports.

Guidelines:
Thoroughness—All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure that pertinent issues are sufficiently resolved
Impartiality—All investigations must be conducted in a fair and equitable manner, with the perseverance necessary to determine the facts.
Objectivity—Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve an issue. This includes inculpatory and exculpatory information.

QSI Page 11, EXECUTING INVESTIGATIONS

Investigations must be conducted in a timely, efficient, thorough, and objective manner. The investigator is a fact-gatherer and should not allow conjecture, unsubstantiated opinion, bias, or personal observations or conclusions to affect work assignments. He or she also has a duty to be receptive to evidence that is exculpatory, as well as incriminating.

QSI Page 13, REPORTING

Reports (oral and written) must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, logically organized, timely, and objective.

QSI Page 14, REPORTING

Guidelines
2. The principles of good Draft ROI writing should be followed. A quality Draft ROI will be
logically organized, accurate, complete, concise, impartial, and clear and should be issued in a timely manner.
3. Reports should contain exculpatory evidence and relevant mitigating information when discovered during any administrative investigation.

TAB B
Draft ROI Does Not Adhere to QSI

The Draft ROI Executive Summary section is located on pages 1-5. I have briefly addressed my concerns for that section below. Following that, I bring a more detailed list of concerns applicable to the Background and Investigative Findings sections, which are pages 6-52 of the Draft ROI.

Executive Summary

Page 1-3, Biased Investigation and Reporting

The draft Report states:

> Allegation 1. The investigation was a whitewash: Inspector General Carl Hoecker (Hoecker), SEC OIG, caused and (b) (6), (b) (7)(C) , SEC OIG, conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) SEC OIG, and (b) (6), (b) (7)(C) , SEC OIG, that understated the significance of the evidence and seriousness of the misconduct.
>
> Allegation 1.1. Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) , was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C) in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew.
>
> Finding 1.1.a. ED OIG substantiated that Hoecker assigned the investigation to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) , although (b) (6), (b) (7)(C) and SEC OIG were not free in appearance from impairments to independence.

IG Hoecker's Summary Response to 1.1.a: The term "whitewash" was not addressed by the Draft ROI. Further, the independence of (b) (6), (b) (7)(C) and the SEC was not impaired. Finding 1.1.a should be unsubstantiated. For further details see pages 10-27 of the Response.

The draft Report states:

> Finding 1.1b. ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's Quality Standards for Investigation (QSI) or the SEC OIG Policy.

IG Hoecker's Summary Response to 1.1.b: The QSI apply to investigations conducted under the investigative operations (under the auspices of the AIGI) unless specifically

adopted by a function outside of investigative operations. My testimony as the Chairman of the Investigations Committee and that of a longstanding AIGI Committee member addressing proper applicability of the QSI were ignored. The SEC investigation was conducted by Office of Counsel who had not adopted the QSI. SEC OIG policy was not violated. Finding 1.1.b should be unsubstantiated. For further details see page 22-24 of the Response.

The draft Report states:

> Allegation 1.2. The Draft ROI stated the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It did not address a third alternative circumstantial evidence of a sexual relationship. The Draft ROI appeared to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of: [bulleted items a-f]
>
> Finding 1.2. Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C), ED OIG could not substantiate whether the Draft ROI of investigation (ROI) understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

IG Hoecker's Summary Response 1.2: First, a sexual relationship between employees is not prohibited by SEC policy. Therefore, to prove a sexual relationship using any type of evidence would not be proper. In fact, pursuing investigative leads to prove something that is not a violation could be considered harassment or violation of privacy. Second, pursuing investigative leads are a matter of professional judgment. Third, we had sufficient evidence to take action on the related conduct and decided not to pursue leads that would not produce additional violations. Regardless, because a negotiated disciplinary agreement for appearance of improper relationship was used, known information outside of Counsel's investigative report located in the file was considered to reach discipline. Finding 1.2. should be unsubstantiated. For further details see pages 24-26 of the Response.

The draft Report states:

> Allegation 1.3. The SEC OIG report 's author speculated in a manner favorable to (b) (6), (b) (7)(C), who could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].
>
> Finding 1.3. ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) time out of the office was spent on official

> activities. Instead, the SEC OIG planned to include the missing time in proposals for discipline for response, but the proposals were never issued.

IG Hoecker's Summary Response to 1.3: The Draft ROI omits a key fact. The reason proposals were not issued is because we used a negotiated disciplinary agreement. Further, we could not substantiate whether (b) (6), (b) (7)(C) were out of the office working or not working. Based on their high level of individual performance results, we determined they were working. Finding 1.3. should be unsubstantiated. For further details see page26 of the Response.

The draft Report states:

> Allegation 1.4. The sanction developed and agreed on by (b) (6), (b) (7)(C) SEC OIG, did not address or correct all of the circumstances that reportedly contributed to the appearance of an inappropriate relationship.
>
> Finding 1.4. ED OIG did not substantiate that (b) (6), (b) (7)(C) failed to separate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) offices. (b) (6), (b) (7)(C) did not prohibit or limit (b) (6), (b) (7)(C) from conducting official business together.

IG Hoecker's Summary Response 1.4: Finding 1.4. should remain unsubstantiated. For further details see page 27 of the Response.

<u>Page 4, Allegation and Finding 2, Biased Investigation and Reporting, Omitting Exculpatory Information</u>

The draft Report states:

> The respondents (identified as Hoecker, (b) (6), (b) (7)(C)) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) improperly excluded the investigation from the peer review conducted by the NSF OIG, which prevented NSF OIG from completing the peer review.

IG Hoecker's Summary Response: The alleged "obstruction" is both inflammatory and wrong. The peer reviewers did not follow the protocol for dispute resolution between peer review teams and entity being peer reviewed as articulated in the Quality Assurance Review Guidelines, published by the Investigations Committee. The NSF OIG did not even seek policy interpretation or guidance from CIGIE Investigations Committee about the dispute. At the end, SEC OIG felt compelled to permit NSF OIG to review the internal matter. The NSF OIG reviewed the file and concluded that the investigation was properly closed outside the peer review scope period. By its own conclusion, NSF OIG substantiated that the internal investigation would not have been selected during this peer

review, yet the case was listed in the peer review report.[1] We did not prevent NSF from completing the peer review as evidenced by the peer review report being issued.

The entire allegation 2 should be unsubstantiated. See the details on pages 28-34 of the Response.

Page 5, Unsubstantiated Allegation 3

IG Hoecker's Summary Response: I have no further comments. See page 34 of the Response.

Page 5, Unsubstantiated Allegation 4

IG Hoecker's Summary Response: I have no further comments. See page 34 of the Response.

Background

Page 8, Ignoring Exculpatory Facts

The Draft ROI reflects:

> According to the QSI, "Recognizing that members of the OIG community are widely diverse in their missions, authorities, staffing levels, funding, and day-to-day operations, certain foundational standards apply to any investigative organization. As such, the standards out lined here are comprehensive, relevant, and sufficiently broad to accommodate a full range of OIG criminal, civil, and administrative investigations across the CIGIE membership" (Exhibit 41, p. Preface).
>
> At the time of this investigation, Hoecker served as the Chair of CIGIE's Investigations Committee responsible for advising the IG community on issues involving criminal investigations and criminal investigative personnel, and on establishing criminal investigative guidelines. As the chair, Hoecker's message included in the updated QSI in 2011, emphasized the QSI will continue to guide the community in high-quality investigative work, and that members of CIGIE shall adhere to professional standards developed by the CIGIE as stated in the IG Reform Act of 2008 (Exhibit 41).

---

[1] Another reason for the peer reviewers to not review the internal investigation is that investigative peer review assesses investigations for compliance with the QSI. The Investigations Committee determined in 2011 that the QSI would apply to functions within the AIGI purview, or by function outside the AIGI if the QSI were specifically adopted by that function. The SEC OIG internal investigation was conducted outside of the investigative operations, by (b) (6), (b) (7)(C). My OC has not adopted the QSI and the QSI are not applicable for the OC internal investigation.

Additional QSI Message Quote (Emphasis added):

> The crafters of this QSI version, as did their predecessors, recognized the unique mission and varying statutory responsibilities of each CIGIE member. As a result, each OIG will **adhere to the QSI in accordance with its unique mission, circumstances, and department or agency.**

Proper Context:

> The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting. As the working group was drafting the 2011 QSI, the Investigations Committee had deliberative discussions and the Committee landed on a decision that the QSI would be applicable to those investigations conducted under the supervision of an OIG's Assistant Inspector General for Investigations (AIGI), which we defined in the standards as "investigative operations." The QSI would apply to functions outside of the AIGI purview if the standards were specifically adopted by that function. Nowhere in the QSI or during deliberative Investigations Committee discussions was it ever contemplated that each OIG shall apply the QSI across every function of an OIG.
>
> The SEC OIG internal investigation was conducted by my Office of Counsel (OC), outside of the investigative operations. My OC had not adopted the QSI before or after my tenure began as IG and the QSI are thus not applicable for the OC investigation.
>
> At TAB C of this response, I have prepared a more detailed historical context for the proper applicability of QSI, to include those Investigative Committee and AIGI Committee Members who would have been knowledge of those deliberations.

References to the QSI as a criteria for measuring Counsel's investigation should be removed from the Draft ROI.

Page 8, paragraph 5, Omission of Key Information

The Draft ROI reflects:

> According to SEC OIG policy, Chapter 1, "Investigative operations are required to be conducted in accordance with the general and qualitative standards that have been adopted by the CIGIE, entitled Quality Standards for Investigations" (Exhibit 39, [SEC OI Policy Chapter 1] p. 3).

Complete SEC policy cite is (Omitted words highlighted):

> OI Investigative operations are required to be conducted in accordance with the general and qualitative standards that have been adopted by the CIGIE, entitled Quality Standards for Investigations.

Effect:

> By omitting the "Office of Investigations (OI)," ED investigators seem to be encouraging the reader to wrongly assume that SEC OIG has adopted the QSI for investigations conducted outside of the OI.

The accurate quote should be used and this information removed from the Draft ROI as the QSI does not apply to this SEC internal investigation.

INVESTIGATIVE FINDINGS

Allegation 1

The investigation was a whitewash: Hoecker caused and (b) (6), (b) (7)(C) conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) that understated the significance of the evidence and seriousness of the misconduct.

Allegation 1.1

Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C), tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C) in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew existed.

Finding 1.1.a

ED OIG substantiated that Hoecker assigned the investigation to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) l, although (b) (6), (b) (7)(C) and SEC OIG were not free in appearance from impairments to independence.

Response: QSI Deficiencies

Page 10, Lack of Thoroughness in Reporting

The Draft ROI reflects:

> Allegation 1. The investigation was a whitewash: Hoecker caused and (b) (6), (b) (7)(C) conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) that understated the significance of the evidence and seriousness of the misconduct.

Allegation not answered:

> The Draft ROI portrays part of allegation 1 that the "investigation was a whitewash" yet nowhere in allegation 1 or its sub-allegations 1.1-1.4 is the term "whitewashed defined or the question of "whitewash" resolved.

Effect and Implication:

> The Draft ROI does not convincingly address the allegation of "whitewash." I think everyone would agree that our investigation was not a whitewash. As written, the reader is left with the question of "whitewash" being unanswered.

Allegation 1 "the investigation was a whitewash" should be answered as unsubstantiated.

Page 10, Ignoring Exculpatory Information, Unconvincing Conclusion

The Draft ROI reflects:

> Allegation 1.1 Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C), tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C) in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew existed.
>
> Finding 1.1.a. ED OIG substantiated that Hoecker assigned the investigation to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), although (b) (6), (b) (7)(C) and SEC OIG were not free in appearance from impairments to independence.

Correct Facts:

> In May 2016, I received two complaints from OIG investigative staff of misconduct on the part of (b) (6), (b) (7)(C). I had to determine the validity and egregiousness of the complaints quickly and objectively. The complaints received were from non-direct witnesses and did not provide corroborating evidence nor details of personal knowledge of the alleged wrongdoing.
>
> As the SEC IG, I have used internal staff to conduct objective internal OIG inquiries and investigations of allegations against OIG employees without issue. More specifically, prior to the (b) (6), (b) (7)(C) matter that resulted in the Internal Investigation, I had two other instances in which I used internal staff for this purpose. Both internal investigations were executed effectively, efficiently, and fairly – and protected the staff from the destructive effects of an external investigation handled by another OIG office, which had previously undercut the morale of the SEC OIG's office before I became the SEC IG. Using

my prerogative as the IG, I decided to assign the matter to (b) (6), (b) (7)(C) and, for 30 days, (b) (6), (b) (7)(C) Another OIG would not find any different investigative results, had an external OIG been brought in.

I assigned the (b) (6), (b) (7)(C) matter to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) would assist for 30 days, because they both had no independence issues. To conclude otherwise is to ignore the following exculpatory facts. (b) (6), (b) (7)(C) successfully supervised (b) (6), (b) (7)(C) approving travel, training, and awards with no complaints. (b) (6), (b) (7)(C) departed from government service on June 26, 2016. The internal investigation began on May 16, 2016 and was reported final on January 19, 2017. There was much analyses, records reviews, follow up interviews, and report writing to be conducted between June 26, 2016 and January 19, 2017 for (b) (6), (b) (7)(C) to complete after (b) (6), (b) (7)(C) departed. The internal matter took 8 months to complete. Everyone in OIG knew (b) (6), (b) (7)(C) was departing, as he announced it in April 2016. Accordingly, no one in the OIG had to be concerned about (b) (6), (b) (7)(C) trying to protect any interest he might have or that he could retaliate against anyone.

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not have any personal relationships with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) other than the typical professional relationships that exists in any office. (b) (6), (b) (7)(C) testified that he was three or four levels down from me when we worked together at Treasury and had limited contact with me as DAIGI. He also had a professional relationship with (b) (6), (b) (7)(C) and never socialized with him. Exh. 27 to Draft ROI. There had been no previous complaints about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) independence. They did not recuse themselves from the investigation.

(b) (6), (b) (7)(C) and the SEC OIG have no impairment to independence, either actual or in appearance. In fact, a review of their interviews of (b) (6), (b) (7)(C) revealed that (b) (6), (b) (7)(C) were aggressive, not characteristic of someone who lacks independence. (b) (6), (b) (7)(C) both commented in their interviews that Further, (b) (6), (b) (7)(C) developed additional findings independent of the initial complaints. See TAB A for more details on the assignment of this matter to my Office of Counsel (OC).

IG Discretion/Judgment:

At the end of the day, this is a judgment call on my part and that of any IG with their office. Both (b) (6), (b) (7)(C) and the SEC OIG were independent. I believed this was the best approach, given my experience with *outside* OIG investigations, my success with *internal* OIG investigations, and the administrative nature of the matter. We were successful in that we gathered the facts and took appropriate action. The perception by some OIG staff of the appearance of an independence impairment ignores the fact that they are not reasonable third parties with knowledge of the relevant facts and circumstances under the Silver Book.

Allegation 1 should be unsubstantiated.

TAB B
Draft ROI Does Not Adhere to QSI

Page 10, last paragraph, Inaccurate Quote

The Draft ROI reflects a quote from my 6/29/17 letter to the Integrity Committee:

> "Initially assigned [redacted] to conduct the investigation jointly [redacted] and SEC OIG's Office of Counsel ([redacted]) assumed sole responsibility for the investigation once [redacted] retired."

Correct Quote from my letter:

> The investigation was initially started as a joint effort by [redacted] and [redacted].

Effect and Implication:

> ED OIG did not properly quote my statements. Although the sentences are similar, ED OIG's use and placement of "assigned [redacted] to conduct the investigation" gives a different meaning and obscures the fact that [redacted] was the long-term leader of the investigation and had sole supervisory responsibility for it from its inception. [redacted] assisted with the investigation, which is why I said it was jointly conducted with [redacted] but he was not the official responsible for it.

Allegation 1 should be unsubstantiated.

Page 11, paragraph 3, Omission of Exculpatory Information

The Draft ROI reflects:

> We referred to CIGIE's Silver Book (Exhibit 42), CIGIE's QSI (Exhibit 41), and SEC OIG policy to review the standards applicable to OIGs and OIG staff "to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties"

Complete Silver Book Independence Standard (Highlighted areas were omitted):

> The IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The IG and OIG staff should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work.

Context and Implication:

> Clearly the independence standard as written contemplated the statutory independence of an IG. In its Draft ROI, ED OIG quotes a partial standard. The omitted portion is critical for the reader to understand that while an OIG's work must be independent and must be perceived as independent. The required perception of independence is measured by reasonable third parties "with knowledge of the relevant facts and circumstances" – not to those who are only in a position to speculate. Considering independence requires an objective test, as measured by "reasonable third parties," not OIG staff members. That said, [redacted] and the SEC OIG were independent as measured by the Silver Book standard.

ED OIG should include the complete quote and make the proper conclusion that [redacted] and SEC OIG did not have an impairment to independence. Allegation 1 should be unsubstantiated.

Page 11, paragraph 5, Lack of Due Diligence, Omitting Exculpatory Information

The Draft ROI reflects:

> The QSI state that, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude." According to the QSI, " [t]his standard places upon agencies, investigative organizations , and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties."

Proper Context:

> During 2010-2011, the Investigations Committee revised the QSI, which were adopted by CIGIE December 2011. The Committee landed on a decision that the QSI would be applicable to those investigations conducted under the supervision of an OIG's AIGI, which we defined in the standards as "investigative operations." The QSI does not apply to all functions of an OIG. A non-investigative operation function could opt to adhere to the QSI *or not*, but the QSIs are not imposed across the board to all functions of an OIG. This has been the practice for the past 10 years of investigative peer reviews.

Effect and Implication:

> My OC has not adopted the QSI for their work and, as such, I would not expect them to follow or be measured by the QSI. In other words, the fact that my OC does not follow QSI is proper and does not equate to a substandard investigation. For More details on the QSI application, see TAB C.

The ED OIG should remove all references to the QSI as it pertains to the SEC internal investigation as is does not apply.

Page 11, paragraph 5, Lack of Due Diligence, Omitting Exculpatory Information

The Draft ROI reflects:

> According to SEC OIG policy, Chapter 1: Investigative Policies and Standards, "upon receipt of an allegation of misconduct by OIG staff other than designated staff members, the Inspector General will review the allegation and make a preliminary determination whether the allegation should be handled administratively by the appropriate OIG management official or should be further investigated. When an allegation is determined to require further investigation, the AIGI will conduct the investigation" (Exhibit 39, p.2).

Complete SEC Policy Cite (Omitted Policy Quote Highlighted);

> Chapter 1, Investigative Policies is, "Upon receipt of an allegation of misconduct by OIG staff other than designated staff members, the Inspector General will review the allegation and make a preliminary determination whether the allegation should be handled administratively by the appropriate OIG management official or should be further investigated. When an allegation is determined to require further investigation, the AIGI will conduct the investigation. However, if, in the circumstances of the case, it could appear that the AIGI has a conflict of interest, the Inspector General will either select another individual internally to conduct the investigation or request that an external agency conduct the investigation. The investigating party will prepare a Report of Investigation and submit to the Inspector General. The OIG will take disciplinary action against the OIG staff as warranted."

Effect:

> By excluding a key process and decision option articulated in our policy, ED investigators are denying the reader with information that supports my decision to assign the matter to (b) (6), (b) (7)(C) and have (b) (6), (b) (7)(C) assist for 30 days. Hence, there is no violation of SEC OIG policy.

The complete quote should be reviewed and this information removed from the Draft ROI.

TAB B
Draft ROI Does Not Adhere to QSI

Page 12, paragraph 1, Lack of Due Diligence, Omitting Exculpatory Information

The Draft ROI reflects:

> SEC OIG's policy on independence mirrors the independence standards out lined in the QSI (Exhibit 39, p. 3).

The referenced QSI cite from the Draft ROI is on QSI page 7, paragraph 1, reads:

> This standard places upon agencies, investigative organizations, and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational.

The complete SEC policy cite of Chapter 1, Investigative Policies, page 3 and 4 is (highlighted sentence is material and not reflected in the ED Draft ROI):

> In all matters related to investigative work, the OI must be free in fact and appearance from impairments to independence; must be organizationally independent; and must maintain an independent attitude. This standard places upon OI and Investigators the responsibility for maintaining independence, so that judgements used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational. Investigators should notify the AIGI and/or Counsel to the IG whenever they believe that they have any of these impairments.

Effect:

> In their Draft ROI, ED investigators omitted a key safeguard articulated in our policy, yet claim there was an appearance of impairment of independence and imply there was a violation of SEC OIG policy.
>
> By omitting the last sentence, ED investigators have denied the reader knowledge of a key control and safeguard to independence. I note that (b) (6), (b) (7)(C) did not notify the IG or (b) (6), (b) (7)(C) that he believed he had any an impairment. As such, if the reader had the benefit of the highlighted sentence, they would have the opportunity to make a conclusion and the accurate determination that there was no violation.

The complete policy quote should be reviewed and this information removed from the Draft ROI.

TAB B
Draft ROI Does Not Adhere to QSI

Page 12, paragraph 4, Overweighing the Value of a Fact

The Draft ROI reflects:

> According to (b) (6), (b) (7)(C) she maintained a supervisor, subordinate relationship with (b) (6), (b) (7)(C) while at Treasury OIG and SEC OIG. She described the relationship as friendly but strictly professional. When (b) (6), (b) (7)(C) left Treasury OIG, she and (b) (6), (b) (7)(C) kept in touch via telephone and have continued to stay in touch through his retirement.

Judgment and Proper Context:

> I view keeping in touch with a professional contact as networking that would not cause a breach of independence by (b) (6), (b) (7)(C) in this situation. During her networking activities with (b) (6), (b) (7)(C) she did not seek employment or any other benefits from (b) (6), (b) (7)(C) Regardless, I did not know of this telephonic contact prior to our internal matter being finalized. And, even if I had, I would not have changed my decision.

Allegation 1 should be unsubstantiated.

Page 12, paragraph 4, Ignoring Exculpatory/Contextual Information

The Draft ROI reflects:

> According to [unnamed person] SEC OIG she and (b) (6), (b) (7)(C) visited (b) (6), (b) (7)(C) at his home when he was placed on administrative leave at Treasury OIG. The reason for the visit was because (b) (6), (b) (7)(C) wife just gave birth and they were bringing gifts to celebrate. [Unnamed person] described the gift giving and visit as a personal gesture out of friendship.

Proper context:

> Two individuals, including (b) (6), (b) (7)(C) visited (b) (6), (b) (7)(C) one time while he was on administrative leave to drop off a baby gift for his newborn child.

Exempted Gift:

> A single visit to someone's home to drop off a gift exempted by 5 CFR 2635.304 does not constitute a relationship that would impair (b) (6), (b) (7)(C) independence. This visit and exempted gift occurred approximately 10 years ago.

I did not know of this visit and gift prior to our internal matter being finalized. The activity did not violate the CFR and even if I had known about it, I would not have changed my decision to have (b) (6), (b) (7)(C) conduct the investigation.

Allegation 1 should be unsubstantiated.

TAB B
Draft ROI Does Not Adhere to QSI

Page 13, paragraph 3, Omitting Exculpatory/Contextual Information

The Draft ROI reflects:

> Subject of the investigation, (b) (6), (b) (7)(C) perceived (b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) as close.
>
> (b) (6), (b) (7)(C) stated to (b) (6), (b) (7)(C) [Because] everybody knows I'm (b) (6), (b) (7)(C) girl, just like everybody knows (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C) boy. I mean it is what it is.

Proper Context:

> The following is an excerpt surrounding the aforementioned quote on page 49-50 of the cited transcript in the Draft ROI:
>
> Page 49
> 14 Q Do you think anyone else might believe you get
> 15 preferential treatment?
> 16 A I'm sure people have their perceptions.
> 17 Q Why would that be the case?
> 18 A Because everybody knows I'm (b) (6), (b) (7)(C) girl, just
> 19 everybody knows (b) (6), (b) (7)(C) your boy. I mean, it is what it
> 20 is. People have their people that they know are going to
> 21 get the job done. And I don't think there's any arguing
> 22 that I've made great cases and I -- even apparently
> 23 though I take ridiculous, inordinate PT time and lunch
> 24 time, I'm one of the highest producers. You can't argue
> 25 that. And I would be missed if (b) (6), (b) (7) wasn't one of your
> Page 50
> 1 highest producing (b) (6), (b) (7)(C)
> 2 Q I don't question your productivity. I don't
> 3 question (b) (6), (b) (7)(C) productivity. That's not the issue.
> 4 A So (b) (6), (b) (7) is your person. It's no secret.
> 5 Q By you saying you're (b) (6), (b) (7)(C) girl, that means
> 6 you're his producer?
> 7 A No, I'm just saying that it -- when he wants
> 8 something done and he wants it done a particular way, he
> 9 knows that I'll get it done. It doesn't mean that every
> 10 thing he thinks I'm going to get it done. There's areas
> 11 that he's identified as my vulnerabilities. And when it
> 12 comes to those sorts of cases, he doesn't come to me.

Review of Subject's transcript:

> Reading the complete passage above, the subject is speaking about whether she received preferential treatment from [redacted] which she denies. In her testimony, she is clearly *speculating* on why others in the office may feel she has received preferential treatment.

Effect and Implication:

> Although important contextual information was just a few lines away, ED OIG did not include it in their Draft ROI. Specifically, she describes what is meant by "I am [redacted] girl. The Draft ROI as written does not accurately portray [redacted] testimony. As written in the Draft ROI, the reader is not given the benefit of context and the reader is wrongly left with the impression that even [redacted] knows there is favoritism—when in fact that is not her testimony. Further, the Draft ROI grossly overstates her testimony. The import of [redacted] testimony was not that [redacted] were "close." Rather, she was simply opining that [redacted] was the person [redacted] went to "to get the job done."

Proper contextual information should be added to the Draft ROI and this testimonial evidence should not be construed to support that [redacted] viewed [redacted] relationship with her nor [redacted] relationship with [redacted] as close, nor that [redacted] independence was impaired.

<u>Page 13, paragraph 4, Omitting Exculpatory/Contextual Information</u>

The Draft ROI reflects:

> Despite his role as the lead investigator until his departure, [redacted] also provided factual information to the investigation, which made him a witness.

Proper Context:

> [redacted] was not the lead investigator. The matter was assigned to [redacted] with [redacted] assisting for 30 days. [redacted] was in charge of the investigation.
>
> Also, it is common for investigators and fact gatherers to be witnesses in administrative proceedings, particularly as it relates to policy clarifications, factual matters and expertise.

The Draft ROI should be corrected to reflect the fact that [redacted] was one of the individuals assigned to conduct the investigation *under the supervision of* [redacted] The Draft ROI should also remove the inference that [redacted] as an investigator and witness is problematic.

TAB B
Draft ROI Does Not Adhere to QSI

Page 13, paragraph 5, Omitting Exculpatory/Contextual Information

The Draft ROI reflects:

> (b) (6), (b) (7)(C) was involved in decision-making that was considered in the investigation and in subsequent decisions regarding the appropriate discipline to impose on (b) (6), (b) (7)(C).

Proper Context:

> The performance evaluation that (b) (6), (b) (7)(C) provided was not only considered during the discipline process for (b) (6), (b) (7)(C), but also was provided as information to the USAO when the matter was declined for criminal prosecution consideration on June 15, 2016. (b) (6), (b) (7)(C) interpretation of the SEC OIG's physical fitness policy was necessary information to provide to the AUSA for consideration. Oftentimes, a manager provides this type of information so the prosecutor or decision-makers in administrative matters can render a decision.
>
> (b) (6), (b) (7)(C) rated (b) (6), (b) (7)(C) annual performance. Because this was the middle of the 2016 evaluation period, (b) (6), (b) (7)(C) needed information from the supervisor as to (b) (6), (b) (7)(C) current performance for the investigation. Upon request, (b) (6), (b) (7)(C) provided this via a memo. Because (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) supervisor of record for that same time frame, (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to provide her performance information. (b) (6), (b) (7)(C) provided that via a memo.
>
> Had he not retired, (b) (6), (b) (7)(C) could have been the proposing official or could have entered into the disciplinary settlement. This is normal in a supervisor-subordinate relationship.

This contextual information should be factored into what the Draft ROI presents and it should not be used to support anything improper.

Page 14-15, Mischaracterization and Conflating Unrelated Information

In the Draft ROI:

> ED OIG concluded that "Redacted Name made the following statements during his interview to (b) (6), (b) (7)(C) that should have alerted (b) (6), (b) (7)(C) to perception of impairments within SEC OIG (Exhibit 48)." The Draft ROI on page 14-15 presents 10 bulleted quotes that should have alerted perception of impairments.

Proper Context:

> The complainant was being questioned to ascertain whether he had any direct knowledge of misconduct or knew the identity of OIG staff who had such

knowledge. Nothing in the complainant's testimony suggests even a hint of impairment to independence on the part of (b) (6), (b) (7)(C) .

The Draft ROI picks and chooses various quotes from a complainant interview that are unrelated to (b) (6), (b) (7)(C) independence. The Draft ROI then conflates these quotes to create support that (b) (6), (b) (7)(C) have an impairment to their independence.

Please see TAB D for my analysis and comments for further details pertaining to page 14-15 of the Draft ROI.

This entire passage in the Draft ROI should be removed.

Page 15, First Paragraph, Conflating Testimony

The Draft ROI reflects:

When presented with the above remarks made by- Hoecker stated it was the first time he heard of such remarks (Exhibit 38, Tr. 39)

Quote From Transcript:

(b) (6), (b) (7)(C): Just some specific examples of (b) (6), (b) (7)(C) concern about reprisal, his concern that you and (b) (6), (b) (7)(C) were protecting (b) (6), (b) (7)(C) and possibly (b) (6), (b) (7)(C) Several times he, he voices that opinion, and, and whether or not there is favoritism towards (b) (6), (b) (7)(C) . Was this interview discussed after it was conducted with you?
MR. HOECKER: No. This is the first time I hear of such remarks.

Context:

The comments referred to by (b) (6), (b) (7)(C) are those made by (b) (6), (b) (7)(C) during his May 2016 interview. Prior to my interview with ED OIG, I was not aware of those comments. Had I known about (b) (6), (b) (7)(C) comments from May 2016, I would not have changed my decision to assign the internal matter to OC with (b) (6), (b) (7)(C) assisting for 30 days.

As far as (b) (6), (b) (7)(C) comments, a contextual review of his transcript reveals the participants in the interview are not speaking of independence, rather they are seeking answers as to why no one in the office of investigations has mentioned or complained about (b) (6), (b) (7)(C) behavior prior to May 16, 2016. For a more detail analysis and proper context of (b) (6), (b) (7)(C) comments see TAB D.

This entire passage in the Draft ROI should be removed as it has no value in terms of whether (b) (6), (b) (7)(C) should have known of potential impairments to independence.

TAB B
Draft ROI Does Not Adhere to QSI

Page 15-18, Biased Questioning, Omitting Exculpatory Information

The Draft ROI reflects:

> Some SEC OIG staff ED OIG interviewed did not believe the investigation was impartial or that it should have been conducted within SEC OIG.

Silver Book Standard:

> The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.

Implications and Effect:

> According to the Draft ROI "some OIG staff" perceived impairments. The record shows that other others did not perceive impairments and I presume some staff members were not asked. Because the relevant Silver Book standard is "viewed by impartial knowledgeable third parties," questioning OIG staff about impairments of the internal matter has no evidentiary value and causes needless anxiety for the SEC OIG staff. As a result, this line of questioning asks for speculative information and did little more than incite poor morale.

This information should be removed from the Draft ROI.

Page 16-17, Omitting Exculpatory Information

The Draft ROI reflects:

> According to [Unnamed person] (b) (6), (b) (7)(C), and [different unnamed person] had a close working relationship where it almost seemed like they were really good friends. He believed the investigation could have been conducted fairly, however, he had not known (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to conduct investigations into inappropriate relationships. He did think the investigation could have appeared to lack objectivity if (b) (6), (b) (7)(C) solely conducted the investigation. However, this perception was mitigated by having (b) (6), (b) (7)(C) assist (Exhibit 35).

Complete Quote (Omitted sentence highlighted):

> According to [unnamed person] (b) (6), (b) (7)(C), and [unnamed person] had a close working relationship where it almost seemed like they were really good friends. He believed the investigation could have been conducted fairly, however, he had not known (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to conduct investigations into inappropriate relationships. He did think the investigation could have appeared to

lack objectivity if (b) (6), (b) (7)(C) solely conducted the investigation. However, this perception was mitigated by having (b) (6), (b) (7)(C) assist (Exhibit 35). [unnamed person] stated he believes the investigation was conducted above board.

Effect:

If the reader had the benefit of the omitted quote, they would make the proper conclusion that this witness does not see an issue with (b) (6), (b) (7)(C) conducting the internal investigation.

This omitted information should be added to draft ROI to consider the accurate opinion of the OI staff.

Page 18, Placement of Exculpatory Information

The Draft ROI reflects:

… we did not find evidence that (b) (6), (b) (7)(C) had personal impairments.

Effect:

This information should also be also placed within Finding 1 and 1.1.a and considered throughout the Draft ROI.

Finding 1 should be unsubstantiated.

Page 20, finding 1.1.b, Omitting/Ignoring Exculpatory Information

The Draft ROI reflects:

ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's QSI or the SEC OIG Policy.

Proper Context:

Section 6 (a)(2) of the IG Act gives the IG authority "to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable"

The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting. As the working group was drafting the 2011 QSI, the Investigations Committee had deliberative discussions and the Committee landed on a decision that the QSI would be applicable to those investigations conducted under the supervision of an OIG's AIGI which we defined in the standards as

"investigative operations." The QSI would apply to functions outside of the AIGI purview *if* the standards were specifically adopted by that function.

In my testimony, I tell ED OIG "Here is the readout as I'll tell you from, as a CIGIE chair and also from the SEC IG, is that those are for, the QSIs are for investigative operations. So, if somebody is supervised by investigative operations, which is an AIGI, then they are going to follow those unless there is a carve-out for a, what we do sometimes is an MIR, which is a Management Implication Report that is kind of like a flash report of a lack of internal controls."

In (b) (6), (b) (7)(C) testimony, an individual who has been part of the QSI revisions (b) (6), (b) (7)(C), (Exhibit 36 of the draft ROI) he tells ED OIG: "I would not have thought of including it in the peer review process because it was not done by the office of investigations. It was not done under the quality standards."

The SEC OIG internal investigation was conducted outside of the investigative operations, by (b) (6), (b) (7)(C). My OC has not adopted the QSI prior to or during my tenure as the IG and the QSI are not applicable for the OC investigation.

At TAB C of this response I have prepared a more detailed historical context for the proper applicability of QSI, to include those Investigative Committee and AIGI Committee Members who would have been knowledgeable of those deliberations.

SEC OIG's Investigative manual applies to our investigative operations—that is, investigations under the supervision of an OIG's AIGI.

References to the QSI as a criteria for measuring (b) (6), (b) (7)(C) investigation should be removed from the Draft ROI. References to (b) (6), (b) (7)(C) investigation violating SEC OIG Office of Investigations policy and violating SEC OIG policy should also be removed from the draft.

Finding 1.1.b should be unsubstantiated.

Page 19 and 21, Lack of Due Care

The Draft ROI reflects:

According to Hoecker, the reason he requested DOJ OIG conduct the investigation was because he was not satisfied with the progress of the investigation. More specifically, Hoecker stated "I was unhappy with the progress of the investigation. In other words, it wasn't happening fast enough for me," (Exhibit 38, Tr. 84) and that he was " impatient " (Exhibit 38, Tr. 138).

Furthermore, in his response to the IC on June 29, 2017, Hoecker stated that he believed that the investigation was both timely and thorough, which conflicts with his stated reason for requesting DOJ OIG's assistance.

Proper Context:

When I responded to the Integrity Committee on June 29, 2017 our internal investigation was completed and action taken. I was overall satisfied with the timeliness and thoroughness of the investigation and resolution. However, during the investigation from May 2016 until November 2016, we were continuing to receive complaints about (b) (6), (b) (7)(C) . At some point I wanted to see if it made sense to get assistance from another OIG. I first thought of DOJ OIG. It was not because the investigation was untimely. Rather, I was concerned for the welfare of, and demands placed upon, my Office of Counsel. Upon my direction, (b) (6), (b) (7)(C) contacted DOJ OIG on October 24, 2016. We learned that they would not be able to assist. From the mere timing of when we contacted DOJ OIG, the bulk of the investigation was done and we had entered the writing phase. At the time, I was concerned about another onslaught of complaints, which did not materialize. Therefore, there was ultimately no need for outside assistance.

Effect and Implication:

By ignoring the full context, the Draft ROI attempts to discredit me. It conflates my exploring a path forward *during* the course of an investigation with my ultimate satisfaction with the final product almost one year after (b) (6), (b) (7)(C) report was finalized. These type of repeated "out of context" character attacks unfortunately leaves the impression that the Draft ROI is infused with bias, or, at best, suffers from a results-oriented and fundamentally flawed analysis.

The Draft ROI should be corrected by removing the conflating information between my statements to the Integrity Committee and both my reason for contacting DOJ OIG and my statement that I was not happy with the progress.

Page 19, Mischaracterization

Draft ROI states: (The highlighted sentence is not a correct portrayal)

During his interview, (b) (6), (b) (7)(C) indicated that DOJ OIG was asked to conduct the investigation due to concerns about conducting the investigation internally. (b) (6), (b) (7)(C) stated, "I raised concerns. I remember there was a discussion about who could do it. And I do remember, I don 't know that it was specifically because of these statements of [unnamed person], but at one point, we talked to Department of Justice OIG about whether or not they could pick it up and take it on" (Exhibit 37, Tr. 36).

Context:

> Nowhere in (b) (6), (b) (7)(C) transcript does he make the statement as characterized in the Draft ROI that DOJ OIG was asked to conduct the investigation due to concerns about conducting the investigation internally.

The information in question should be deleted from the draft ROI.

Page 19 and 21, Inaccurate Reporting

The Draft ROI reflects:

> [Unnamed person] did not recall (b) (6), (b) (7)(C) telling him a specific reason for SEC OIG's request to DOJ OIG, but based on the information provided to him inferred that there were issues related to objectivity and impairments in SEC OIG's investigation. [Unnamed person] reasoned that typically, an OIG would ask for an external agency to conduct an investigation on its behalf if there were internal impairments.

Proper Context:

> The witness stated he did not recall the specific reason SEC OIG requested DOJ OIG assistance. He is speculating. Also, from personal experience, I know that there are more "typical" reasons an OIG would ask for investigative assistance.

This information should be stricken from the Draft ROI as it is complete speculation and does not support anything improper.

Finding 1.1.b

ED OIG substantiated that the SEC investigation was substandard because it was not conducted in accordance with the CIGIE's Quality Standards for Investigation (QSI) or the SEC OIG Policy.

Response: QSI Deficiencies:

Page 22, paragraph 2, Lack of Objectivity

The Draft ROI reflects:

> Hoecker also explained that the investigation "wasn't necessarily criminal," despite being presented to the USAO for criminal prosecution consideration. Hoecker stated, "that constitutes an abundance of caution.

Proper Context:

> In my office—and most other OIGs would agree—a common practice is to contact the USAO sooner rather than later to get a prosecutorial decision or prosecutorial sense of the investigative results. This is important, because if we can identify a matter that is purely administrative, we can better manage our resources per our mission statement. Further, if additional information about criminal activity is developed, we can go back to the USAO. For this matter, within less than 30 days we presented it to the USAO and they declined to pursue prosecution. The remaining allegations were administrative, at best. Had this been an SEC employee outside of OIG, we could have referred the remaining issue to agency management. Also in this matter, (b) (6), (b) (7)(C) informed me that there was no criminal matter that would be prosecuted. In an abundance of caution, I asked him to contact the USAO. Important context is that we take cases to the USAO as a matter of routine, including cases that only have technical violations that usually do not meet the prosecutorial threshold.

ED OIG did not report the contextual and chronological information above. Use of the word "despite" again reflects an ingrained bias at worst and a results-oriented analysis at best. This information should be stricken from the Draft ROI as it does not support anything improper.

Page 22, paragraph 4. Lack of Due Diligence

The Draft ROI reflects:

> ED OIG concluded that reviewing the investigation against the QSI would enable us to determine whether the investigation was substandard, as alleged. We believe this method was appropriate because (1) the QSI are designed to accommodate a variety of types of investigations (2) the investigation the SEC OIG conducted involved potential criminal conduct (time and attendance fraud) until it was declined on June 15, 2016, by the USAO, and such allegations generally are investigated in accordance with the QSI; (3) a criminal investigator trained to conduct investigations according to the QSI conducted the majority of the investigation.

Fact about the QSI:

> The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting. As the working group was drafting the 2011 QSI, the Investigations Committee had deliberative discussions and the Committee landed on a decision that the QSI would be applicable to those investigations conducted under the supervision of an OIG's AIGI, which we define in the standards as "investigative operations." The QSI would apply to functions outside of the AIGI purview *if* the standards were specifically adopted by that function.

TAB B
Draft ROI Does Not Adhere to QSI

Proper Context:

> I assigned the matter to (b) (6), (b) (7)(C) and to (b) (6), (b) (7)(C) to assist for 30 days. (b) (6), (b) (7)(C) was in control of this investigation. To conclude otherwise is to ignore the following exculpatory evidence. (b) (6), (b) (7)(C) departed from government service on June 26, 2016. The internal investigation began on May 18, 2016 and was reported final on January 19, 2017. There were analyses, records reviews, follow up interviews, report writing and review remaining between June 26, 2016 and January 19, 2017 for (b) (6), (b) (7)(C) to complete, all of which were done after (b) (6), (b) (7)(C) departure. The internal matter took 8 months to complete. I knew (b) (6), (b) (7)(C) would have a maximum of 30 days to assist. Lastly, according to our Case Management System, the matter was assigned (b) (6), (b) (7)(C), who reports to (b) (6), (b) (7)(C). See pages 17-18 of Response.
>
> The investigation began in May 2016 and was reported final in January 2017 Counsel had not adopted the QSI. (b) (6), (b) (7)(C) report was marked on every page "attorney work product." Also, (b) (6), (b) (7)(C) report was prepared in anticipation of litigation, which is still pending.

Effect and Implication:

> ED OIG presented this information in a one-sided fashion. The Draft ROI ignores the specific determinations made by the Investigations Committee in 2011 pertaining to the applicability of QSI. As such, the reader is presented a false conclusion as to the proper applicability of the QSI.
>
> I note that (b) (6), (b) (7)(C) led the working group to draft the QSI that was adopted by CIGIE in 2011. As such, he would have knowledge of specific discussions and decision by the CIGIE Investigations Committee to make the QSI only applicable to investigative operations, that is investigations conducted under the supervision of the AIGI. Functions outside of the investigative operations within an OIG could opt to incorporate (or not) the QSI for their work. The ED IG was also a member of the Investigations Committee during this time and would have also had relevant knowledge. For further details on proper application of the QSI, see TAB C.

The ED OIG should remove all reference to the QSI in the Draft ROI as it pertains to the SEC internal investigation.

<u>Page 25, Ignoring Exculpatory Information</u>

The Draft ROI reflects:

> (b) (6), (b) (7)(C) was interviewed on May 18, 2016 (Exhibit 53), May 24, 2016 (Exhibit 54), and June 21, 2016 (Exhibit 49). However, only her June 21, 2016, interview

was audio recorded and transcribed. (b) (6), (b) (7)(C) June 21, 2016, interview is the only interview included as an exhibit to the ROI.

Exculpatory Information:

(b) (6), (b) (7)(C) June 21, 2016 interview was recorded and transcribed. The other two (b) (6), (b) (7)(C) interviews were contemporaneously documented in the investigator's notes and located in the file.

Effect and Implication:

Since (b) (6), (b) (7)(C) was issued a letter of caution, all information in possession of the SEC OIG, presented in the ROI or located in the file, was considered.

This information should be added to the Draft ROI.

Page 25, Insufficient Evidence to Support Conclusion:

The Draft ROI reflects:

Two of three interviews of (b) (6), (b) (7)(C) were not documented in the ROI

According to (b) (6), (b) (7)(C) he was interviewed two times, June 3, 2016 (Exhibit 55), and June 21, 2016 (Exhibit 56). However, (b) (6), (b) (7)(C) recalled interviewing (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) around the time of the May 18, 2016, staff interviews. Only the June 3, 2016, and June 21, 2016, interviews were audio recorded and transcribed. Only the June 3, 2016, interview was included as an exhibit to the ROI. According to (b) (6), (b) (7)(C) the June 21, 2016, interview being excluded from the ROI, was "not intentional" and an "oversight" (Exhibit 37, Tr. 59 and 63). Although (b) (6), (b) (7)(C) indicated to ED OIG that (b) (6), (b) (7)(C) was interviewed around May 18, 2016, no documentation of the interview was located in SEC OIG's case file.

Proper Context:

During (b) (6), (b) (7)(C) interview with ED OIG, he recalled that (b) (6), (b) (7)(C) had been interviewed three times during the internal matter. The (b) (6), (b) (7)(C) interviews in question would have taken place approximately two years prior to the ED OIG interview of (b) (6), (b) (7)(C) No interview notes of (b) (6), (b) (7)(C) or any other person were found in the file for the (b) (6), (b) (7)(C) interview in question. (b) (6), (b) (7)(C) has taken notes or otherwise documented all interviews he conducted in this matter. (b) (6), (b) (7)(C) told ED OIG that he was interviewed twice, not three times. I see no investigative result in the draft ROI convincing me that a third interview occurred. Nor is there any discussion as to whether (b) (6), (b) (7)(C) might have simply misremembered the number of interviews especially given the lengthy passage of time.

> Based on the information in the Draft ROI, I am not convinced that [redacted] was interviewed three times. ED OIG should remove this information from the Draft ROI as it is not convincing whether three interviews occurred or not.

The draft ROI should be corrected to reflect there were two interviews of [redacted]

Page 26, paragraph a

The Draft ROI reflects:

> The following information from the June 21, 2016, interview was not addressed or documented in the ROI (Exhibit 56):
>
> > a. [redacted] was recorded during his interview of [redacted] stating that he did not find [redacted] credible in his answers (p.20). [redacted] during the interview of [redacted] stated he did not find [redacted] credible.

Proper Context:

> [redacted] legitimately used a deception technique during the [redacted] interview. This line of questioning related to [redacted] responses to the question as to whether he was having an affair and with whom.
>
> [redacted] exact quote is "So the – here's the deal. I'll just tell you up front, I don't find you – I don't find you credible. I don't find what you're saying credible. I ain't stupid."
>
> Throughout the entire SEC OIG investigation, we attempted, among other things, to follow up on the credibility of [redacted] To conclude otherwise ignores the entire investigative record.

This information should be removed from the Draft ROI as it has no probative value.

<u>Page 26, Misquoting Testimony</u>

The Draft ROI reflects:

> a. [redacted] was recorded during his interview of [redacted] stating that he did not find [redacted] credible in his answers (p.20).
> b. [redacted] refused to provide information that would corroborate who he was staying at a hotel with during SEC OIG training travel in Charleston, SC (p.20).
> c. During his June 3, 2016 interview, [redacted] stated that he did not stay at a hotel in Fredrick, MD after an SEC OIG in-service training on April 28, 2016 (Exhibit 55, p. 10).

During his interview, Hoecker stated knowledge of inconsistent statements could have been important to proposing officials (Exhibit 38, Tr. 92)

Correct Quote from transcript:

(b) (6), (b) (7)(C): After training, is this information you think would have been important for someone proposing discipline?
MR. HOECKER: I think it's something they could have used, yes.
(b) (6), (b) (7)(C): Or some, for that matter, some, something that could have been considered even with a settlement with (b) (6), (b) (7)(C)?
MR. HOECKER: Yes.

Proper Context:

It is clear from the transcript I agreed that training information could have been important for someone proposing discipline. I was not asked, nor did I agree, that a deception technique used in an interview could be important for a proposing official or for a negotiated disciplinary agreement.

This information should be removed from the Draft ROI or properly quoted.

Page 28, paragraph 2, Lack of Due Diligence

The Draft ROI reflects:

However, [unnamed person] did say that he had a separate follow-up conversation with (b) (6), (b) (7)(C) over the phone in which (b) (6), (b) (7)(C) asked if [unnamed person] had any recollection of hearing an alleged comment by (b) (6), (b) (7)(C) discussing, "sucking on (b) (6), (b) (7)(C) titties." [unnamed person] did not recall how he answered it because he did not remember if (b) (6), (b) (7)(C) said it or not (Exhibit 16, p. 4). The telephone conversation between [unnamed person] and (b) (6), (b) (7)(C) was not memorialized.

Accurate Fact:

The follow up conversation between (b) (6), (b) (7)(C) and [unnamed person] was in fact documented in an email and attached as Exhibit 58 in the SEC ROI.

Effect and Implication:

Exhibit 58 is clearly marked in the SEC ROI. As a respondent reader, I question the veracity and accuracy of the entire Draft ROI. With inaccurate facts in the Draft ROI, the independent reader is misled with respect to the strength of any evidence and any draft findings offered in the entire Draft ROI. My question is, what else did ED OIG omit.

This accurate fact should be acknowledged and the entire paragraph and any reference to it, be removed.

The Integrity Committee should conduct a detailed review of the Draft ROI and its exhibits giving strong weight to my comments and response to the Draft ROI.

Allegation 1.2

The report stated the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It did not address a third alternative—circumstantial evidence of a sexual relationship. The report appeared to consider individual bits of evidence in isolation, rather than the totality of circumstances, including evidence of:

a. The unusual amount of time that (b) (6), (b) (7)(C) spent together, exceeding the time they spent with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which (b) (6), (b) (7)(C) were found in the evidence room and the door was blocked, where one witness observed (b) (6), (b) (7)(C) zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f. The claim that (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) an expensive birthday present.

Finding 1.2

Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) ED OIG could not substantiate whether the report of investigation (ROI) understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C).

Response: QSI Deficiencies

Page 29, allegation 1.2, Lack of Due Diligence

The Draft ROI reflects:

The report states the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It does not address a third alternative circumstantial evidence of a sexual relationship. "It [report] does not address a third alternative – circumstantial evidence of a sexual relationship.

Proper Context:

An accurate review of the SEC ROI shows that a sexual relationship between two SEC employees is not a violation. Therefore, to prove a sexual relationship using any type of evidence would not be proper. In fact, pursuing investigative leads to prove something that is not a violation could be considered harassment or violation of privacy.

The evidence has been labeled in the Draft ROI by ED OIG as "circumstantial" when, in fact, this information was contained and considered in Counsel's report. Rather than consider it circumstantial of a sexual relationship, which is not a violation, we used it and other evidence as direct evidence of the appearance of an improper relationship.

Allegation 1.2 should be unsubstantiated.

<u>Page 29, allegation 1.2, letter a – f, Mischaracterizing Facts</u>

The Draft ROI reflects:

The report states the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It does not address a third alternative circumstantial evidence of a sexual relationship. "It [report] does not address a third alternative – circumstantial evidence of a sexual relationship. The report appears to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of:

a. The unusual amount of time that (b) (6), (b) (7)(C) spend together, exceeding the time that they spend with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which (b) (6), (b) (7)(C) were found in the evidence room and the door was blocked, where one witness observed (b) (6), (b) (7)(C) zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f . The claim that (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) an expensive birthday present.

Proper Context:

As I stated in the previous comments in this document, a sexual relationship between SEC employees is not a violation. Further, not only did my office consider each single allegation a – f individually, but also collectively to arrive at the conclusion (listed below) and eventual negotiated settlement.

On page 3 of the SEC OIG report we state:

> The evidence did support a finding that (b) (6), (b) (7)(C) created the appearance that he had an inappropriate relationship with (b) (6), (b) (7)(C) and as a result of that appearance, employees in OI believed that [redacted] received preferential treatment. Although the evidence does support a finding that (b) (6), (b) (7)(C) created the appearance of an inappropriate relationship, the evidence does not show that (b) (6), (b) (7)(C) actually received preferential treatment.

SEC OIG Report addresses a – f:

Draft ROI letter a is covered throughout the SEC OIG report but specifically beginning page 7 in Allegation A, subparts A, B, G, I and in Allegation 2 beginning on page 24. Multiple meetings were suggested in a complaint.

Draft ROI letter b is covered in the SEC OIG report Allegation H beginning on page 16.

Draft ROI letter c is covered in SEC OIG report Developed Allegation 1, beginning on page 18.

Draft ROI letter is covered by SEC OIG report at Developed Allegation 6, page 45. We take exception to "multiple times" as we only could establish one time. We established evidence that one meeting occurred in the testimonial room.

Draft ROI letter e is covered by SEC OIG report at Developed Allegation 3 page 34.

Draft ROI letter f is covered by SEC OIG report at Developed Allegation 4 beginning on page 43. We take exception to this issue being in the Draft ROI. Our investigation found this to be an unsubstantiated allegation.

Professional Judgement:

> We had sufficient evidence to take action on the related conduct and decided not to pursue those leads further than we did related to a - f. However, since a negotiated disciplinary agreement for appearance of improper relationship was used, known information outside of Counsel's investigative report was considered.

This information should be stricken from the Draft ROI as it was properly used by my office to arrive at our disciplinary decision.

Page 29. Lack of Objectivity

The Draft ROI reflects:

> Finding 1.2. ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)
>
> > The SEC OIG did not develop information related to the April 2016 meeting between (b) (6), (b) (7)(C) in Frederick, MD and the inconsistent accounts of that meeting.
> >
> > The SEC OIG did not address (b) (6), (b) (7)(C) refusal to corroborate his account regarding a hotel guest in Charleston, SC.
> >
> > The SEC OIG did not corroborate information received about other possible hotel stays by (b) (6), (b) (7)(C) by requesting information, including possible security video recordings, from the hotels.

Proper Context:

> The information was in fact in Counsel's report and the file and both were considered during the issuance of the disciplinary agreement. We had enough evidence to show the appearance of an improper relationship for which we entered into the disciplinary agreement and did not pursue the additional leads balancing the use of resources. Developing this information would have yielded, at best, circumstantial evidence of a sexual relationship, which is not a violation.

This information should be stricken for the Draft ROI as it was properly used by my office to arrive at our disciplinary decision.

TAB B
Draft ROI Does Not Adhere to QSI

Page 31, paragraph 2, Lack of Objectivity

The Draft ROI reflects:

> Additionally, rather than conduct a covert, active investigation to gather evidence of the alleged relationship between (b) (6), (b) (7)(C), SEC OIG conducted an overt investigation, relying on historical witness accounts and documents, including conducting subject interviews on the first day of investigative activities. In fact, on or around that time, Hoecker announced the existence of the investigation to OI staff and gave briefings on the status of the investigation in subsequent OI meetings. The investigation also did not incorporate active surveillance or monitoring of the subjects.

Proper Context:

> My OI is small and centrally located in Washington, DC. I used my professional judgement to notify OI staff that I had received an allegation of misconduct. During this meeting, I was not specific as to the type of allegations, yet I did say I will not tolerate wrongdoing. Notifying the staff served multiple purposes. First, to let the complainants know we began action on their complaints. Second, I wanted to instruct staff to cooperate fully with the inquiry. Finally, I thought the office should begin the process of healing. Sharing as much information without jeopardizing the investigation with those affected is common when impactful events happen in a community.
>
> In my experience, covert operations and surveillance are not successful for internal investigations of time and attendance issues. Having conducted covert investigations, I know what resources are required. In the SEC OIG a covert operation would not have been successful, given our resources and small size. I query whether it is standard practice of other IGs to conduct surveillance or monitoring of internal staff in similar circumstances.

This is a judgement call. As presented in the Draft ROI, it appears that ED OIG is substituting their judgement for mine. I am in the best position to exercise judgement for SEC OIG. I also view this as an attack on my integrity.

This information has little relevance to wrongdoing or misconduct and all about professional judgement and use of resources. It should be removed from the Draft ROI.

Allegation 1.3

The SEC OIG report's author speculated in a manner favorable to (b) (6), (b) (7)(C), who "could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].

TAB B
Draft ROI Does Not Adhere to QSI

Finding 1.3

ED OIG substantiated that the SEC ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) time out of the office as spent on official activities. Instead, the SEC OIG planned to include the missing time in proposals for discipline for response, but the proposals were never issued.

Response: QSI Deficiencies

Page 31, finding 1.3, paragraph 2, Omitting Exculpatory Information

The Draft ROI reflects:

> Finding 1.3 ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) time out of the office was spent on official activities. Instead, the SEC OIG planned to include the missing time in proposals for discipline for response, but the proposals were never issued. Ultimately, however, neither (b) (6), (b) (7)(C) received any proposed disciplinary action.

Proper Context and Complete Story (omitted information highlighted):

> Should read: "Ultimately, however, neither (b) (6), (b) (7)(C) received any proposed disciplinary action as (b) (6), (b) (7)(C) entered into a disciplinary settlement and (b) (6), (b) (7)(C) was issued a letter of censure."

Effect and Implication

> The Draft ROI omits a key fact - the reason proposals were not issued is because we used a negotiated disciplinary agreement and a letter of caution. Further, we could not substantiate whether (b) (6), (b) (7)(C) were out of the office working or not working. Based on their high level of individual performance results, we determined they were working. ED OIG fails to acknowledge the reason proposals for discipline were not issued. This improperly gives the impression we decided not to take corrective action and instead engaged in a "coverup."

Allegation 1.3 should be unsubstantiated.

Allegation 1.4

The sanction developed and agreed on by (b) (6), (b) (7)(C) SEC OIG, did not address or correct all of the circumstances that reportedly contributed to the appearance of an inappropriate relationship. SEC OIG management did not:

a. Separate the subjects' offices which are next door to each other;

b. Prohibit or limit them ([redacted]) from meeting off-premises alone from work;

c. Prohibit them from private closed door meeting;

d. Require them to limit their ([redacted]) meetings alone together to OIG space;

e. Prohibit or limit [redacted] from traveling together;

f. Require them ([redacted]) to stay in the same hotels as other OIG staff when on travel.

Finding 1.4

ED OIG did not substantiate that [redacted] failed to separate [redacted] offices. [redacted] did not prohibit or limit [redacted] from conducting official business together.

Response:

This allegation should be found unsubstantiated.

Additional Allegations of Misconduct Related to Allegation, not Addressed by SEC OIG

ED OIG also developed the following information in the course of its investigation:

1. Additional allegations of inappropriate sexual comments made by [redacted] to [redacted] [REDACTED] were not addressed as part of the SEC OIG investigation.

2. [redacted]. However, Hoecker made the decision to continue with the settlement.

Response: QSI Deficiencies

<u>Page 33, Lack of Objectivity</u>

The Draft ROI states:

> Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG
>
> Additional allegations of inappropriate sexual comments made by [redacted] to [redacted] [unnamed person] were not addressed as part of the SEC OIG investigation.
>
> According to [unnamed person] in the third Quarter of 2017, she told Hoecker that she did not think that the incidents with [redacted] and her reporting of them was handled well. [Unnamed person] recalled that Hoecker acknowledged [unnamed person's] position and apologized for how he handled the matter (Exhibit 31) .

Complete quote from unnamed person's transcript:

> [Unnamed person] explained SEC OIG does quarterly meeting for evaluation/performance purposes. When [unnamed person] had her meeting with IG Hoecker for the third quarter of 2017, [unnamed person] told IG Hoecker that [unnamed person] did not think that the incidents with [redacted] and [unnamed person] reporting of them was handled well. IG Hoecker acknowledged [unnamed person's] position and apologized for how he handled the matter.

Proper Context:

> I understand the following: [redacted] made remarks that were not explicitly sexual in 2014. The unnamed person did not tell [redacted] at the time the comments were offensive to her. The unnamed person talked to [redacted] and she decided to send an email to [redacted] telling him to stop. She did not make a complaint. After the email, the comments stopped. No further complaints were made subsequent to the email to [redacted] This is not a matter that needed further investigation.
>
> In terms of my apology, the [unnamed person], told me she in July 20**16** about the comments made in 20**14**. One month later, I apologized simply because I believed I could have been more emphatic in my verbal response during our interaction in July 2016. I was not apologizing to her because I believed [redacted] had some something explicitly sexual or that [redacted] had handled the situation improperly. In fact, [redacted] was aware of this issue and it may have been considered during the negotiated settlement.

This information should be removed from the Draft ROI as there was nothing to investigate or address in the SEC internal matter.

<u>Page 33, Lack of Objectivity</u>

The Draft ROI states:

> Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG

(b) (6), (b) (7)(C), (b) (5) [redacted].

Proper Context:

I understand the following: (b) (6), (b) (7)(C) felt that (b) (6), (b) (7)(C) was untruthful to him. (b) (6), (b) (7)(C), (b) (5) [redacted]. This matter did not require further investigation and I decided to move forward with the negotiated settlement. It may have been considered during the negotiated settlement.

This information should be removed from the Draft ROI as there was nothing to investigate or address in the SEC internal matter.

Summary of Issue:

On May 26, 2017 a telephonic exit conference was held between NSF OIG and my Office of Investigations. I was not on this call. Without seeking policy interpretation or guidance from CIGIE Investigations Committee or following the protocol for dispute resolution between peer review teams and entity being peer reviewed as articulated in the Quality Assurance Review Guidelines, NSF OIG compelled my office to allow access to an investigation conducted outside the auspices of QSI. NSF OIG reviewed this investigation on October 25, 2017, and issued the peer review report in November 2017. I was not aware of any issues identified by the October 2017 review, as they were withheld from me, until my interview with ED OIG in July 2018. By its own conclusion, NSF OIG substantiated that the internal investigation would not have been selected during this peer review, yet the case was listed in the peer review report.[2]

Context and Effect:

NSF OIG did not follow proper protocol during the peer review. In what is supposed to be a transparent process, NSF OIG decided to conceal and not discuss with me what they believed to be issues with our internal matter. This was a gross departure from CIGIE investigative peer review guidelines and procedure that

[2] Another reason for the peer reviewers to not review the internal investigation is that investigative peer review assesses investigations for compliance with the QSI. The Investigations Committee determined in 2011 that the QSI would apply to functions within the AIGI purview, or by function outside the AIGI if the QSI were specifically adopted by that function. The SEC OIG internal investigation was conducted outside of the investigative operations, by (b) (6), (b) (7)(C). My OC has not adopted the QSI and the QSI are not applicable for the OC internal investigation.

> violated due process. It is apparent that the NSF OIG's opinions has infected this entire investigation, as the Draft ROI's findings mirror the unsubstantiated opinions in the NSF OIG's Memorandum of Investigations.

This entire section of the Draft ROI should be removed or unsubstantiated.

Allegation 2

The respondents (identified as Hoecker, (b) (6), (b) (7)(C)) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) improperly excluded the investigation from the peer review conducted by the NSF OIG, which prevented the NSF OIG from completing the peer review.

Allegation 2.1
They offered shifting (and potentially pretextual) justifications for SEC OIG's position that the investigation was not subject to peer review.

Finding 2.1
ED OIG substantiated that the SEC OIG offered shifting justifications on why the investigation was not subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

Response: QSI Deficiencies

Page 36, finding 2.1, Omitting Exculpatory Information

The Draft ROI reflects:

> ED OIG substantiated that the SEC OIG offered shifting justifications on why the investigation was not subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

Proper Context:

> There were multiple, valid reasons that Counsel's investigation should not have been peer reviewed. The Draft ROI indiscriminately adopts the NSF OIG's terminology "shifting justifications," which falsely suggests that (b) (6), (b) (7)(C) and I were lying, when there were multiple, legitimate reasons for this matter to be excluded from the peer review – It was conducted by my OC which is outside of the SEC OIG investigative operations, my OC had not adopted the QSI, and it was completed after the scope period of the peer review.
>
> Counsel's Draft ROI was marked on every page "attorney work product." Also, the Draft ROI was prepared in anticipation of litigation, which is still pending. At the time these reasons were provided, the peer review was ongoing and this was a

dispute between a peer review team and an office being peer reviewed. The peer reviewers refused to follow the peer review guide procedures on resolving disagreements. In fact, the Draft ROI finding 2.2 confirms it was completed outside the scope period and would not have been otherwise selected for review, just as (b) (6), (b) (7)(C) and I explained.

During the then ongoing SEC OIG peer review, there were discussions had and healthy tension existed between SEC OIG and NSF OIG. The peer review was extended by the vice chair of the investigations committee. Both OIGs resolved the issue and the NSF OIG reviewed the internal matter. I felt compelled to allow this review since NSF OIG would not issue the peer review report that had a rating of "pass." By its own conclusion, NSF OIG substantiated that the internal investigation would not have been selected during this peer review. Also, ED OIG found that the internal investigation was properly closed outside of the peer review period (finding 2.2)

Effect:

ED OIG presents this information in a one-sided fashion. The Draft ROI seems to ignore the specific determinations made by the Investigations Committee pertaining to the applicability of QSI. The Draft ROI also did not address the NSF IG ignoring the established and documented protocol of resolving disputes during investigative peer reviews articulated in the QAR Guidelines. NSF did not seek policy interpretation or guidance from CIGIE Investigations Committee. I note that this particular issue was recently resolved by the IC for two other OIGs who had a dispute over the peer review process. ED OIG actually concludes that I granted NSF OIG access to review the matter. Finally, ED OIG confirmed one of the reasons we told NSF OIG the internal matter should not be part of the peer review – the internal matter was closed outside of the peer review scope time frame. The draft ROI uses biased, inflammatory language by endorsing ED OIG's claim that there were shifting justifications for the peer review team to not review the SEC internal matter.

There were no "shifting" justifications given. Allegation 2 should be unsubstantiated.

Page 37, Incomplete and Inaccurate Reporting

The Draft ROI at paragraph 6 reflects:

ED OIG's investigation established that (b) (6), (b) (7)(C) was the lead investigator who conducted all material interviews and major document reviews.

Correct Facts:

This matter was assigned to my Office of Counsel. (b) (6), (b) (7)(C) was not the lead investigator, nor did he have a supervisory role. He conducted most material

interviews with [redacted] as the witness interviews in this matter corroborate [redacted] was involved with the investigation for about 30 days. Major document reviews were conducted by [redacted] Counsel's Draft ROI is marked "Attorney Work Product" on every page.

Further, according to our Case Management System, the matter was assigned [redacted], who Draft ROI to [redacted].

The Draft ROI fails to provide complete and accurate information relative to the assignment of work. [redacted] assisted OC during [redacted] last 30 days of government service.

The Draft ROI should be corrected to reflect the fact that the internal matter was assigned to OC.

Page 37, Incomplete and Inaccurate Reporting

The draft ROI reflects:

Hoecker's above representation to NSF OIG that he did not believe the internal investigation implicated investigative operations because it was performed by [redacted] and [redacted] played no role in the investigation, is contrary to SEC OIG's ROI reporting (Exhibit 4, p. 2) and Hoecker 's response to the IC on June 29, 2017 (Exhibit 40, p. 2). Both indicated that the investigation was initially started as a joint effort by [redacted] and [redacted]. As previously discussed, ED OIG's investigation established that [redacted] was the lead investigator who conducted all material interviews and major document reviews (Finding 1.1.a, p. 19).

Correct Facts (Emphasis added):

During my discussions with NSF OIG as the peer reviewers, I did not represent [redacted] had no role in the internal matter. In describing [redacted] role, I would have said he had no **supervisory** role. I also note that my use of the term "joint" simply acknowledges that both [redacted] and [redacted] were involved in investigating the matter. It does not describe supervisory responsibility.

Context and Effect:

ED OIG has two written responses from me to the Integrity Committee as well as my testimony and that of [redacted] articulating [redacted] role in the internal matter. After NSF received an allegation, they sought to review the internal matter and we had at least one discussion with NSF during which I thought they were being unreasonable. Apparently, NSF OIG decided to evaluate the complaint as it pertains to the ongoing peer review and produce the letter dated September 14, 2016 (NSF OIG Side Letter). I had no knowledge that the NSF IG

> had sent, much less contemplated crafting, the letter. In fact, I had not seen this correspondence until I received the exhibits in this case in February 2019, well after this investigation began in November 2017. NSF asserted that I represented [redacted] had no role. NSF must have misunderstood that part of the discussion. I was not asked about this during my interview with ED OIG. Strangely enough, ED OIG choose to assign more weight to a summary of a complaint to my official response (i.e., the NSF OIG Side Letter), than to my sworn testimony, and [redacted] sworn testimony.

This is yet another example of ED OIG using inaccurate, biased reporting to attack my credibility.

This information should be removed from the draft ROI.

Allegation 2.2

Hoecker and [redacted] modified or manipulated the date of completion of the investigation to place it outside the review period.

Finding 2.2

> ED OIG did not substantiate that the date of completion was modified or manipulated. The investigation had been appropriately closed outside of the period of peer review

Response: QSI Deficiencies

Page 38 Finding 2.2 Inaccurate Reporting

> The Draft ROI states:
>
> > ED OIG did not substantiate that the date of completion was modified or manipulated. The investigation had been appropriately closed outside of the period covered by the peer review.
>
> This finding should remain unsubstantiated and the information applied to the whole allegation 2. The entire allegation 2 should be unsubstantiated.

Allegation 2.3

The Respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an "investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an "inquiry" and therefore outside the scope of peer review.

Finding 2.3

TAB B
Draft ROI Does Not Adhere to QSI

ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by (b) (6), (b) (7)(C)). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Response: QSI Deficiencies

Page 38-39, Biased Reporting

The Draft ROI reflects:

> Allegation 2.3 The Respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an " investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an " inquiry" and therefore outside the scope of peer review.
>
> Finding 2.3 ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by (b) (6), (b) (7)(C)). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Corrected and Accurate Information:

> The semantics of an investigation versus inquiry has little to do with an investigative peer review. The key for peer review purposes is whether the investigation/inquiry was conducted in the investigative operations. This matter was conducted outside of my investigative operations and therefore outside of the peer review. Further, "ED OIG found that the internal investigation was properly closed outside of the peer review period" (finding 2.2). Lastly, this was an ongoing peer review with the usual back and forth discussions and healthy tension that sometimes occurs. The vice chair of the investigations committee granted a peer review extension and the peer review Draft ROI was issued in November 2017.
>
> The QSI was unanimously approved by CIGIE on November 15, 2011, during its monthly meeting. As the working group was drafting the 2011 QSI, the Investigations Committee had deliberative discussions and the Committee landed on a decision that the QSI would be applicable to those investigations conducted under the supervision of an OIG's Assistant Inspector General for Investigations which we defined in the standards as "investigative operations." The QSI would apply to functions outside of the AIGI purview *if* the standards were specifically adopted by that function. Nowhere in the QSI or during deliberative Investigations Committee discussions is it even contemplated that each OIG shall apply the QSI across every function of an OIG. See TAB C for further details.

> In terms of reporting to Congress, we reported the matter and I determined it was best reported in the "Investigations" section of the Semi-annual Report. The matter clearly was not an audit or evaluation. Had we created a category in the Semi-annual Report such as "Internal Investigations" or "Counsel Investigations," (b) (6), (b) (7)(C) and I agreed that it would most likely violate the Privacy Act given the small size of our office and the ease of which it would be to determine the identity of those investigated.

Allegation 2.3 should be unsubstantiated.

Allegation 2.4

Respondents designated or allowed (b) (6), (b) (7)(C) to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

Finding 2.4

ED OIG substantiated the (b) (6), (b) (7)(C) served as the SEC OIG's liaison to the NSF OIG peer review team when placed into a new role following a realignment in the OIG, but did not substantiate his serving in his role obstructed the peer review.

Response: QSI Deficiencies

Page 38, Sub Allegation 2.4, Incomplete Reporting

The Draft ROI states:

> Respondents designated or allowed (b) (6), (b) (7)(C) to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

Proper Context:

> The relevant timeline is:
>
> | | |
> |---|---|
> | October 16, 2016 | Peer Review Point of Contact – (b) (6), (b) (7)(C) |
> | March 28, 2017 | (b) (6), (b) (7)(C) confirms the case listing for NSF |
> | March 29, 2017 | (b) (6), (b) (7)(C) informed about CD & UPS envelope. Due April 3. |
> | March 31, 2017 | (b) (6), (b) (7)(C) sent CD via UPS |
> | April 25, 2017 | (b) (6), (b) (7)(C) informs NSF he is now the POC. |
>
> The CD contained the population of cases from which the peer review team selected the of sample cases for review. The peer review point of contact from October 16, 2016 until April 25, 2017 was (b) (6), (b) (7)(C) In fact, on March 31, 2017,

(b) (6), (b) (7)(C) sent the closed case listing and other documents to the peer reviewers. On April 25, 2017 (b) (6), (b) (7)(C) took over as the point of contact for the remainder of the peer review. His duties in this role were to provide building access and access to our investigative database. Further, ED OIG found that the internal investigation of (b) (6), (b) (7)(C) was properly closed outside of the peer review period (finding 2.2).

The Draft ROI fails to put a small chronology together that would bring into question the veracity of one of the allegations/complainants. This is yet another example of bias.

Allegation 2.4 should be unsubstantiated.

Allegation 3

Hoecker, assisted by (b) (6), (b) (7)(C) misused his position as Chair of CIGIE's Investigations Committee to sponsor revisions to CIGIE's Qualitative Assessment Review Guidelines for Investigations (investigations peer review standards) to exclude internal OIG Investigations from peer review without (1) disclosing that the changes had the potential to affect a pending peer review of SEC OIG and allegations before and likely to come before the IC or (2) recusing himself from consideration of those proposed changes.

Finding 3

ED OIG did not substantiate that Hoecker, assisted by (b) (6), (b) (7)(C) misused his position. The changes approved by CIGIE on July 18, 2017, would not have applied to the NSF OIG peer review of the SEC OIG and provided an option for covering internal investigations.

Response: QSI Deficiencies

This allegation was not substantiated and, in any event, has no merit. Notably, Finding 3 supports my response to Allegations 1 and 2.1-2.3 that investigative functions outside the Office of Investigation (or equivalent) "do [ ] not operate under the guidelines established by the QSI"; and 2) that internal OIG investigations conducted outside of investigative operations (that is under the AIGI) are not required to be included in an CIGIE peer review.

The peer review guidelines set forth in CIGIE's Qualitative Assessment Review Guidelines for Investigations approved by CIGIE's Executive Counsel on July 5, 2017, and by CIGIE's membership on July 18, 2017, were not necessarily "new" as the Draft ROI contends; rather, they more clearly reflected in writing the IGs' existing policy and practice, which supports my response to the preceding allegations and findings. As the Draft ROI states, the standards state, "if the reviewed OIG's structure consists of investigative operations reporting to the AIGI and other investigative activity reporting outside of the AIGI's chain of command (e.g., internal affairs or special investigative unit), the reviewed OIG ***may*** want to include those internal and special investigations to be subjected to the OAR process. An OIG may forego a CIGIE peer review where an investigation function outside the Office of Investigation (or equivalent) had minimal activity, does not operate under the guidelines established by the QSI,

or is subject to other sufficient or regular scrutiny and review." (Citing Exhibit 62 at 6.) (Emphasis added.) It important to note that no one contends that these peer review standards were a change to a previous policy; for instance, there is no claim that the prior policy required such investigations to be included in the peer review and this new policy only made it an option.

As noted in the Draft ROI, these peer review standards give the IG ***the option*** to include an investigation function outside the Office of Investigation (e.g., an investigation conducted by (b) (6), (b) (7)(C) such as the one here) or an investigative function that does not operate under the guidelines established by the QSI (again, an investigation conducted by (b) (6), (b) (7)(C) such as the one here). An IG is not required to include such an investigation in the peer review. There is no and was no requirement that such investigations be included before or after these peer review standards went in July 2017.

Allegation 4

The SEC OIG may not have conformed with its Giglio policy requiring disclosure of impeachable information to the DOJ in anticipation of offering (b) (6), (b) (7)(C) as a witness for sworn testimony or statements in criminal cases.

Finding 4

ED OIG did not substantiate that the SEC OIG failed to conform with its Giglio policy requiring disclosure of impeachable information to the DOJ in anticipation of offering (b) (6), (b) (7)(C) as a witness for sworn testimony or statements in criminal cases.

Response:

The allegation was not substantiated and, in any case, is without merit and therefore should be dismissed.

TAB C

TAB C
Proper Application of the Quality Standards for Investigations (QSI)

During 2010-2011, the Investigations Committee revised the QSI. While drafting the 2011 QSI, the Investigations Committee had deliberative discussions about which investigations should be performed under the QSI. As a result of those discussions, the Committee decided that the QSI would be applicable to those investigations conducted under the supervision of an OIG's Assistant Inspector General for Investigations, which we defined in the standards as "investigative operations." The QSI would apply to functions outside of the AIGI purview *if* the standards were specifically adopted by that function. Nowhere in the QSI or during deliberative Investigations Committee discussions is it ever contemplated that each OIG shall apply the QSI across every function of an OIG. The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting.

Individuals involved in drafting the 2011 QSI included (b) (6), (b) (7)(C) [redacted]. Some of the Investigations Committee members at the time included [redacted], and myself as the Chairman.

The Investigations Committee embarked on a parallel effort in 2010-2011 to update the Quality Assessment Review (QAR or Investigative Peer Review) Guidelines. The purpose of the QAR is to ensure that QSI are followed and that law enforcement powers conferred by the 2002 amendments to the Inspector General Act are properly exercised. As such, the QAR Guidelines were designed to assist peer review teams in their reviews of investigations conducted pursuant to the QSI. The QAR was unanimously approved by CIGIE in December 2011.

Individuals drafting the 2011 QAR Guidelines included (b) (6), (b) (7)(C) [redacted]. Some of the Investigations Committee members included those mentioned above.

During 2014, the Assistant Inspector General for Investigations (AIGI) Committee, under the direction of the Investigations Committee, conducted a review of the QAR process. The results of the review prompted discussion about investigations pursued outside of the AIGI supervision. We found that the IG community had three general methods to handle internal investigations – 1) internals were under the supervision of the AIGI, 2) internals were handled by a function outside of the supervision of the AIGI, and 3) internals were handled by a dedicated group assigned to handle internal cases.

In response to the aforementioned discussion, the Investigations Committee revised QAR Guidelines, which were adopted unanimously by CIGIE on July 18, 2017. Leading up to the 2017 QAR Guidelines, from 2014-2016, the Investigations Committee decided that the IG being peer reviewed would disclose the functions with his/her office that conduct investigations and identify which investigations outside of the AIGI supervision would be subjected to the investigative peer review. This memorialized the practice that had been used for the past 10 years of investigative peer reviews.

Individuals drafting the 2017 QAR Guidelines included (b) (6), (b) (7)(C) [redacted]. The Investigations Committee membership at the time included (b) (6), (b) (7)(C) [redacted]

(b) (6), (b) (7)(C)
[redacted], and myself as the Chairman.

TAB D

TAB D
Analysis of Draft ROI Pages 14-15

Analysis of Witness Interview dated 5-18-16 used in the Draft IC Report
page 14-15 numbered bullets 1-10

Page 14 of the Draft ROI concludes that an "[Unnamed person] made the following statements during his interview to [redacted] that *should have alerted* [redacted] *to perception of impairments within SEC OIG* (Exhibit 48)." Pages 14-15 of the Draft ROI then details 10 bulleted statements from this unnamed person that are taken out of context and constitute speculative hearsay from other unnamed individuals. Further, this individual's testimony changed between the first and second interviews on the issue of impartiality. Yet the Draft ROI heavily relies on this testimony to support Finding 1.1a, that [redacted] were allegedly not free from appearance of impairments to independence. None of the statements amount to explicit or implicit challenges to the independence of [redacted]. If anything, the testimony that the Witness offers reflects complete respect for [redacted] as a man of integrity and excellent leadership skills. A discussion of each of those 10 bullets follows below:

Draft ROI Bullet 1 "And I think the world of you and what you've built here. But others and myself, they know you brought [redacted] and [redacted] over." [redacted] and [redacted] acknowledged the statement by saying "right" (Page 31 of Witnesstranscript)

Proper context: At page 29-30, Witness states: "Frankly, I'm embarrassed by not having come to you at that point, because you could have made it stop sooner. And I mean no disrespect to you, [redacted] –" Further: " -- but at that point, I still don't have proof. I have observation. Others don't have proof. Others are afraid to go forward. And I think the world of you and what you've built here. But others and myself, they know you brought [redacted] over."

Analysis: During an interview, if the interviewer says "right" "I know", or anything similar, it is to get the interviewee to continue speaking on that issue. To conclude anything else would assume that the interviewer is providing testimony rather than taking testimony. In reality during this interview, [redacted] was being asked why he, as a supervisor, did not report alleged misconduct that **occurred 5 months earlier**, if [redacted] thought there was misconduct. In fact, the Witness says he is embarrassed that he did not report it because [redacted] could have stopped the alleged behavior back then. What really comes out in this testimony is the justification this Witness, as a management official, offered to not report something he believed to be misconduct until 5 months later – that justification is he had no proof. The Witness does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 2 "And there's a feeling that, you know, [redacted] is your guy" (Witnesspage 30)

Proper context: At page 30, Witness states: "And there's a feeling that, you know, [redacted] your guy and [redacted] you know -- I think it's great that we promote from within and

that we trust people and we bring them over from other organizations, and I would do the same thing. I've done it myself." [redacted] "Right." Witness: "So I didn't want to come forward to you without more."

Analysis: This bullet is closely related to the bullet above and is offered by the Witness as a reason for his not reporting suspected misconduct earlier. [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 3 "..you owe the world to (an unnamed person), [redacted]. [redacted] clarified his statement then, stating "we wouldn't be here today without [redacted] and unnamed person." ([redacted] page 33)

Proper context: At page 32-33, [redacted] asks: "So and is this post-Shepherdstown tension, did something happen there or was it just the announcement of my departure and people are thinking, hey, I could end up working for this guy and if it's in my face now, it's really going to be in my face then?" [redacted] states: "And I didn't hear it, because I was out of the room at the time. But it was related to me at some point when you're talking about and I think you're reflecting how we had come, it was reported to me that you said something like you owe the world to [redacted]. And others have shared with me that, for them, that was their tipping point. Oh, crap. And they started talking about it in whatever setting and they began to put their pieces together. And it was a realization that what was tolerable when it was just co-workers doing things that they're not comfortable with, would be intolerable when it would possibly be the next leader of the organization."

Analysis: This Witness is providing the reason he decided to make the complaint when he did, i.e., his speculation that [redacted] could be [redacted] (a position that he also submitted for), and is speculating on why others may not have complained earlier. [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 4 "I believe only a fair and objective investigation could provide you evidence to make that determination." (Witness page 43)

Proper context: At page 37, [redacted] asks: "When you say basically, these facts potentially constitute T&A fraud, which may violate -- this is kind of the same thing. You don't know anything specific, you just think it may?" [redacted] answers: "I believe only a fair and objective investigation could provide you evidence to make that determination."

Analysis: The line of questioning is attempting to determine why [redacted] claimed in his complaint that there was criminality even though he had no evidence or personal knowledge thereof. [redacted] says he believes the allegations could possibly be criminal but only a fair an objective investigation would determine it. There was nothing said or

inferred about (b) (6), (b) (7)(C) being unfair or not objective with the interview or investigation.

Draft ROI Bullet 5 "They're afraid of (b) (6), (b) (7)(C) But they feel that (b) (6), (b) (7) is protected by you and Carl (Hoecker)." ((b) (6), (b) (7)(C) page 70)

Proper context: (b) (6), (b) (7)(C) states: "And she expressed to me concern about this statement. Which this is an example, I don't believe it was the only time that he said to her, how about I shut your door and bend you over your desk. Which she took as an unsolicited sexual advance or a joke. And so she laughed it off. She told me, frankly, that she's embarrassed for not having stood up and said, this is not okay. Stop. But she said that she's afraid of retaliation or reprisal for reporting it. Which is why she coped with it by laughing it off." (Pages 67-68). At page 69, (b) (6), (b) (7)(C) asks: "So once he said this to her, she came and reported it to you?" (b) (6), (b) (7)(C) answers: "Yeah."

Analysis: The line of questioning was to understand why (b) (6), (b) (7)(C) as a supervisor, did not report a possible EEO violation timely, as required by SEC policy. (b) (6), (b) (7)(C) also speculates on why others did not timely report matters. (b) (6), (b) (7)(C) remarks have nothing to do with the independence of the investigation. Nor does (b) (6), (b) (7)(C) state explicitly or implicitly there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation.

Draft ROI Bullet 6 "Someone told me, and I don 't know if this is accurate, that Carl was like literally his ((b) (6), (b) (7)(C) godfather, or if that means godfather in that like I've got people that I'm the godfather of their, you know, their federal career. I brought them in, I've mentored them, I've taken care of them, you know, helped develop people. So, I don't know if that was an allegation or if that just means, you know, Carl supporting (b) (6), (b) (7)(C) professional development, because that can be okay totally. But I think to the extent that that information may be out there, people are concerned, well, he is protected which is why he's behaving in this way, and if I report it, it's not going to go so well for me" ((b) (6), (b) (7)(C) page 70-71).

Proper context and analysis: This entire passage constitutes speculation about what other people are thinking. It contains: "I don't know if it is accurate" "I don't know if that means." The line of questioning was to understand if (b) (6), (b) (7)(C) as a supervisor, encouraged those who believed there was misconduct to report it in a timely manner. (b) (6), (b) (7)(C) does not state, explicitly or implicitly, that there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation.

Draft ROI Bullet 7 "I think you are very perceptive … how could you not have a sense of what was going on" ((b) (6), (b) (7)(C) page 71)

Proper context: At page 71 (b) (6), (b) (7)(C) asks: "Have I conveyed anything that would give people that thought? Did he insinuate it or somehow?" (b) (6), (b) (7)(C) answers: "To be completely frank with you -- which is always what you're going to get from me if you ask

me. I think, collectively, people are concerned that, I mean you're a pretty hands-on guy. I think you're very perceptive, at least that's my feeling is you're tuned in. How could you not have a sense something was going on?" (b) (6), (b) (7)(C) continues: "That's what people are concerned, that either (b) (6), (b) (7)(C) doesn't see it, so are they hiding it from you, or has it gone on, I mean that's the general concern is since we all know it or sense that this is going on and it's not okay, how is it possible that you don't see it or that someone else doesn't see it, or even people out of OI don't see and say something. I'm not making an accusation, because this is not about me, this is about them."

Analysis: This bullet is a continuation of the bullets 5 and 6. The line of questioning was to understand if (b) (6), (b) (7)(C) knew about anything (b) (6), (b) (7)(C) may have conveyed that would lead (b) (6), (b) (7)(C) to believe (b) (6), (b) (7)(C) as "untouchable." (b) (6), (b) (7)(C) does not answer based on his own knowledge, but rather speculates based on nothing more than inferences (b) (6), (b) (7)(C) draws based on unspecified conversations (b) (6), (b) (7)(C) might have had with other unnamed individuals. The "what's going on" refers to the alleged misconduct on the part of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Also, it is unrealistic for (b) (6), (b) (7)(C) to know all social interactions of his unit. (b) (6), (b) (7)(C) does not state, explicitly or implicitly, that there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation. In fact, and curiously absent from the Draft ROI, is (b) (6), (b) (7)(C) statement that he is not making an accusation. I also note that if (b) (6), (b) (7)(C) believed there was an impartiality issue, one would expect him to push this line of inquiry as he did.

Draft ROI Bullet 8 "That's what [sic] people are concerned, that either (b) (6), (b) (7)(C) doesn't see it, so are they hiding it from you, or has it gone on ... how is it possible that you don't see it..." (p. 72).

Proper context: At Page 72, (b) (6), (b) (7)(C) states: "That's what people are concerned, that either (b) (6), (b) (7)(C) doesn't see it, so are they hiding it from you, or has it gone on, I mean that's the general concern is since we all know it or sense that this is going on and it's not okay, how is it possible that you don't see it or that someone else doesn't see it, or even people out of OI don't see and say something. I'm not making an accusation, because this is not about me, this is about them."

Analysis: This bullet is a continuation of the bullets 5, 6, and specifically, 7. The line of questioning was to understand if (b) (6), (b) (7)(C) knew about anything (b) (6), (b) (7)(C) may have conveyed that would lead him to believe (b) (6), (b) (7)(C) as "untouchable." (b) (6), (b) (7)(C) does not answer based on his own knowledge, but rather speculates on others' concerns based on pure hearsay and/or conjecture. Also, it is unrealistic for (b) (6), (b) (7)(C) to know all social interactions of his unit. (b) (6), (b) (7)(C) does not state, explicitly or implicitly, that there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation. In fact, he states he is not making an accusation.

Draft ROI Bullet 9 "I think people have a sense that he ((b) (6), (b) (7)(C) operates with impunity, or that he feels that way. So, I think people connect the dots to, I mean not my words, someone else's, hey, he must have some pictures of Carl and (b) (6), (b) (7)(C) hugging it out in the

locker room or something ... But I think people are looking to see how you're going to resolve this "(p. 110)

Proper context: At page 109, [redacted] asks: "What do you think I could have done differently to get people to have told me?" On page 110, [redacted] answers: "I don't think it's what you could have done differently, I think it's what [redacted] could have done differently. I think people have a sense that he operates with impunity, or that he feels that way. So, I think people connect the dots to, I mean not my words, someone else's, hey, he must have some pictures of Carl and [redacted] hugging it out in the locker room or something because -- Right, you know, because he walks around like he owns the place, and maybe that means that if I say something nothing is going to happen. I don't think anybody, I'm speaking for myself, but I don't think anybody thinks you failed as a leader. I don't feel you fail as a leader. But I think people are looking to see how you're going to resolve this."

Analysis: [redacted] testimony tells [redacted] that he not a failure as a leader and that he believes people are looking to see how [redacted] resolves this issue. This is the opposite of impairment to independence. This is an actual endorsement of [redacted] as independent interviews and fact gatherers. Lastly, [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 10 Regarding one on one interviews of OI staff by [redacted] [Unnamed person] stated "I think that no one wants to challenge what you've built here ... l think everyone wants to just come in and say everything is okay from the one-on-ones and move on" (p. 109).

Proper context: At page 109, [redacted] asks: "Give me a little more on that. What do you mean intimidated by me? How is that, help me with that, because I don't want that to come across. How is that?" [redacted] answers: "No, and I don't mean it in a bad way but I think that no one wants to challenge what you've built here by saying, hey, your baby is ugly. No one wants to tell you your baby is ugly, because we all love you and respect you and care about you. No one wants to say, hey, this place is jacked up."

Analysis: In this line of questioning [redacted] is attempting to understand or evaluate what [redacted] means by intimidation. Curiously absent from the Draft ROI is [redacted] statement "I don't mean that in a bad way." Nothing suggesting an independence issue with the investigation. [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

TAB D
Analysis of Draft ROI Pages 14-15

IG Hoecker's overall remarks on bullets 1-10:

From his 5-18-16 interview transcript, (b) (6), (b) (7)(C) appears to be open and honest. He did not mention that he was concerned with (b) (6), (b) (7)(C) conducting the interview or investigation. (b) (6), (b) (7)(C) did not state he was concerned with independence, did not request anyone else be present during the interview, and did not request to be interviewed by someone else – all options he could have exercised if he thought there was an issue.

From the quotes contained in bullets 1-10 of the draft ROI and with the benefit of proper context and missing sentences, there is nothing, either singularly or together, that would cause an objective fact gatherer or reader to think that (b) (6), (b) (7)(C) thought there was an independence issue with the internal investigation. In fact, (b) (6), (b) (7)(C) did not raise an independence issue, nor did they inform me they should be recused from this matter. Additionally, the quotes on page 14-15, were first provided to me as independence issues during my interview conducted by the Integrity Committee in July 2018, about two years after (b) (6), (b) (7)(C) interview and about a year after the internal matter on (b) (6), (b) (7)(C) was closed.

In sum, when viewed in the proper context and with the addition of missing information from the (b) (6), (b) (7)(C) interview, as I did above, an objective reader/reasonable third party cannot infer that (b) (6), (b) (7)(C) should have known there was an independence impairment worthy of recusal or reporting. At most, (b) (6), (b) (7)(C) testimony at the time is full of speculative hearsay about what other OIG staff were thinking and, in fact, actually endorses the independence and integrity of (b) (6), (b) (7)(C) as a person and as a leader.

TAB E

Tab E
Timeline of Internal Investigation, Integrity Committee Correspondence and Peer Review Activity

Date	Event
May 16, 2016	Allegation received on (b) (6), (b) (7)(C)
May 18, 2016	Internal investigation begun
October 28, 2016	IC request information on IC #868 - unrelated to this matter
November 30, 2016	Hoecker responds to the IC letter IC #868
January 4, 2017	IC partial close on 868. Request for additional info on 868 and a response to 872 (IC #872 alleges I failed to ensure appropriate and objective internal investigation re (b) (6), (b) (7)(C) and it was not timely.)
February 2, 2017	Hoecker responds Letter to IC (One issue on IC #868 all of IC #872)
February 21, 2017	IC Closes IC #868 & IC #872 Complaints
February 23, 2017	IC letter to (b) (6), (b) (7)(C). No action on referral dated October 21, 2016.
March 3, 2017	Internal Investigative Report from Counsel on (b) (6), (b) (7)(C)
March 24, 2017	Action taken on (b) (6), (b) (7)(C)
May 13, 2017	Integrity Committee Request for Information about "phony" investigation (IC#890)
May 22, 2017	Peer Review field work commenced
May 30, 2017	IC Request for Information IC #890 and status of internal investigation previously responded to IC #872.
June 29, 2017	Telephone conversation with NSF OIG about reviewing or not reviewing our internal matter.
June 29, 2017	Response to Integrity Committee (IC #890 and Allegation 1 of IC #872) redacted report provided. Access to full report, exhibits, file. re (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) internal investigation.
June 30, 2017	Telephone conversation with NSF OIG about reviewing or not reviewing our internal matter.
August 29, 2017	Hoecker requests and is granted an extension for the peer review completion from Vice Chair Investigations Committee.

Tab E
Timeline of Internal Investigation, Integrity Committee Correspondence and Peer Review Activity

Date	Event
September 14, 2017	NSF IG sends allegation letter to Integrity Committee on concerns with an internal administrative investigation and obstruction of a peer review. **First time I saw this was February 2018 upon receiving access to the Exhibits in this matter.**
September 28, 2017	Hoecker emails the Vice Chair of Investigations Committee requesting assistance with dispute.
October 16, 2017	Hoecker emails NSF IG telling her I will make the internal matter available for review
October 25, 2017	NSF reviews internal (for 2 hours)
October 26, 2017	NSF Memo of Investigation. **Did not see this until June 2017 during my interview with ED OIG.**
November 12, 2017	WSJ Article
November 13, 2017	NSF email to SEC OIG Peer review report "Pass"
November 13, 2017	Hoecker notifies IG Dahl about WSJ Article
November 15, 2017	IC notifies me of Investigation (IC #890)
November 27, 2017	IC #890 & IC #909 (Hoecker) Additional Investigation 1. withheld information from peer reviewers. 2. misused office by changing QAR and not recusing.
December 4, 2017	NSF IG letter to Integrity Committee that she has reviewed the internal investigation and determined it was outside the scope of the peer review. **Did not see this until June 2017 during my interview with ED OIG.**

EXHIBIT LIST

EXHIBIT LIST

1. Email String – IG Hoecker and Integrity Committee, September 28, 2018

2. Council of the Inspectors General on Integrity and Efficiency, "The Inspectors General," July 14, 2014

3. a. IC Letter to IG Hoecker, dated December 23, 2016
   b. IG Hoecker Letter to IC, dated February 2, 2017
   c. IC Letter to IG Hoecker, dated February 21, 2017
   d. IC Letter to IG Hoecker, dated May 30, 2017
   e. IG Hoecker Letter to IC, dated June 29, 2017

4. Email String – (b) (6), (b) (7)(C) and Integrity Committee, September 2018

5. Multiple Email Strings – (b) (6), (b) (7)(C) and Integrity Committee, February 2019

6. a. CIGIE IC Peer Working Group questionnaire and attendant email dated June 29, 2015
   b. 11-24-15 AIGI QAR Study (Annotated by IG Hoecker)
   c. Peer Review WG Objectives

7. a. CIGIE Audit Committee Minutes, May 24, 2016
   b. IG Hoecker email to the Investigations Committee, July 7, 2017

8. Various Emails Strings re NSF Peer Review – IG Hoecker, IG Lerner, (b) (6), (b) (7)(C), August 2017-November 2017

EXHIBIT 1

(b) (6), (b) (7)(C)

From: Hoecker, Carl W. (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 8:58 AM
To: (b) (6), (b) (7)(C)
Cc: Integrity-WG
Subject: Re: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Sensitivity: Confidential

(b) (6), (b) (7)(C),

My counsel for this matter is (b) (6), (b) (7)(C).

Regards,

Carl Hoecker

On Sep 28, 2018, at 8:35 AM, (b) (6), (b) (7)(C) > wrote:

> Dear (b) (6), (b) (7)(C),
>
> Thank you for your email. I believed my representation was a matter of record. IG Hoecker and I informed the investigatory agents of my representation and I was present for his interview. That said, I will advise IG Hoecker to reply by email, confirming my representation. If you require some other form of documentation, please let me know.
>
> Regards,
>
> (b) (6), (b) (7)(C)
>
> (b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 7:53 AM
To: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for contacting the Integrity Committee.

Can you please provide us with documentation showing your representation of Mr. Carl Hoecker?

Upon receipt we will be able to respond to your request.

Sincerely,

(b) (6), (b) (7)(C)
CIGIE
Suite 825
1717 H St., N.W.
Washington, D.C. 20006
http://www.IGnet.gov

From: (b) (6), (b) (7)(C) >
Sent: Wednesday, September 26, 2018 12:02 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

I represent Inspector General Carl Hoecker with respect to the following matter: Council of Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909.

Yesterday, on Tuesday, September 25, 2018, while I was out of the office on medical leave, I received the Integrity Committee draft report of Investigation in the aforementioned matter. The draft report of Investigation refers to and lists 66 separate Exhibits. See draft report of Investigation at pages 43-45. However, these Exhibits were not included with the draft report that Inspector General Hoecker received from Integrity Committee. I am writing to request

1) a copy of the 66 Exhibits listed in the draft report,
2) "a transcript of any recorded interview" of Inspector General Hoecker– if not one of the 66 Exhibits, and

3) “a summary memorandum of any unrecorded interview” of Inspector General Hoecker, if not one of the 66 Exhibits

This request is made pursuant to Integrity Committee Policies & Procedures 2018 Section 10.A.i.

If you have any questions, please do not hesitate to contact me using the contact information below.

Thank you.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

EXHIBIT 2

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

THE INSPECTORS GENERAL

July 14, 2014

INTRODUCTION

The concept of a statutory Inspector General (IG) was broadly introduced to the civilian side of the Federal government by the Inspector General Act of 1978 (IG Act).[1] The original Inspectors General (IGs) were established in 12 Federal agencies. The concept has proved so successful that today, there are 72 statutory IGs across the Federal government.

Statutory IGs are structurally unique within the Federal government. The stated purpose of the IG Act is to create independent and objective units within each agency whose duty it is to combat waste, fraud, and abuse in the programs and operations of that agency.[2] To this end, each IG is responsible for conducting audits and investigations relating to the programs and operations of its agency, and providing leadership and coordination and recommending policies for, and to conduct, supervise, or coordinate other activities[3] for the purpose of promoting economy, efficiency, and effectiveness and preventing and detecting fraud and abuse in those programs and operations. Importantly, each IG is also to keep the agency head and the Congress "fully and currently informed" about problems and deficiencies relating to the administration of agency programs and operations. The IG Act contains a variety of statutory guarantees of Office of Inspector General (OIG) independence, designed to ensure the objectivity of OIG work and to safeguard against efforts to compromise that objectivity or hinder OIG operations. It is these guarantees of independence that make statutory IGs unique.

This paper, prepared by the Council of the Inspectors General on Integrity and Efficiency (CIGIE),[4] explores the authorities, responsibilities, and independence of statutory IGs. It is

[1] Pub. L. No. 95-452 (Oct. 12, 1978), 5 U.S.C. app. 3.
[2] Additionally, the IG Act, at section 7, sets out that the IG may receive and investigate complaints alleging mismanagement.
[3] For example, many IGs conduct inspections and evaluations.
[4] Established by the Inspector General Reform Act of 2008, CIGIE is a council made up of 72 IGs and others in the Federal law enforcement and program integrity community, including the Office of Management and Budget (OMB). The mission of the Council is to address integrity, economy, and effectiveness issues that transcend individual Government agencies and to increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the IGs. The Council has annual and other reporting requirements to the President and to Congress [IG Act, § 11].

presented for purposes of providing a better understanding of these attributes, and to foster a productive, informed working relationship between agency executives and their IGs.[5]

SELECTION, APPOINTMENT, AND REMOVAL OF IGs

At the outset, it is important to note that there are two distinct types of IGs under the IG Act: those in "establishment" agencies (establishment IGs) and those in "designated Federal entities" (DFE) (DFE IGs).[6] Establishment IGs are appointed by the President with Senate confirmation, whereas DFE IGs are appointed by the agency head, which may be an individual, a board, or a commission. With a few exceptions, both types of IGs share the same authorities and responsibilities. For consistency, the term "agencies" is used throughout this paper to apply equally to establishment agencies and DFEs.[7] Where there are significant differences, the two are distinguished.

A. SELECTION AND APPOINTMENT

Under the IG Act, all IGs must be selected without regard to political affiliation and based solely on "integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations"[8] [IG Act, §§ 3(a); 8G(c)].

> *Establishment IGs [IG Act, § 3(a)]:* Establishment IGs are appointed by the President and confirmed by the Senate. Pay for establishment IGs is fixed by statute at Executive Schedule level III plus three percent.[9]
>
> *DFE IGs [IG Act, § 8G(c)]:* DFE IGs are appointed by the head of the entity. In DFE agencies with a board or commission, that board or commission is considered the entity head.[10] For pay and all other purposes, the grade, level, or rank of a DFE IG must be at or above the majority of the senior level executives within that entity (such as the General Counsel, Chief Information Officer, or Chief Acquisition Officer); DFE IG pay must not be less than the average total annual compensation (with bonuses included) of the DFE's senior level executives.[11]

---

[5] Please note that this paper summarizes authorities granted by statute to Federal IGs. This is not intended to change the existing authority of each IG to exercise legal discretion and professional judgment to interpret and execute those authorities for his or her Office in particular circumstances.

[6] Appendix 1 contains a list of all departments and agencies with statutory IGs, and identifies each as an "establishment" agency (with a Presidentially-appointed IG), or "Designated Federal Entity" (with an IG appointed by the head of the entity or a governing board).

[7] We note that some IGs were established by statutes other than the IG Act. Some of these IGs are listed in Appendix 1. In some cases, these statutes incorporate some of the authorities and responsibilities of the IG Act; where this is true, this paper will also be applicable to IGs in those agencies.

[8] Particular IGs may also be subject to additional requirements [*see, e.g.*, IG Act, § 8D(i)].

[9] If an IG is appointed from a Senior Executive Service (SES) position, the IG Act provides that the IG may elect to retain his or her SES pay level, which could be higher. [IG Act, § 3, note].

[10] As of 2011, the Government Accountability Office (GAO) reported that 26 of 33 DFEs have boards or commissions. GAO-11-770, *Inspectors General, Reporting on Independence, Effectiveness, and Expertise* (Sept. 2011).

[11] For additional information on fixing the pay of an IG of a DFE, see the IG Reform Act, § 4(b)-(d), Pub. L. No. 110-409 (codified at IG Act, § 3, note).

CIGIE submits recommendations of individuals for IG appointments to the appropriate appointing authorities for both DFE and establishment IG positions [IG Act, § 11(c)(1)(F)]. So as not to compromise the independence of his or her work, no IG may receive a cash award or cash bonus [IG Act, § 3(f)].

B. REMOVAL OR TRANSFER

Although IGs generally serve at the pleasure of the President or DFE head, the IG Act contains procedural safeguards to help ensure the independence of IGs and to ensure that Congress is informed of the reasons for their removal or transfer before such action takes place. These safeguards are meant to prevent IGs from being removed for political reasons or simply because they are doing an effective job of identifying fraud, waste, and abuse.

Specifically:

> *Establishment IGs [IG Act, § 3(b)]:* An establishment IG may be removed from office or transferred to another position within the agency by the President; however, the President must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer.
>
> *DFE IGs [IG Act, § 8G(e)]:* Likewise, a DFE IG may be removed from office or transferred to another position within the agency by the entity head; however, the entity head must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer. In a DFE agency with a board or commission, removal or transfer of a DFE IG requires the written concurrence of two-thirds of the members of the board or commission.

In both cases, Congressional notification letters must be sent by the President (for establishment IGs) or the entity head (for DFE IGs) to "both Houses of Congress." Entity heads are also requested to provide copies of the Congressional notifications to the CIGIE Chair.

OIG INDEPENDENCE AND THE RELATIONSHIP WITH AGENCY MANAGEMENT

In creating the OIGs, Congress sought to "strike a workable balance" for IGs and agency heads. The Senate Committee on Governmental Affairs explained:

> If the agency head is committed to running and managing the agency effectively and to rooting out fraud, abuse and waste at all levels, the Inspector and Auditor General[12] can be his strong right arm in doing so, while maintaining the independence needed to honor his reporting obligations to Congress.[13]

This balance is accomplished through a number of provisions of the Act.

[12] This was the name given to IGs in the original bill; it was later shortened to "Inspector General."
[13] S. REP. NO. 95-1071, at 9 (1978).

A. GENERAL SUPERVISION

The IG Act specifically prohibits agency management officials from supervising the IG. This important organizational independence helps to limit the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.

> *Establishment IGs [IG Act, § 3(a)]:* The Act specifies that each IG "shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment." Except under narrow circumstances discussed below, even the head of the establishment may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.
>
> *DFE IGs [IG Act, § 8G(d)]:* Similarly, each DFE IG "shall report to and be under the general supervision of the head of the [DFE], but shall not report to, or be subject to supervision by, any other officer or employee of such [DFE]." Again, except in narrow circumstances discussed below, even the head of the DFE may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

There is no statutory definition of "general supervision." However, the IG Act is clear that this supervision is limited and may not be exercised in a way that would inhibit an IG's full discretion to undertake an audit or investigation, issue subpoenas, and see these matters through to conclusion. Additionally, although only a few court decisions have analyzed the "general supervision" language of the IG Act, one case in particular, *United States Nuclear Regulatory Commission v. Federal Labor Relations Authority*, 25 F.3d 229, 235 (4th Cir. 1994), reviewed the legislative history of the "general supervision" language and described the agency head's supervisory authority over the IG as "nominal."

As mentioned above, there is one exception to the prohibition on agency interference with IG audits, investigations, and subpoenas. Under the IG Act, the heads of seven agencies (the Departments of Defense, Homeland Security, Justice, Treasury, plus the Federal Reserve Board and Consumer Financial Protection Bureau, and the Postal Service) may prevent their respective IGs from initiating or completing an investigation or audit, or issuing a subpoena, but only for reasons specified in the IG Act [*see, e.g.*, IG Act, § 8].[14] These reasons include, among others, preserving national security interests, protecting ongoing criminal prosecutions, or limiting the disclosure of information that could significantly influence the economy or market behavior [*see,*

[14] Other statutes may provide heads of agencies with similar powers over IG audits, investigations, and subpoenas. For example, the Secretary of Defense, in consultation with the Director of National Intelligence, has those powers with respect to the Defense Intelligence Component (DIC) IGs.

e.g., IG Act, § 8D]. If an agency head invokes this power, he or she must send an explanatory statement to certain Congressional Committees within 30 days.[15]

B. IG ACCESS TO AGENCY HEAD

The IG is required to have direct and prompt access to the agency head when necessary to perform the IG's functions and responsibilities [IG Act, § 6(a)(6)]. This provision helps make sure that the agency head hears, first hand and promptly, needed information on serious problems and abuses within the agency. It also helps ensure timely access by the IG to all records and information in the agency's possession.

C. IG REPORTING TO THE CONGRESS

The IG Act creates a rare dual reporting obligation for IGs to keep both the head of the agency and the Congress "fully and currently informed" about deficiencies in agency programs and operations, and progress in correcting those deficiencies [IG Act § 4(a)(5)]. In part, this responsibility is fulfilled through the two reports discussed below. Many OIGs also have agency- or program-specific reports that they are obligated to submit to the Congress. In addition, IGs brief their agency heads on important audits, investigations, and other issues, as appropriate, testify frequently before Congressional committees, and respond to Questions for the Record (QFRs). They also field requests, provide briefings to, and participate in meetings with Congressional members and their staff on a regular basis.

Semiannual Reports [IG Act, § 5]: IGs must issue semiannual reports detailing, among other items, significant problems and deficiencies identified by the OIG during the preceding six-month period (ending March 31 and September 30), listing current and pending recommendations and summarizing prosecutorial referrals made during the period. The report also describes any significant disagreements with agency management concerning OIG recommendations. By law, the IG submits the report first to the agency head (no later than April 30 and October 31 of each year). The agency head must prepare a companion report, detailing management's actions in response to OIG findings and recommendations. Upon receipt of the IG's semiannual report, the agency head has 30 days to append comments and his/her companion report and transmit both to the appropriate committees of the Congress.[16]

The IG Act does not require IGs to seek clearance of the semiannual report by the agency head, although the IG may choose to circulate the report in draft format to the appropriate agency officials for technical comments. The agency head may not change the OIG's semiannual report, but he or she may separately provide comments.

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[15] There are separate authorities applicable to the Central Intelligence Agency, Intelligence Community IG, and the DIC IGs, including Defense Intelligence Agency, National Security Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency, which require reports to respective Congressional oversight committees within 7 days.

[16] Additionally, for those agencies subject to its provisions, the Reports Consolidation Act of 2000 (31 U.S.C. § 3516(a)(2)(C)) authorizes an agency head to respond to IG reports on an annual basis. Agencies must first consult with OMB and appropriate Congressional committees.

As set out in the IG Act, the semiannual reports of the OIG and the agency head are prepared independently. However, because both reports must contain specified statistical data relating to the same universe of audit, inspection, and evaluation reports, management and the IG should routinely reconcile their follow-up data and account for any discrepancies between them.[17]

"Seven-Day Letter" [IG Act, § 5(d)]: Section 5(d) of the IG Act authorizes an IG to report "immediately" to the agency head when the IG becomes aware of "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations." In turn, the agency head must transmit the report—and any comments—to the appropriate committees or subcommittees of Congress within seven calendar days. In practice, the "Seven-Day Letter" is a powerful tool available to the IG in compelling circumstances requiring immediate Congressional attention.

D. OVERSEEING THE OIG

The statutory independence of IGs raises the fair question of, "Who oversees the IG?" The IG Act does have several mechanisms for IG accountability. First, all OIG reports (excluding those containing classified or other information that may not be released) are published on the particular OIG's website and are open to public scrutiny [IG Act, § 8M(b)(1)]. The OIG semiannual reports are also, by law, publicly available. These reports, together with the companion agency report, reveal important information on the acceptance and implementation of OIG recommendations. Moreover, OIG Audit Offices are subject to external peer review for compliance with Government Auditing Standards, established by GAO, at least once every three years.[18] OIGs that exercise statutory law enforcement authorities (discussed below) under the IG Act are also subject to mandatory peer review of their Office of Investigations every three years.[19] OIG evaluations and inspections professionals are currently pilot testing peer reviews for that function as well. Information regarding all peer reviews is made public in the OIGs' semiannual reports [IG Act, § 5].

Another form of OIG oversight is CIGIE's role in ensuring OIG professionalism. For example, CIGIE sets government-wide quality standards that form the basis for the professional peer reviews described above [IG Act, § 11(c)(2)]. OIG staff must adhere to these professional standards, so long as they are not inconsistent with Government Auditing Standards. CIGIE also coordinates cross-agency work and provides professional training opportunities for IGs across government.

Under applicable standards, another aspect of professionalism is the need for OIGs to have qualified personnel. For many OIG positions, OIG personnel must also meet continuing education requirements to maintain professional competency for their positions. The importance

[17] Defense Intelligence Component IGs have a separate statutory obligation to submit an additional annual report directly to the Intelligence Committees [*see* IG Act § 8H(g)].
[18] Frequency of audit peer review is set by GAO in its Government Auditing Standards, which IGs are obligated to follow [IG Act, § 4(b)(1)(A)].
[19] There are four OIGs (Department of Agriculture, Department of Defense, U.S. Postal Service, and Treasury IG for Tax Administration) that derive their law enforcement authority from legislation other than the IG Act of 1978, as amended, and may voluntarily submit to such peer review processes.

of training for OIG personnel is reflected in the IG Act, which requires all IGs to include training information in their annual budget requests [IG Act, § 6(f)(1)].

When an allegation of wrongdoing is lodged against an IG or a member of his/her senior staff, the Integrity Committee of CIGIE serves as an independent reviewer and investigative mechanism for those allegations [IG Act, §§ 11(d)(1) and (4)]. An official of the Federal Bureau of Investigation serves as Chairperson of the Integrity Committee. [IG Act, § 11(d)(2)(A)].

STRUCTURE & ADMINISTRATION OF OFFICES OF INSPECTOR GENERAL

A. OFFICE STRUCTURE

OIGs are given considerable latitude in organizing their offices as they see fit to best carry out the duties assigned to them by statute. This autonomy is described in more detail below. Nonetheless, the IG Act does contain certain requirements with respect to OIG staffing:

Assistant Inspectors General [IG Act, § 3(d)]: Establishment IGs are required to appoint two officials—an Assistant Inspector General for Auditing, who is responsible for supervising the performance of audits relating to programs and operations of that agency, and an Assistant Inspector General for Investigations, who is similarly responsible for supervising investigations of those programs and operations. There is no corresponding requirement that IGs in DFE agencies appoint these officials; in practice, however, this is the model followed by many DFE IGs.

Legal Counsel [IG Act, §§ 3(g); 8G(g)(4)]: IGs are required by law to obtain legal counsel independent of the agency counsel. Specifically, the IG Act requires an IG to obtain legal advice from a counsel who reports directly to the IG or to another IG. Alternatively, DFE IGs may obtain services of appropriate staff of CIGIE on a reimbursable basis.

Evaluations and Inspections. Many IGs have offices that perform inspections or evaluations of their agency's programs and operations. Where an IG does perform inspections or evaluations, it must conduct them in accordance with CIGIE Quality Standards for Inspection and Evaluation [IG Act, § 11(c)(2)(A)]. In addition, the IG must include a list of any inspection or evaluation reports and their results in its semiannual report [IG Act, § 5].

Whistleblower Ombudsman. Each establishment IG (except certain IGs in the intelligence community) is required to designate a Whistleblower Ombudsman. This is described in more detail later in this paper [IG Act, § 3(d)(1)(C)].

B. PERSONNEL, PROCUREMENT, AND LOGISTICAL SUPPORT

To ensure that each IG would be able to secure the resources necessary to carry out his or her duties, Congress provided the IG with broad administrative authorities:

- to select, appoint, and employ such officers as may be necessary for carrying out the functions, powers, and duties of the OIG [IG Act, §§ 6(a)(7); 8G(g)(2)], and to be

considered head of the agency with respect to authorities related to separation, retirement, and reemployment of OIG employees [IG Act, § 6(d)];

- to obtain consultant services [IG Act, §§ 6(a)(8); 8G(g)(2)];
- to contract for audits, studies, analyses, and other services [IG Act, § 6(a)(9)]; and
- to appoint individuals to Senior Executive Service (SES) positions within the OIG [IG Act, § 6(d)] and to be considered head of the agency for all SES positions within the OIG.

The IG Act also directs each agency head to provide the IG with "appropriate and adequate office space . . . together with such equipment, office supplies and communications facilities and services as may be necessary for the operation of such offices . . ." [IG Act, § 6(c)].

Congressional intent in including these broad authorities was clear. In the legislative history to the IG Act, the Senate Committee on Governmental Affairs acknowledged that administrative personnel and contracting authorities usually rest with the agency head and are delegated by him or her to subordinate officials. However, because of the IG's "unique function . . . and the possibility that such authority might be denied to him in order to hamper his operations, the committee has given him explicit authority to carry out these functions."[20]

Although OIGs are authorized to exercise personnel and procurement authorities independent of the parent agency, often it is more cost effective to obtain these services from the agency. Thus, in many agencies, the OIG continues to rely on the parent agency for personnel and/or procurement functions. Again, though, the IG must employ or retain (by reimbursable agreement) independent counsel.

C. OIG BUDGET

Another way that the IG Act promotes IG independence is through individual reporting of OIG budgets. Section 6(f) of the IG Act specifically requires that each IG's requested budget amounts be separately identified within their agency budgets when submitted to OMB and by OMB to the Congress. Also, section 6(f)(3) of the IG Act authorizes IGs to comment to Congress on the sufficiency of their budgets if the amount proposed in the President's budget would "substantially inhibit the [IG] from performing the duties of the office." Additional details with respect to this reporting requirement are set forth in Appendix 2.

Under Federal law, agency budget requests must be submitted by the individual agency head to OMB. This includes the budgets of the respective OIGs. However, it is important to note that while each agency head is responsible for budget formulation and execution decisions affecting the entire agency (including the OIG), in practice, the OIG may also have an ongoing dialogue with the OMB budget examiner about the OIG's operational plans, activities, and accomplishments.[21]

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[20] S. REP. NO. 95-1071, at 35 (1978).

[21] Out of concern that intelligence agencies may consider reducing the budgets and workforce of their IGs, separate legislation was enacted in 2013 designating the OIG of an intelligence agency as a congressional special interest item [Intelligence Authorization Act for Fiscal Year 2013, Classified Annex]. In addition, some IGs for nonappropriated agencies do not submit budget requests to OMB.

A. AUDITS, INVESTIGATIONS, AND EVALUATIONS

Each OIG has a broad statutory mandate to "conduct . . . audits and investigations relating to the programs and operations" of the agency and to "conduct . . . other activities . . . for the purpose of promoting economy and efficiency in the administration of . . ." the agency [IG Act, §§ 4(a)(1), (a)(3)].[22] Within this broad mandate, the IG is given full discretion to undertake those investigations that are, in the judgment of the IG, "necessary or desirable" [IG Act, § 6(a)(2)].[23] Although the IG reports to the agency head, even that official may not compromise the initiation or conduct of an OIG audit or investigation [IG Act, §§ 3; 8G(d)].[24]

As discussed above, OIG audits are conducted in accordance with Government Auditing Standards established by the Comptroller General [IG Act, § 4(b)(1)(A)]. In addition, OIGs coordinate with the Comptroller General to avoid duplication in Federal audits [IG Act, § 4(c)]. OIGs also establish criteria for using non-Federal auditors (typically, Certified Public Accountant firms) and ensure that such auditors comply with Government Auditing Standards.

OIGs are charged with not only investigating or auditing fraud, waste, and abuse after they have occurred, but also identifying vulnerabilities and recommending programmatic changes that would, when enacted or implemented, strengthen controls or mitigate risk. Additionally, OIGs may investigate allegations of mismanagement. To this end, some OIGs, but not all, have separate offices devoted to conducting program inspections and evaluations. Others fulfill this responsibility through their audit and investigative offices. Where an OIG does conduct program evaluations and inspections, the IG is charged with tracking and reporting these recommendations in its semiannual report to the Congress, just as it reports its audit findings and recommendations.

The objectivity of these fact-finding efforts is enhanced by the considerable independence given the IGs, which is discussed throughout this paper. This independence enables IGs to fulfill a fundamental responsibility to keep the agency head and the Congress informed about problems and deficiencies in agency programs and operations. However, the statutory requirement for operational independence with respect to IG audits and investigations does not foreclose coordination and cooperation between the IG and agency management. For example, OIGs generally invite agency management to comment on the IG's annual work plan; in this way, managers can offer suggestions on risk areas they perceive in their day-to-day operations of

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[22] The IG Act, at section 8, sets out unique authorities or responsibilities for certain OIGs. Other statutes may also enlarge or change an IG's authorities within a particular agency. For information on these OIG-specific authorities, it may be helpful to consult the website for the particular OIG. These may be accessed via the CIGIE website at http://www.ignet.gov/igs/homepage1 html.

[23] While each IG has broad discretion as to the work his or her office undertakes, certain audits or reviews are mandated by statute. For example, most IGs are required by the Federal Information Security Management Act to perform an annual evaluation to determine the effectiveness of their agency's information security program and practices (44 U.S.C. §§ 3541-3549). For many agencies, their financial statements must be audited annually by the IG or by an independent auditor as determined by the OIG (31 U.S.C. § 3521). For other such mandated work, you may consult the particular IG's semiannual report; these reports may be accessed via the CIGIE website at http://www.ignet.gov/igs/homepage1 html.

[24] See page 4 and footnote 14 for exceptions.

agency programs. Consultation with subject matter experts in the agency's program offices also can enhance OIG work products.

OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations and Federal law. In conducting investigations, whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the Department of Justice [IG Act, § 4(d)]. These reports are to be made directly to the Department of Justice, without prior clearance by agency officials outside OIG.

Law Enforcement Authorities [IG Act § 6(e)]: The IG Act authorizes criminal investigators in the offices of 24 Presidentially-appointed IGs to exercise law enforcement powers while conducting official duties. More specifically, these law enforcement powers include the authority to (1) carry a firearm while engaged in official duties; (2) make an arrest without a warrant for any Federal offense committed in the presence of the agent, or when the agent has reasonable grounds to believe that the person to be arrested has committed or is committing a Federal felony; and (3) seek and execute Federal warrants for arrest, search of premises, or seizure of evidence under the authority of the United States. The Act also provides a mechanism whereby the Attorney General may, after an initial determination of need,[25] confer law enforcement powers on investigative personnel of other OIGs, including those in DFE OIGs. Those OIGs with law enforcement authority conferred directly by statute or designated by the Attorney General must exercise those powers in accordance with guidelines promulgated by the Attorney General. Each OIG also undergoes periodic peer review of its exercise of law enforcement powers. A listing of OIGs with statutory law enforcement powers, including several OIGs that exercise law enforcement authority pursuant to statutes other than the IG Act, is attached in Appendix 3.

B. WEBSITE REQUIREMENTS

To facilitate reporting of fraud, waste, and abuse to IGs, each agency homepage must contain a direct link to the website of the agency's OIG [IG Act, § 8M]. In turn, each OIG homepage must have a direct link for individuals to report fraud, waste, and abuse. Such reports may be anonymous. The OIG is prohibited from disclosing the identity of anyone making a complaint through its website without their consent, except where disclosure is "unavoidable during the course of the investigation" [IG Act, § 8M(b)(2)]. Agency officials are encouraged to periodically confirm that their website's links to the OIG are in place and operational.

It is also important to note that the IG Act requires OIGs to post public reports (or portions) and final audit reports on the OIG website.[26] Under this requirement, reports must be posted not later than three days after being made publicly available [IG Act, § 8M(b)(1)].

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[25] OIGs that seek Attorney General authorization to exercise law enforcement powers must demonstrate that: the OIGs have been significantly hampered by the lack of these authorities; there is insufficient assistance available from other law enforcement agencies; and the OIGs have procedures for the proper exercise of the authorities.

[26] CIGIE is also required to maintain a website [IG Act, § 11(c)(1)(D)], https://www.ignet.gov/.

C. PROGRAM OPERATING RESPONSIBILITIES

In the initial establishment of OIGs, the IG Act provided for the transfer of authority and resources from the respective agencies' existing audit and investigative units to the OIG [IG Act, § 9]. However, the IG Act specifically prohibits an agency from transferring "program operating responsibilities" to an OIG [IG Act, §§ 9(a); 8G(b)]. With this provision, Congress intended to insulate IGs from responsibility for running the very programs that they might review. Thus, by not performing the program responsibilities of their agencies, IGs have no vested interest in agency policies or particular programs and can remain unbiased in their review of those programs.

The statutory prohibition on the IGs having program operating responsibilities does not preclude the IG from assisting the agency and its committees and project teams, when the IG determines that such assistance will help the entity reduce fraud, waste, and abuse and such assistance by the OIG would not compromise its independence in subsequent reviews of the subject matter. For example, an IG may decline to serve as a voting member on a policy-making board or committee within the agency; however, the IG could opt to attend those meetings and provide technical assistance with respect to fraud, waste, and abuse issues or matters of economy, efficiency, or effectiveness. In this way, the IG is able to remain objective if he or she later reviews those issues and matters.

D. LEGISLATION AND REGULATORY REVIEW

IGs are required to review existing and proposed legislation and regulations for their impact on the economy and efficiency of their agency's programs and operations and the prevention of fraud and abuse in those programs and operations [IG Act, § 4(a)(2)]. Agency heads should make sure there are procedures in place giving the OIG the opportunity to conduct these reviews. Under the IG Act, IGs communicate the results of these reviews via their semiannual report. In addition, OIGs often are asked by Congress or CIGIE to respond to direct requests for technical assistance on draft or proposed legislation.

E. IG ACCESS TO AGENCY RECORDS; SUBPOENAS; AND RECEIPT OF ALLEGATIONS AND OATHS OR AFFIRMATIONS

In enacting the IG Act, Congress recognized that access to records would be critical to effective OIG investigations, audits, and other inquiries. In response, Congress fashioned broad authorities for OIG access to records:

Agency Records: Each IG is given a broad statutory right of access to all records available to their agency [IG Act, § 6(a)(1)]. The legislative history of the IG Act provides that access to "all records" is expansive and is intended to include even "confidential interagency memoranda."[27] If an agency employee refuses to provide records to the IG, the IG is to report the circumstances to the agency head immediately, and to include the incident in his/her semiannual report [IG Act, §§ 6(b), 5(a)(5)].

[27] S. REP. NO. 95-1071, at 33-34 (1978).

Other Federal Agencies: Each IG may request information or assistance from other Federal agencies; agency heads are directed to provide such assistance or information "insofar as is practicable" and legal to do so [IG Act, §§ 6(b)]. Again, in the event of refusal, the IG is to report the circumstances to the agency head involved immediately, and to include the incident in its semiannual report [IG Act, §§ 6(b), 5(a)(5)].

Subpoenas: The IG Act provides IGs with broad authority to subpoena all information "necessary in the performance of the functions assigned by [the IG] Act" [IG Act, § 6(a)(4)]. Under this authority, IGs may subpoena relevant documents and information. However, IGs may not subpoena records from other Federal agencies. The subpoenas are enforceable in Federal district court.

Allegations, Complaints, and Oaths or Affirmations: IGs may receive allegations and complaints directly from agency employees [IG Act, § 7]. Also, IGs may take from any person an "oath, affirmation, or affidavit" when necessary in performing their duties under the IG Act. [IG Act, § 6(a)(5)].

Optimally, agency operating guidelines should clearly advise employees of their obligations to provide records to the IG and cooperate fully in investigations or audits conducted by the IG.

F. WHISTLEBLOWERS

Each IG is authorized to receive complaints from agency employees relating to potential impropriety in connection with agency programs and operations. The IG may not disclose the identity of these whistleblowers, except when disclosure is "unavoidable during the course of the investigation." Importantly, agency managers may not take action against an employee for making a complaint or disclosing information to the IG unless the disclosure was knowingly false or made with willful disregard to its truth [IG Act, § 7].

Establishment IGs. Establishment IGs are required to designate a Whistleblower Ombudsman to educate employees throughout the agency about prohibitions on retaliation for whistleblowing, and educate employees who have made or contemplate making a protected disclosure about their rights and remedies against retaliation [IG Act, § 3(d)(1)(C)].

CONCLUSION

As summarized above, OIGs are, in many ways, unique. They are part of their particular agencies or entities, but are operationally independent. Supervision of IGs is strictly limited and there are safeguards against their removal. OIGs have a unique reporting relationship with the Congress and specific protections in the Federal budget process. These and other novel attributes of IGs can present challenges for establishing and maintaining effective working relationships within a Federal agency or entity. By providing the information set forth above concerning the functions and operations of the OIGs, this paper is intended to assist in the promotion of effective relationships between IGs and the agencies they oversee.

Appendix 1

OIGs Created by the IG Act, as Amended[28]

OIGs in Establishment Agencies	OIGs in Designated Federal Entities
Agency for International Development	Amtrak
Corporation for National and Community Service	Appalachian Regional Commission
Department of Agriculture	Board of Governors of the Federal Reserve System and Consumer Financial Protection Bureau
Department of Commerce	Commodity Futures Trading Commission
Department of Defense	Consumer Product Safety Commission
Department of Education	Corporation for Public Broadcasting
Department of Energy	Defense Intelligence Agency
Department of Health and Human Services	Denali Commission
Department of Homeland Security	Election Assistance Commission
Department of Housing & Urban Development	Equal Employment Opportunity Commission
Department of the Interior	Farm Credit Administration
Department of Justice	Federal Communications Commission
Department of Labor	Federal Election Commission
Department of State and the Broadcasting Board of Governors	Federal Labor Relations Authority
Department of Transportation	Federal Maritime Commission
Department of the Treasury	Federal Trade Commission
Department of Veterans Affairs	Legal Services Corporation
Environmental Protection Agency and the Chemical Safety and Hazard Investigation Board	National Archives & Records Administration
	National Credit Union Administration
	National Endowment for the Arts
Export-Import Bank of the United States	National Endowment for the Humanities
Federal Deposit Insurance Corporation	National Geospatial-Intelligence Agency
Federal Housing Finance Agency	National Labor Relations Board
General Services Administration	National Reconnaissance Office
National Aeronautics & Space Administration	National Science Foundation
Office of Personnel Management	National Security Agency
Small Business Administration	Peace Corps
Social Security Administration	Pension Benefit Guaranty Corporation
Tennessee Valley Authority	Postal Regulatory Commission
Treasury IG for Tax Administration	Smithsonian Institution
U.S. Nuclear Regulatory Commission	U.S. International Trade Commission
U.S. Railroad Retirement Board	U.S. Postal Service
	U.S. Securities and Exchange Commission

[28] Note that this listing was developed in January 2014 and reflects IGs in operation at that time.

Other Offices of Inspector General

There are also a number of Inspectors General established pursuant to statutes other than the IG Act. These statutes may incorporate some, but not necessarily all, of the provisions of the IG Act. For additional information concerning the specific authorities of these IGs, it is advisable to consult their web pages directly. For reference, a listing of these OIGs is set out below:[29]

OIGs	Authorizing Legislation
Architect of the Capitol	2 U.S.C. § 1808
Central Intelligence Agency	50 U.S.C. § 3517
Government Printing Office	44 U.S.C. § 3901
Library of Congress	2 U.S.C. § 185
Office of the Intelligence Commmity IG	50 U.S.C. § 3033
Special IG for Afghanistan Reconstruction	National Defense Authorization Act for FY 2008, Pub. L. No. 110-181, § 1229(b) (Jan. 28, 2008)
Special IG for Troubled Asset Relief Program	Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 121 (Oct. 3, 2008)
U.S. Capitol Police	2 U.S.C. § 1909
U.S. Government Accountability Office	31 U.S.C. § 705

[29] Note that this listing was developed in January 2014. Also, it may not be an exhaustive listing of all OIGs that have been created by authorities other than the IG Act.

Appendix 2

Office of Inspector General's Fiscal Year Budget Request

The Inspector General Reform Act of 2008 (Pub. L. No. 110-409) was signed by the President on October 14, 2008. Section 6(f)(1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year.

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- the aggregate amount of funds requested for the operations of the OIG,
- the portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for that fiscal year, and
- the portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget, via OMB, to the President for approval, shall include:

- an aggregate request for the OIG,
- the portion of this aggregate request for OIG training,
- the portion of this aggregate request for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress:

- a separate statement of the budget estimate submitted by each IG,
- the amount requested by the President for each OIG,
- the amount requested by the President for training of OIGs,
- the amount requested by the President for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing the duties of the OIG.

Appendix 3

OIGs WITH LAW ENFORCEMENT AUTHORITIES

Agency for International Development
Amtrak
Board of Governors of the Federal Reserve and Consumer Financial Protection Bureau
Corporation for National and Community Service
Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State and the Broadcasting Board of Governors
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Environmental Protection Agency and the Chemical Safety and Hazard Investigation Board
Export-Import Bank of the United States
Federal Deposit Insurance Corporation
Federal Housing Finance Agency
General Services Administration
National Archives and Records Administration
National Aeronautics and Space Administration
National Science Foundation
Office of Personnel Management
Peace Corps
Securities and Exchange Commission
Small Business Administration
Social Security Administration
Special IG for Afghanistan Reconstruction
Special IG for Troubled Asset Relief Program
Tennessee Valley Authority
U.S. Nuclear Regulatory Commission
U.S. Railroad Retirement Board

In addition to the above there are four additional OIGs with law enforcement authority—Department of Agriculture, Department of Defense, U.S. Postal Service, and Treasury IG for Tax Administration. These four OIGs derive their law enforcement authority from legislation other than the IG Act of 1978, as amended. Further, some OIGs have personnel that have received special deputation from the U.S. Marshall Service.

EXHIBIT 3

EXHIBIT 3.a

Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

935 Pennsylvania Ave, NW, Room 7452, Washington, DC 20535 • IC_Complaints@ic.fbi.gov

Patrick W. Kelley
Chair
Assistant Director
Federal Bureau of
Investigation

Scott Dahl
Vice Chair
Inspector General
Department of Labor

December 23, 2016

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

(b) (6), (b) (7)(C) IC #872 Request for Response

Dear Mr. Hoecker:

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)

Further, after deciding to request a response on the above-noted allegations, the IC received additional complaints from other individuals related to these matters. After considering your responses to the above allegations, and in reviewing the new complaints, the IC decided to request further responses from you on the three allegations described below:

1) In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing personal relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to produce witness statements, but the statements were never collected. The manager conducting the investigation then retired.

2) In September 2016, you and (b) (6), (b) (7)(C) approved a revised version of the Investigative Authority and Standards (drafted by (b) (6), (b) (7)(C) who was under "management inquiry") which changed the manner in which internal investigations were to be conducted by removing the requirement to refer internal matters with personal conflicts to an outside agency.

3) You are improperly "cleaning house" of individuals whom you do not like, and fostering a hostile work environment by making inappropriate statements including, "things will get better when the bad people are gone," "people need to stop shitting in my house," and "some people don't know when to drop things."

The IC requests your response to these allegations within 30 days of receipt of this letter. Please note that this is your opportunity to fully address the issues and provide any supporting documents prior to the IC reviewing the allegation. You may address your response in writing to: Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535, or by email to IC_Complaints@ic.fbi.gov. You may contact [redacted] with any questions regarding this request.

Sincerely,

(b) (6)

Patrick W. Kelley
Chairman
Integrity Committee

U.S. Department of Justice
Federal Bureau of Investigation

935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Official Business
Penalty for Private Use $300

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Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

SEC OIG RCVD *1

20549-2977

EXHIBIT 3.b

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

February 2, 2017

VIA EMAIL
Scott Dahl
Chairman
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency

Re: (b) (6), (b) (7)(C) IC #872

Dear Mr. Dahl:

This letter responds to the Integrity Committee letter dated December 23, 2016, and received by me on January 4, 2017, regarding (b) (6), (b) (7)(C) additional allegations of wrongdoing that the Integrity Committee (IC) has requested further responses from me. I want to reiterate that I take very seriously any allegation of wrongdoing and appreciate the opportunity to respond.

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)

In addition, your December 23, 2016, letter requested responses from me on three additional allegations the IC accepted for review (IC #872). The allegations and my response to these allegations are detailed below.

1) *Allegation 1 (IC #872)*: In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to provide witness statements, but the statements were never collected. The manager conducting the investigation then retired.

   Response:

   On May 16, 2016, I received a five-page letter containing numerous allegations of misconduct on the part of (b) (6), (b) (7)(C) in the SEC OIG Office of Investigations (OI). The overarching allegation was that the two individuals maintain a sexual relationship. On May 17, 2016, pending the outcome of the investigation, (b) (6), (b) (7)(C) was moved out of his supervisory position in OI to a different component of the OIG, the SEC OIG Office of

Management Support. Once the allegations were received an investigation was commenced. The investigation was initially started as a joint effort by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) relationship with the agents was not close and personal and it was determined that it did not present a conflict. He had a professional relationship with the agents accused of misconduct that did not impair his objectivity. As the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement,[1] I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation into the alleged misconduct. It should be noted that neither of the subjects of the internal investigation was an individual who is a direct report to the IG or a designated staff member of the IG requiring referral to the Integrity Committee pursuant § 11(d)(4) of the Inspector General Act of 1978 (as amended). As an added step to ensure impartiality, an outside party, an Acting Inspector General of another agency was asked by (b) (6), (b) (7)(C) to review a draft of the investigatory report and provide input into the thoroughness and impartiality of the report. During the initial interviews, (b) (6), (b) (7)(C) documented the interviews using notes and he requested that select witnesses provide draft statements. All individuals requested to provide draft statements complied but one. Rather than finalize those draft statements into sworn statements, (b) (6), (b) (7)(C) decided to document the interview results in Memoranda of Activity. Throughout the investigation, additional allegations were developed and on November 18, 2016, I received an email that included supplementary allegations.

On January 19, 2017, (b) (6), (b) (7)(C) provided me with an investigatory report concluding the internal investigation. The report addressed approximately 34 allegations, was 52 pages in length, and included 58 exhibits (consisting of 1,279 pages). Throughout the investigation every individual assigned to OI when the investigation commenced was interviewed (15), thousands of emails, blackberry call logs, building entry and exit swipe reports, internet logs, travel and training documents, time and attendance documents and other relevant records were reviewed and analyzed. Given the number and complexity of the allegations, and the developed additional allegations, I believe the investigation was both timely and thorough. Although the report of investigation has been issued, it is still open at this time, pending any potential action taken as a result of the findings. During the pendency of an investigation, individual employees not conducting the internal investigation are necessarily unaware of the scope and investigatory progress and may have incorrectly assumed that work was not being completed.

2) *Allegation 2 (IC #872)*: In September 2016, you and (b) (6), (b) (7)(C) approved a revised version of the Investigative Authority and Standards (drafted by (b) (6), (b) (7)(C) who was under "management inquiry") which changed the manner in which internal investigations were to be conducted by removing the requirement to refer internal matters with personal conflicts to an outside agency.

[1] The retirement had been planned in March 2016 and was announced in April 2016.

Response:

Throughout August and September of 2016, the OIG was in the process of reviewing its investigations policy. In doing so, revisions were made to many policy chapters. These changes were reviewed, edited and changed as necessary, by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) prior to being submitted to me for final approval and adopted. Chapter 1 of the Investigations division manual includes a section concerning investigations of the Inspector General and OIG employees. On September 15, 2016, (b) (6), (b) (7)(C) issued a revised Chapter 1. The language concerning investigations of misconduct by SEC OIG employees was changed.

Specifically, the original policy, Chapter 1, B(1) read, in relevant part:

> Upon receipt of an allegation of misconduct by OIG staff other than designated staff members, the Inspector General will review the allegation and make a preliminary determination as to whether the allegation should be handled administratively by the appropriate OIG management official or should be further investigated. When an allegation is determined to require further investigation, the Assistant Inspector General for Investigations (AIGI) will conduct the investigation. However, if, in the circumstances of the case, it could appear that the AIGI has a conflict of interest, the Inspector General will either select another individual internally to conduct the investigation or request that an external agency conduct the investigation. The investigating party will prepare a Report of Investigation and submit to the Inspector General. The OIG will take disciplinary action against the OIG staff as warranted. [Exhibit 2]

The policy revised and issued on September 15, 2016, reads, Chapter 1, 5(c):

> Upon receipt of an allegation of misconduct by the OIG staff other than designated staff members, the IG will review the allegation and make a preliminary determination as to whether the allegation should be handled administratively by the appropriate OIG management official or should be further investigated. When an allegation is determined to require further investigation, the IG will assign the matter to an individual within OIG for investigation. The investigative party will prepare a Report of Investigation for submission to the IG. The OIG will take disciplinary action against the OIG staff, as warranted, if the investigation substantiates the allegation. [Exhibit 3]

Of note, the original policy did not include a requirement that the OIG refer internal matters with personal conflicts to an outside agency. Rather, it provided notice to OI staff that I could do so based on the circumstances of the case. The original policy was changed to provide notice that I have flexibility to have someone other than the AIGI conduct the investigation if I believe the facts warranted. However, in making the change,

we inadvertently removed the sentence that included the option to refer a matter to an external agency or entity, allowing for the possibility of a contract investigation. Although the sentence was not in the policy, I can assure you that if the SEC OIG had received an allegation that I did not believe could be objectively investigated in my office, I would have referred it out to an external party. During the time period September 2016 through present, there were no such allegations or investigations. Since the deletion of that sentence was inadvertent, I have reissued the policy to include a sentence explicitly giving notice to OI staff that I can refer matters to an external entity. [Exhibit 4] While I do not believe that this inadvertent deletion in any way restricted my ability to refer a matter for investigation by an external party, I appreciate this error being brought to my attention. Additionally, (b) (6), (b) (7)(C) began with my office on October 3, 2016, and I have asked him to review the OI policies and procedures for any substantive and material changes that may be required.

3) *Allegation 3 (IC #872)*: You are improperly "cleaning house" of individuals whom you do not like, and fostering a hostile work environment by making inappropriate statements including, "things will get better when the bad people are gone," "people need to stop shitting in my house," and "some people don't know when to drop things."

Response:

I have not improperly "cleaned" house in any manner. In fact, I actually like all of the OIG employees and I have not taken an adverse action against any employee since starting at the SEC OIG. I am a hands-on leader and speak regularly with my employees. I vaguely recall a conversation where I may have used wording similar to what is used in the allegation. However, the context of the conversation is very different from what is implied by the allegation. I was having a conversation with a criminal investigator I regularly interact with. I was walking through the office and asked her how she was doing. Although she said she was fine, she appeared to be upset and I could tell from the tone of her voice she was concerned. Unfortunately, the internal investigation I mentioned above has caused concern for some employees in OI and it has been a distraction to the regular work routine. As a leader, when I see a coachable moment, I take the opportunity to coach. I told her I appreciated the work she was doing, especially on a particularly sensitive case she was assigned. I also told her that we would get through the internal investigation as an office and move beyond it. I wanted to acknowledge that her work was appreciated and that we would move past the investigation. As an ongoing open internal investigation, I could not discuss details of the investigation so I used general terms. To acknowledge and describe that I did not condone the behavior and continued poor judgment of the subjects of our internal investigation, I used the analogy that someone took a dump (or possibly a shit) in our house and did not clean it up (the misconduct initially being investigated). I went on to say they took another dump in our house (the continued poor judgment). I wanted her to realize that we were continuing to look into the allegations and that potential misconduct

continued and that we could not control human behavior. In an attempt to convey the point that we would move on as an office, I may have said something to the affect that things will get better when we complete the internal investigation and we will take appropriate action for the bad behavior. I then may have added "some people don't know when to stop" in order to emphasize the subjects' further poor judgment. I do not recall stating "things will get better when the bad people are gone."

At the conclusion of this conversation, the criminal investigator with whom I had spoken seemed relieved by the conversation and that I understood the situation and she thanked me for speaking with her. From what I understand, she was happy with the conversation and saw it as a sign that she doing good work. She relayed a summary of our conversation to another individual who apparently took the comments to suggest that I was going to get rid of individuals I did not like. That was certainly not what I intended to convey. The criminal investigator was ultimately confronted by the person who misunderstood the comments in such a manner that made her uncomfortable enough that she reported it to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) immediately met with her to discuss the conversation.

In conclusion, I would note that the issues raised in (b) (6), (b) (7)(C) #872 have been raised around the same time that my managers have taken steps to address issues with a couple of employees' performance and productivity. I believe that a culture of employee engagement and accountability does not equal a hostile work environment. To the contrary, my leadership has focused on engaging employees to produce work that makes the OIG an agent for positive change.

I believe this response adequately addresses all of the allegations. However, if you have any additional questions, please do not hesitate to contact me.

Sincerely,

(b) (6)

Carl W. Hoecker

EXHIBIT 3.c

Scott Dahl
Chair
Inspector General
Department of Labor

Integrity Committee

Council of the Inspectors General on Integrity and Efficiency
935 Pennsylvania Ave, NW, Room 7452, Washington, DC 20535 • IC_Complaints@ic.fbi.gov

February 21, 2017

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

(b) (6), (b) (7)(C) #872: Complaint Closings

Dear Mr. Hoecker:

This is to notify you of the Integrity Committee's (IC) disposition (b) (6), (b) (7)(C) [redacted]

(b) (6), (b) (7)(C) [redacted]

IC872

1) In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing personal relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to produce witness statements, but the statements were never collected. The manager conducting the investigation then retired.

2) In September 2016, you and (b) (6), (b) (7)(C) approved a revised version of the Investigative Authority and Standards (drafted by (b) (6), (b) (7)(C) who was under "management inquiry") which changed the manner in which internal investigations were to be conducted by removing the requirement to refer internal matters with personal conflicts to an outside agency.

3) You are improperly "cleaning house" of individuals whom you do not like, and fostering a hostile work environment by making inappropriate statements including, "things will get better when the bad people are gone," "people need to stop shitting in my house," and "some people don't know when to drop things."

After reviewing the complaints and your responses, the IC determined that it will take no further action.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

EXHIBIT 3.d

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
935 Pennsylvania Ave, NW, Room 7452, Washington, DC 20535 • IC_Complaints@ic.fbi.gov

Scott Dahl
Chair
Inspector General
Department of Labor

May 30, 2017

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

IC #890 Request for Information

Dear Mr. Hoecker:

(b) (6), (b) (7)(C) [redacted]. However, the IC continues to receive complaints related to the following allegation:

> Allegation 1 (IC #872): In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing personal relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to produce witness statements, but the statements were never collected. The manager conducting the investigation then retired.

The additional complaints allege you have or are conducting a phony investigation, and are engaging in a cover-up to protect your senior managers.

As such, the IC respectfully requests a status update on the outcome of the investigation, to include any potential action taken as a result of the findings, and a copy of the report of investigation itself.

You may address your response in writing to: Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535, or by email to IC_Complaints@ic.fbi.gov.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

EXHIBIT 3.e

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

June 29, 2017

VIA EMAIL
Scott Dahl
Chairman
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency

Re: IC #890

Dear Mr. Dahl:

This letter responds to the Integrity Committee's (IC) letter dated May 30, 2017, and received by me on June 8, 2017, regarding the IC's continuing receipt of complaints relating to Allegation 1 of IC #872 and requesting a status update on the outcome of the investigation at issue in that complaint. I appreciate the opportunity to respond.

Specifically, your letter notes that the IC recently closed IC #872 but continues to receive complaints alleging that I have or am conducting a phony investigation and that I am engaging in a cover-up to protect my senior managers. The IC requests information on the outcome of the investigation, including any potential action taken as a result of the findings, and a copy of the report of investigation itself. The text of Allegation 1 of IC #872, excerpts of my February 2, 2017, response to the IC, and the information requested by the IC's May 30, 2017, letter are detailed below.

1. *Allegation 1 (IC #872)*: In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to provide witness statements, but the statements were never collected. The manager conducting the investigation then retired.

Response:

As I noted in my February 2, 2017, response to the IC, on May 16, 2016, I received a five-page letter containing numerous allegations of misconduct on the part of (b) (6), (b) (7)(C) [redacted] in the SEC OIG Office of Investigations (OI). The overarching allegation was that the two individuals maintain a sexual relationship. On May 17, 2016, pending the outcome of the investigation, (b) (6), (b) (7)(C) [redacted] was moved out of his supervisory position in OI to a different component of the OIG, the SEC

OIG Office of Management Support. Once the allegations were received an investigation was commenced. The investigation was initially started as a joint effort by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). (b) (6), (b) relationship with the agents was not close and personal and it was determined that it did not present a conflict. He had a professional relationship with the agents accused of misconduct that did not impair his objectivity. As the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement, I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation. (b) (6), (b) had prior experience conducting and overseeing highly sensitive internal investigations and (b) (6), (b) (7)(C) was relatively new to the OIG and therefore presented limited, if any, independence and objectivity concerns. It should be noted that neither of the subjects of the internal investigation was an individual who is a direct report to the IG or a designated staff member of the IG requiring referral to the Integrity Committee pursuant to § 11(d)(4) of the Inspector General Act of 1978, as amended (IG Act). As an added step to ensure impartiality, an outside party, an Acting Inspector General of another agency was asked by (b) (6), (b) (7)(C) to review a draft of the investigatory report and provide input into the thoroughness and impartiality of the report. During the initial interviews, (b) (6), (b) (7)(C) documented the interviews using notes and he requested that select witnesses provide draft statements. Rather than finalize the draft statements provided into sworn statements, (b) (6), (b) (7)(C) decided to document the interview results in Memoranda. Throughout the investigation, additional allegations were developed and pursued. Also, on November 18, 2016, I received an email that included supplementary allegations. Those additional allegations were also investigated.

On January 19, 2017, (b) (6), (b) (7)(C) provided me with an investigatory report concluding the internal investigation. The final report addressed approximately 34 allegations, was 51 pages in length, and included 63 exhibits (consisting of approximately 1,279 pages).[1] Throughout the investigation every individual assigned to OI when the investigation commenced was interviewed (15), thousands of emails, blackberry call logs, building entry and exit swipe reports, internet logs, travel and training documents, time and attendance documents and other relevant records were reviewed and analyzed. Given the number and complexity of the allegations, and the developed additional allegations, including allegations received as recently as November 18, 2016, I believe the investigation was both timely and thorough; completely contrary to the allegation of a phony investigation and cover-up.

The investigation determined that there was no direct evidence to support the overarching allegation that (b) (6), (b) (7)(C) maintained a sexual relationship. The evidence did support a finding that (b) (6), (b) (7)(C) created the appearance of an inappropriate relationship and as a result of the appearance, employees in OI believed that (b) (6), (b) (7)(C) received preferential treatment. However, the evidence did not show that (b) (6), (b) (7)(C) actually

[1] The report was amended for administrative and clerical oversight errors and re-issued on March 3, 2017. The original report, as I informed the IC in my February 2, 2017, correspondence, was 52 pages in length and included 58 exhibits.

received preferential treatment. Additional findings include that the subjects created the appearance they were not working required hours and that (b) (6), (b) (7)(C) made inappropriate sexual comments to subordinate (b) (6), (b) (7)(C). Complete allegations and findings are detailed in the attached report of investigation.

OIG management carefully reviewed the investigation and its findings and, rather than engage in a cover up as alleged, took appropriate action against both (b) (6), (b) (7)(C). In fact, the deciding official was relatively new to the OIG, his first day in the office was October 3, 2016, and had no role in the internal investigation. On March 24, 2017, (b) (6), (b) (7)(C) entered into an agreement in which he (1) voluntarily took four business days of Leave Without Pay, and (2) agreed to complete sensitivity training/diversity training, in addition to any mandatory supervisory or all-employee training, once a year for the next two years. The agreement converts the Leave Without Pay to a three-day suspension documented in his official personnel file if (b) (6), (b) (7)(C) engages in any additional misconduct in the next two years. Additionally, (b) (6), (b) (7)(C) supervisory duties have been limited. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) received a Memorandum of Censure on March 30, 2017, for (1) creating the appearance of an inappropriate relationship with (b) (6), (b) (7)(C), and (2) creating the appearance that she failed to adhere to SEC time reporting requirements. The Memorandum of Censure will be converted to a disciplinary action and placed in (b) (6), (b) official personnel file if, within the next two years, she engages in conduct relating to the concerns addressed in the memorandum that management concludes constitutes conduct unbecoming an OIG (b) (6), (b) (7)(C).

Per the IC's request, I am providing the attached report of investigation for the IC's review pursuant to its jurisdiction under section 11(d) of the IG Act to receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members of the various Offices of Inspector General. The report of investigation is being provided in redacted form under section 7(b) of the IG Act to protect the confidentiality of OI employees who provided information relating to this matter. Specifically, employee identities are replaced with numbered references (*e.g.*, WITNESS 1, WITNESS 2, etc.) and material clearly identifying those individuals is redacted. Similarly, the identities of the subjects, a non-employee applicant who was not interviewed, and the name of an open OIG investigation into an unrelated criminal matter are also redacted. The report of investigation is otherwise being provided unaltered. Please contact me to arrange to examine an unredacted copy of the report of investigation if the IC determines that the redacted information impairs the IC's ability to further evaluate IC #890. Should the IC wish to arrange to review any of the 63 exhibits, please contact me. The exhibits are not attached due to their voluminous nature. I also request an opportunity to discuss potential additional redactions should the IC receive a Freedom of Information Act request for the report of investigation.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,

(b) (6)

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission

Enclosure: As stated.

EXHIBIT 4

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 9:33 AM
To: (b) (6), (b) (7)(C); Integrity-WG
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Importance: High
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for contacting the Integrity Committee.

We received confirmation of your legal representation of Mr. Hoecker.

In accordance with the IC Policies and Procedures 2018, the exhibits to the report of investigation for IC 890/909 will need to be redacted prior to review. We sincerely appreciate your patience as the staff perform these redactions. We understand this will impact the 10-day response period, therefore we will delay the start of the response period until we provide you with notification that the documents are ready for review.

Please let us know if you have any questions or concerns.

Sincerely,
Integrity Committee Working Group

From: (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 8:32 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for your email. I believed my representation was a matter of record. IG Hoecker and I informed the investigatory agents of my representation and I was present for his interview. That said, I will advise IG Hoecker to reply by email, confirming my representation. If you require some other form of documentation, please let me know.

Regards,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 7:53 AM
To: (b) (6), (b) (7)(C) >
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for contacting the Integrity Committee.

Can you please provide us with documentation showing your representation of Mr. Carl Hoecker?

Upon receipt we will be able to respond to your request.

Sincerely,

(b) (6), (b) (7)(C)
CIGIE
Suite 825
1717 H St., N.W.
Washington, D.C. 20006
www.IGnet.gov

From: (b) (6), (b) (7)(C)
Sent: Wednesday, September 26, 2018 12:02 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

I represent Inspector General Carl Hoecker with respect to the following matter: Council of Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909.

Yesterday, on Tuesday, September 25, 2018, while I was out of the office on medical leave, I received the Integrity Committee draft report of Investigation in the aforementioned matter. The draft report of Investigation refers to and lists 66 separate Exhibits. See draft report of Investigation at pages 43-45. However, these Exhibits were not included with the draft report that Inspector General Hoecker received from Integrity Committee. I am writing to request

1) a copy of the 66 Exhibits listed in the draft report,
2) "a transcript of any recorded interview" of Inspector General Hoecker– if not one of the 66 Exhibits, and
3) "a summary memorandum of any unrecorded interview" of Inspector General Hoecker, if not one of the 66 Exhibits

This request is made pursuant to Integrity Committee Policies & Procedures 2018 Section 10.A.i.

If you have any questions, please do not hesitate to contact me using the contact information below.

Thank you.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

EXHIBIT 5

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Friday, February 01, 2019 6:44 PM
To: Integrity-WG
Cc: (b) (6), (b) (7)(C)
Subject: Re: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Sensitivity: Confidential

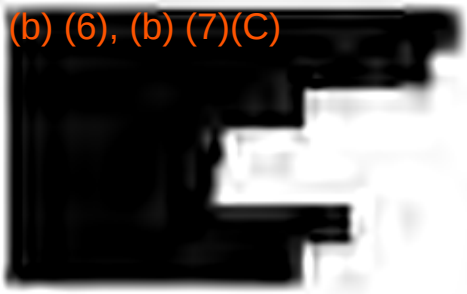
Dear CIGIE Working Group:

Thank you for your email today, February 1, 2019, advising that the redacted exhibits to the draft ROI are available for our review.

We request copies of the redacted exhibits except for Exhibits 1-8, 39-42, 52, 58, 62, 63, 66. Reviewing the exhibits in your office will not give us sufficient access or review of the documents in order to prepare our response.

Regards,

(b) (6), (b) (7)(C)



From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, February 1, 2019 10:19 AM
To: (b) (6), (b) (7)(C); Integrity-WG

Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Dear (b) (6), (b) (7)(C),

The Integrity Committee Working Group finalized the necessary redactions of the exhibits to the report of investigation. We are able to provide access to the exhibits at our CIGIE Office starting Wednesday, February 6, 2019. If you or your designee would like to review these documents, please contact us as soon as practical to schedule a date and time. Please let us know if you would prefer the documents in hard copy for review, however you will not be able to make copies or remove the documents from the CIGIE Office. We also have laptops available if you prefer to review the documents electronically.

The documents will be available to you here for ten business days; from February 6, 2019 at 0800 until February 19, 2019 at 1700. We are located at 1717 H St. N.W., Suite 825, Washington, D.C. 20006.

Please let us know if you have any questions or concerns.

Sincerely,
Integrity Committee Working Group

From: (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 11:30 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear Integrity Committee Working Group:

Thank you for your reply. We understand that it will take some time for the staff to perform the redactions.

Please be advised that I will be out of the country from October 5, 2018 through October 20, 2018, on a pre-scheduled personal and work trip with limited availability and Internet access. I respectfully request that my travel schedule, as well as the time it will take to review the 66 exhibits once we receive them, be factored into the response period. Doing so will allow us to provide a meaningful, complete response to the Integrity Committee. If you require that we submit an extension request after we receive notice that the documents are ready for review, we would be happy to do so.

If you have any questions, please let me know.

Regards,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 9:33 AM
To: (b) (6), (b) (7)(C) Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for contacting the Integrity Committee.

We received confirmation of your legal representation of Mr. Hoecker.

In accordance with the IC Policies and Procedures 2018, the exhibits to the report of investigation for IC 890/909 will need to be redacted prior to review. We sincerely appreciate your patience as the staff perform these redactions. We understand this will impact the 10-day response period, therefore we will delay the start of the response period until we provide you with notification that the documents are ready for review.

Please let us know if you have any questions or concerns.

Sincerely,
Integrity Committee Working Group

From: (b) (6), (b) (7)(C)
Sent: Friday, September 28, 2018 8:32 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for your email. I believed my representation was a matter of record. IG Hoecker and I informed the investigatory agents of my representation and I was present for his interview. That said, I will advise IG Hoecker to reply by email, confirming my representation. If you require some other form of documentation, please let me know.

Regards,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 7:53 AM
To: (b) (6), (b) (7)(C) >
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for contacting the Integrity Committee.

Can you please provide us with documentation showing your representation of Mr. Carl Hoecker?

Upon receipt we will be able to respond to your request.

Sincerely,

(b) (6), (b) (7)(C)

CIGIE
Suite 825
1717 H St., N.W.
Washington, D.C. 20006

From: (b) (6), (b) (7)(C) >
Sent: Wednesday, September 26, 2018 12:02 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

I represent Inspector General Carl Hoecker with respect to the following matter: Council of Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909.

Yesterday, on Tuesday, September 25, 2018, while I was out of the office on medical leave, I received the Integrity Committee draft report of Investigation in the aforementioned matter. The draft report of Investigation refers to and lists 66 separate Exhibits. See draft report of Investigation at pages 43-45. However, these Exhibits were not included with the draft report that Inspector General Hoecker received from Integrity Committee. I am writing to request

1) a copy of the 66 Exhibits listed in the draft report,
2) "a transcript of any recorded interview" of Inspector General Hoecker– if not one of the 66 Exhibits, and
3) "a summary memorandum of any unrecorded interview" of Inspector General Hoecker, if not one of the 66 Exhibits

This request is made pursuant to Integrity Committee Policies & Procedures 2018 Section 10.A.i.

If you have any questions, please do not hesitate to contact me using the contact information below.

Thank you.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

ATTACHMENTS IS STRICTLY PROHIBITED. PLEASE IMMEDIATELY NOTIFY THE SENDER OF THE ERROR BY RETURN E-MAIL AND DELETE THIS MESSAGE FROM YOUR SYSTEM.

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Monday, February 25, 2019 8:23 AM
To: (b) (6), (b) (7)(C)
Subject: RE: Deadline Extension

Importance: Low

Thank you for letting us know!

Sincerely,
Integrity Committee Working Group

From: (b) (6), (b) (7)(C) >
Sent: Monday, February 25, 2019 8:04 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group:

I am writing to let you know that IG Hoecker and I do not need to come in to review Exhibits today.

Thank you.

Best,

(b) (6), (b) (7)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Thursday, February 21, 2019 5:47 PM
To: Integrity-WG <Integrity-WG@cigie.gov>

Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group:

I'm writing to let you know that IG Hoecker and I do **not** plan to review Exhibits tomorrow, Friday, February 22.

Thank you.

Best,

(b) (6), (b) (7)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Thursday, February 21, 2019 1:21 PM
To: 'Integrity-WG' <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group:

Thank you for the approving our extension request.

We will let you know before COB today whether we will need to come in tomorrow. We likely won't know whether we will need to come in in Monday until tomorrow. We will keep you apprised of our plans for your own planning purposes.

Best,

(b) (6), (b) (7)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Thursday, February 21, 2019 1:12 PM
To: (b) (6), (b) (7)(C) >
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension
Importance: Low

Dear (b) (6), (b) (7)(C),

Thank you for your request and kind remarks.

Your request for an extension is approved. For planning purposes on our end, please let us know as soon as practical the dates and times you need for additional document review here at CIGIE.

Sincerely,
Integrity Committee Working Group

From: (b) (6), (b) (7)(C) >
Sent: Thursday, February 21, 2019 12:53 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group,

I am writing to follow up on your February 8 email which advised that in the event of a weather closure/delay impacting my and IG Hoecker's ability to review the Exhibits, the IC will provide additional time for our review and extend the deadline for a response. Given the weather closure/delay on Monday, February 11, and Wednesday, February 20, and intervening holiday and limited staff hours last week, we would like to request the following: 1) a two-business day extension of time to file IG Hoecker's response to the Draft ROI and Addendum **from** March 1, 2019 **to** Tuesday, March 5, and 2) the option to review portions of the Exhibits again, if necessary, up through COB on Monday, February 25. I finished reviewing the Exhibits on Tuesday, February 19, but would like the option to check my notes against the Exhibits if necessary. I don't expect that we'll need to come in again but we would like to know our options in that regard.

Finally, we'd like to thank your staff for their work in facilitating our review of the documents, including adjusting their schedules and allowing us to use their offices and conference space.

Thank you for your attention to this matter.

Best,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Monday, February 11, 2019 10:52 AM
To: (b) (6), (b) (7)(C)
Cc: Integrity-WG <Integrity-WG@cigie.gov>; (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension
Importance: Low

Dear (b) (6), (b) (7)(C),

Thank you for reaching out with your questions.

Yes, the deadlines for both the original draft ROI and the draft ROI addendum were extended to March 1, 2019. You are also correct that CIGIE staff are unavailable to assist today, we apologize for any inconvenience.

Sincerely,
Integrity Committee Working Group

From: (b) (6), (b) (7)(C) >
Sent: Monday, February 11, 2019 9:30 AM
To: (b) (6), (b) (7)(C) >
Cc: Integrity-WG <Integrity-WG@cigie.gov>; (b) (6), (b) (7)(C)
Subject: RE: Deadline Extension

Dear (b) (6), (b) (7)(C):

Thank you for your email on Friday, February 8, 2019, advising that the IC has extended the deadline for IG Hoecker's response from February 21, 2019, to March 1, 2019. Given that the Exhibits to the Addendum to the ROI were made available for review on the same date as the Exhibits to the ROI, we believe that the responses to both the Draft ROI and the Addendum are due on the same date. Can you confirm our understanding?

Also, given the weather, the federal government operating status today in DC today is "Open - 2 hours delayed arrival – with option for unscheduled leave or unscheduled telework," see https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/. As such, per your February 8 email, we understand that your staff will not be able to facilitate my and IG Hoecker's review of the Exhibits at your office today.

Thank you.

Best,

[redacted]

[redacted]

From: [redacted]
Sent: Friday, February 08, 2019 2:03 PM
To: [redacted]
Cc: Integrity-WG <Integrity-WG@cigie.gov>; [redacted]
Subject: Deadline Extension

Good afternoon, [redacted],

In light of our office being short-staffed next week, the IC has extended the deadline for Mr. Hoecker's response from February 21, 2019, to March 1, 2019. Additionally, given the weather forecast for Monday and Tuesday, please note that if there is a weather closure, delay, or open with option for unscheduled leave or telework, then we will be unavailable to facilitate review of the exhibits at our office. If that should happen, the IC will provide additional time for your review and extend the deadline for a response. Please let me know if you have any questions.

[redacted]

Sincerely,

[redacted]
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington DC 20006-3900

[redacted]
Main: 202-292-2600
[redacted]

EXHIBIT 6 (35 pages) was withheld pursuant to FOIA Exemptions b(5), b(6), and b(7)(C).

EXHIBIT 7

EXHIBIT 7.a

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

REPORT OF MEETING: CIGIE Audit Committee
May 24, 2016, at 2:00 pm

LOCATION: Corporation for Public Broadcasting Offices
401 9th St NW
Washington, DC

Ms. Mary Mitchelson, Inspector General (IG), Corporation for Public Broadcasting and Chair, CIGIE Audit Committee, called the meeting to order.

The following members, surrogates and staff participated:

Members or their representatives:

Ms. Mary Mitchelson, Corporation for Public Broadcasting
Mr. Hubert Sparks, Appalachian Regional Commission
Mr. Jason Malmstrom for Michael Horowitz, CIGIE
Ms. Kathy Tighe, Department of Education
Mr. Darryl Ross for Mr. Rickey Hass, Department of Energy
Mr. Chris Gieseler for Mr. Fred Gibson, Federal Deposit Insurance Corporation
Mr. Jon Hatfield, Federal Maritime Commission
Mr. Eric Keehan for Chuck McCullough, Intelligence Community
Mr. Scott Dahl, Department of Labor
Mr. Robert Westbrooks, Pension Benefit Guaranty Corporation
Dr. Brett Baker, FAEC Chair, National Science Foundation (phone)
Ms. Nomi Taslitt for Mr. John Sopko, SIGAR
Ms. Cathy Helm, Smithsonian Institution
Ms. Rona Lawson for Mr. Patrick O'Carroll, Social Security Administration
Mr. Bob Taylor for Mr. Eric Thorson, Department of the Treasury

Presenters:

Ms. Beth Leon, CIGIE
Mr. Jim Lisle, Department of the Treasury

The following guests and observers participated:

Mr. Kevin Christensen for Mr. Arthur Elkins, Jr., Environmental Protection Agency
Mr. Michael Maykish, Federal Maritime Commission
Ms. Megan Levanduski, Agency for International Development
Mr. Ryan McGonagle, Agency for International Development

Ms. Bobbi Bartz, Department of Justice
Ms. Julia Stancil, Corporation for Public Broadcasting
Ms. Jayne Hornstein, National Science Foundation

BUSINESS

New Members

Ms. Mary Mitchelson announced that Glenn Fine, IG, Department of Defense, and Laura Wertheimer, IG, Federal Housing Finance Agency, have joined the Audit Committee.

Ms. Rona Lawson announced that on May 26, 2016, Pat O'Carroll will retire as IG at Social Security Administration and the Acting IG will be Gale Stone.

Approval of Minutes from March Meeting

The Committee members unanimously approved the minutes from the March 2016 meeting.

Discussion of CPE Requirements for Inspectors General

Ms. Mary Mitchelson reported the result of the electronic vote that she had previously announced by email on April 7. The vote was 10 yes, 5 no, and 2 who did not respond. She also mentioned that the Committee's position on IGs and CPE must be approved by the full CIGIE membership. She also noted that the conversation around this issue over the last several months has heightened awareness in the IG community considerably. She recommended that the Committee withdraw its position as reported in its October 2015 newsletter and return to *status quo ante*, where the issue will be dealt with on an individual basis should it arise in a peer review. The Committee adopted this position unanimously.

Other Business

Mr. Chris Greisler noted that the nomination for FDIC's IG, Jay Lerner, has moved forward to the Senate.

Ms. Mary Mitchelson suggested adding to the format of the Committee meetings presentations on audit work various OIGs are conducting. Committee members suggested discussion on the annual risk assessment process, organizational effectiveness audits, and passive twitter feeds as an audit report depository. Please contact Mary Mitchelson (b) (6), (b) (7)(C), or Julia Stancil, (b) (6), (b) (7)(C), if interested in presenting.

Mr. Hubert Sparks expressed concerns on the qualifications for performance auditing. He suggested either (a) splitting the 511 series into financial and performance auditing or (b) creating a separate series for performance auditing with elimination of accounting as a required element.

Survey of CFO Agencies

Ms. Rona Lawson mentioned that GAO issued a draft report on its survey of CFO Act agencies. Responses are due by June 1. A copy of the draft report will be circulated to the Committee.

UPDATES

FAEC

Impact of DCAA limitation

Dr. Brett Baker reported that the FAEC Work Group is coordinating a conference call with the Chief Acquisition Officer Council (CAOC) to get insight on the effects of the DCAA work stoppage on the civilian acquisition community.

Audit Resolution Practices

Dr. Brett Baker reported that the FAEC audit resolution Working Group is summarizing the final survey results on OIG audit resolution practices. The survey was sent out in late March and asked for responses on how to encourage auditees to implement recommendations and how to address non-responsive agencies. Dr. Baker will send out the results to the FAEC membership by June and will present the results at the next Committee meeting in July.

The next FAEC meeting will be the annual conference scheduled for September 8-9 at PTO in Alexandria, VA.

OPM Closing Skills Gap

Ms. Mary Mitchelson reported that OPM identified the auditor profession as one with a critical skills gap. To close the gap, OPM has recruited occupational and HR leaders to put together a work group to look at the recruiting, hiring, and tracking of auditors. The 0511 classification and qualification standards are being analyzed by a separate OPM-led effort.

The first meeting of the Closing Skills Gap auditor work group, known as a Federal Action Skill Team (FAST), will be on June 16 at 10am at the Corporation for Public Broadcasting offices. Please contact Brett at (b) (6), (b) (7)(C) if you are interested in participating.

DATA Act

Mr. Bob Taylor and Jim Lisle, Treasury OIG, reported on behalf of the FAEC DATA Act Working Group. As an update on significant events, Treasury released the DATA Act Information Model Schema on April 29, 2016; the schema provides a cross-walk of data elements from various data systems (e.g., financial, grants, procurement) to the data standards of the DATA Act. Additionally, OMB released additional guidance on implementation of the DATA Act standards on May 3, 2016. OMB is requesting agencies to update implementation plans originally put together in September 2015. OMB also released guidance on agencies that need to comply with the DATA Act requirements. Agencies were encouraged to reach out to Karen Lee of OMB with any questions.

The DATA Act Working Group continues to revise the common methodology for a DATA Act agency readiness review based on comments received and to add an addendum for agencies that provide or use shared services. The updated readiness review guide should be completed in June 2016. The Working Group is collaborating with Beth León, CIGIE AI&E Academy, to put together a workshop in late June/early July on conducting readiness reviews. The Working Group is also developing a common methodology for the required IG reviews under the DATA Act which is anticipated to be ready for release in late fall 2016. The next Working Group meeting is scheduled for May 25, 2016, with a GAO/Working Group consultation meeting to follow on June 22, 2016.

A Committee member mentioned that even if the DATA Act does not apply to a given agency, the agency should still consider adhering as a best practice.

IT Committee

Ms. Kathy Tighe noted that the next IT Committee meeting will take place on May 25, 2016 at Department of Education OIG offices. The Committee members will be updated on the status of the OIG 2016 FISMA metrics, which should be sent over to the Department of Homeland Security soon for publication.

Auditor Training

Ms. Beth León reported that halfway through the fiscal year, the AI&E Academy has successfully delivered 25 training programs to 670 participants. The remaining scheduled classes are nearly full. Registration for the FAEC Contracting Committee's annual procurement conference on June 17 at the Patent and Trademark Office (PTO) will open on May 26 via IGNet. Participants may register to attend in person or remotely via Livestream. The Academy will deliver the pilot for its Intermediate Auditor training program by October. To obtain more detailed information on CIGIE training programs, please contact Beth León at (b) (6), (b) (7)(C).

ADMINISTRATIVE

The next Committee meeting will be held on **July 19, 2016,** at **2pm**, a week earlier than previously scheduled.

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Audit Committee

June 2016

Next Meeting
- July 19, 2016, 2pm
- Location: CPB IG, 401 9th St. NW

CPEs Requirements for IGs
At its May 24 meeting, the Committee voted unanimously to withdraw the position regarding IGs and CPEs that it reported in its October 2015 newsletter.

OPM Study of Auditor Skills Gap
The first meeting of the Closing Skills Gap auditor Working Group, known as a Federal Action Skill Team (FAST), was held on June 16 at 10am at the Corporation for Public Broadcasting offices. Please contact Brett at (b) (6), (b) (7)(C) if you are interested in participating.

Federal Audit Executive Council
Dr. Brett Baker and the FAEC Working Group are coordinating a conference call with the Chief Acquisition Officer Council (CAOC) to get insight on the effects of the DCAA work stoppage on the civilian acquisition community.

The FAEC audit resolution Working Group is summarizing the final survey results on OIG audit resolution practices. The survey asks for responses on how to encourage auditees to implement recommendations and how to address non-responsive agencies. Dr. Brett Baker will send out the results to the FAEC membership by August.

The next FAEC meeting will be the annual conference scheduled for September 8-9 at PTO in Alexandria, VA.

DATA Act
The DATA Act Working Group released an update concerning the common methodology for DATA Act agency readiness reviews on June 2, 2016. This "Readiness Review Guide" version 2.0 included a number of enhancements including an addendum for agencies that provide or use shared services. The Working Group is also developing a readiness review workshop (date to be determined) and a common methodology for the required IG reviews under the DATA Act. The next GAO/Working Group consultation meeting is scheduled for June 22, 2016, with a Working Group meeting to follow on July 6, 2016.

Auditor Training
The AI&E Academy has successfully delivered 29 training programs to 740 participants. The remaining scheduled classes for fiscal year 2016 are nearly full. The Academy is supporting the DATA Act Working Group with the logistics and registration for its upcoming training session. The Academy is currently drafting its fiscal year 2017 training schedule which will be posted on IGNet by September. Delivery of the Academy's pilot iteration of the Intermediate Auditor training program will now occur in October. To obtain more detailed information on CIGIE training programs, please contact Beth León at (b) (6), (b) (7)(C)

Next Audit Committee Meeting
The next meeting will be held on **July 19, 2016,** at **2:00pm,** at the CPB IG Office, Room 3002, 401 Ninth Street NW, Washington, DC. Please note that this is a week earlier than previously scheduled. Contact Julia Stancil at 202-879-9651, jstancil@cpb.org, if you have any questions.

Committee Members

Mary Mitchelson, Chair
CPB

Ann Calvaresi-Barr, Vice-Chair
USAID IG

Hubert Sparks
ARC IG

Glenn Fine
DOD IG

Kathleen Tighe
Education IG

Rickey Hass
Energy IG (Acting)

Fred Gibson
FDIC IG

Laura Wertheimer,
FHFA IG

Jon Hatfield
FMC IG

Michael Raponi
GPO IG

Chuck McCullough
IC IG

Scott Dahl
Labor IG

Jeffrey Schanz
LSC IG

Kurt Hyde
FASAB Representative, LOC IG

James Springs
NARA IG

Robert Westbrooks,
PBGC IG

Cathy Helm
Smithsonian Institution IG

Gale Stone
SSA Acting IG

John Sopko
SIGAR

Eric Thorson
Treasury IG

Dr. Brett Baker
FAEC Representative

EXHIBIT 7.b

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT 8

From: (b) (6), (b) (7)(C) v
To: Hoecker, Carl W.
Cc: (b) (6), (b) (7)(C)
Subject: Re: Peer Review Extension
Date: Tuesday, August 29, 2017 1:07:41 PM

Your request for an extension is granted.

(b) (6), (b) (7)(C)
Vice Chair
Investigations Committee

From: Hoecker, Carl W. (b) (6), (b) (7)(C) >
Date: August 29, 2017 at 12:20:54 PM EDT
To: (b) (6), (b) (7)(C)
Subject: Peer Review Extension

(b) (6), (b) (7)(C)

Per our conversation, I would like to have a quarter extension for the peer review report to be completed. The due date would be November 30, 2017.

The NSF OIG is conducting a peer review of my office. I would normally grant such an extension for any other office, but did not want to approve it for my own office. Thanks.

Regards,

Carl Hoecker

From: Hoecker, Carl W.
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C) Allison Lerner (b) (6), (b) (7)(C)
Subject: Investigations Committee Dispute Resolution
Date: Wednesday, September 27, 2017 1:47:00 PM

(b) (6), (b) (7)(C)

Pursuant to the Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General (Guidelines), I write to request that the CIGIE Investigations Committee resolve a dispute that arose during the National Science Foundation Office of Inspector General's (NSF OIG) Qualitative Assessment Review (QAR) of the investigative operations of the Securities and Exchange Commission Office of Inspector General (SEC OIG).

The QAR was originally to be conducted during the January to March 2017 timeframe, but the SEC OIG (b) (6), (b) (7)(C) requested, pursuant to the Guidelines, that it be delayed until April 2017 (b) (6), (b) (7)(C). The NSF OIG agreed to the delay and to a review period of March 2016 through February 2017. The NSF OIG commenced field work the week of May 22, 2017 and as of today, the QAR has not been concluded as a result of a dispute between the NSF OIG and SEC OIG.

The dispute relates to what OIG investigative operations are to be included in the QAR process. Specifically, should internal inquiries conducted by Counsel's office or another office, not under the supervision of the AIGI, be included as part of the QAR.

The Guidelines note that the CIGIE Investigations Committee has responsibility over the QAR process and will resolve all issues that cannot be mutually agreed upon by the CIGIE QAR team and any OIG being reviewed.

As this dispute involves my office, I am officially recusing from this matter as the Chair and as a member of the Investigations Committee. I remain available, however, to provide additional information as the office being peer reviewed. As Vice Chair of the CIGIE Investigations Committee, I am referring this matter to you for committee resolution.

Regards,

Carl W. Hoecker
Inspector General
Securities and Exchange Commission

From: Lerner, Allison C.
To: Hoecker, Carl W.; (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: RE: Investigations Committee Dispute Resolution
Date: Thursday, September 28, 2017 3:21:52 PM

Good afternoon, (b) (6), (b) (7)(C)

Yesterday Carl Hoecker referred a matter related to the peer review conducted by our office of SEC OIG's investigative operations to you in your capacity as vice chair of the Investigations Committee, with a request that the Committee seek to resolve a dispute as to which investigative operations should be covered by a peer review. As detailed below, the matter is more complex than it appears in the referral you received and there is no issue for the Investigations Committee to resolve.

As Carl notes in his referral, our review focused on SEC OIG's investigative operations during the period from March 1, 2016, through February 28, 2017. We reviewed compliance with SEC OIG's system of internal policies and procedures, as outlined in the peer review checklists, and examined a sample of 20 case files for investigations closed during our review period. As planned, we conducted our work at the headquarters office in Washington, DC.

When fieldwork was concluded, we had an exit conference with IG Hoecker and (b) (6), (b) (7)(C) [redacted]. In that meeting we explained that, overall, SEC OIG complied with CIGIE standards and Attorney General Guidelines and discussed the best practices and suggestions for improvement we identified during our review. After that conversation, as we were finalizing our report, we received multiple allegations that, if true, could have had a significant impact on the outcome of the peer review. The allegations broke down into two main groups: those relating to an alleged effort to obstruct the peer review by keeping an allegedly non-compliant, "substandard" internal investigation open to prevent it from being assessed during the peer review, and those relating to the quality and integrity of that particular internal investigation of two members of the SEC OIG Office of Investigations.

We were particularly concerned by the charge that action had been taken to obstruct the peer review. While we had planned to give SEC OIG a "pass" rating, we concluded that we had to resolve the obstruction charge before finalizing our process, as such an effort, if proven, would undermine the integrity of our review and call into question the quality and management of SEC OIG's investigative operations. Accordingly, members of my staff and I had multiple conversations with IG Hoecker and his staff to see if there was a way for us to resolve the issues raised in the allegations and complete our peer review. Our initial attempts were unsuccessful and we ceased such efforts once we received an allegation that senior SEC OIG management's actions in this area had violated a criminal statute. As the allegation involved actions by individuals within the jurisdiction of CIGIE's Integrity Committee, we referred it and the other allegations we had received to the IC for appropriate action. Because

we were unable to determine the impact of the allegations on the integrity of our peer review, we have closed that review with no finding.

In sum, the matter we were presented with is *not* whether internal inquiries conducted by the SEC OIG's Counsel's office or another office are subject to QAR. Rather, the situation we had to address grew out of allegations that a "substandard" investigation was maneuvered to keep it "off the peer review screen." It was further alleged that such actions violate a criminal statute. Determining whether internal inquiries conducted by the Office of Counsel (or other components) are subject to assessment under a peer review will not resolve these concerns, which have been appropriately referred to the Integrity Committee. There is therefore no need for action by the Investigations Committee.

Regards,

Allison Lerner

From: Hoecker, Carl W. (b) (6), (b) (7)(C)]
Sent: Wednesday, September 27, 2017 1:48 PM
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C) ; Lerner, Allison C. (b) (6), (b) (7)(C)
Subject: Investigations Committee Dispute Resolution

(b) (6), (b) (7)(C)

Pursuant to the Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General (Guidelines), I write to request that the CIGIE Investigations Committee resolve a dispute that arose during the National Science Foundation Office of Inspector General's (NSF OIG) Qualitative Assessment Review (QAR) of the investigative operations of the Securities and Exchange Commission Office of Inspector General (SEC OIG).

The QAR was originally to be conducted during the January to March 2017 timeframe, but the SEC OIG (b) (6), (b) (7)(C) requested, pursuant to the Guidelines, that it be delayed until April 2017 (b) (6), (b) (7)(C) . The NSF OIG agreed to the delay and to a review period of March 2016 through February 2017. The NSF OIG commenced field work the week of May 22, 2017 and as of today, the QAR has not been concluded as a result of a dispute between the NSF OIG and SEC OIG.

The dispute relates to what OIG investigative operations are to be included in the QAR process. Specifically, should internal inquiries conducted by Counsel's office or another office, not under the supervision of the AIGI, be included as part of the QAR.

From: (b) (6), (b) (7)(C)
To: Hoecker, Carl W. (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: RE: Investigations Committee Dispute Resolution
Date: Friday, September 29, 2017 7:55:50 AM

Hi guys. I had my budget hearing with OMB yesterday so I did not get a chance to review. Let me look over this and the manual and I will get back to you. If there is anything else you think I need to review in terms of procedure, protocol or standards that can help me decide whether the committee should take this up, please send my way. Have a great weekend.

(b) (6), (b) (7)(C)

From: Lerner, Allison C. (b) (6), (b) (7)(C)
Date: September 28, 2017 at 3:22:43 PM EDT
To: Hoecker, Carl W. (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Investigations Committee Dispute Resolution

Good afternoon, (b) (6), (b) (7)(C)

Yesterday Carl Hoecker referred a matter related to the peer review conducted by our office of SEC OIG's investigative operations to you in your capacity as vice chair of the Investigations Committee, with a request that the Committee seek to resolve a dispute as to which investigative operations should be covered by a peer review. As detailed below, the matter is more complex than it appears in the referral you received and there is no issue for the Investigations Committee to resolve.

As Carl notes in his referral, our review focused on SEC OIG's investigative operations during the period from March 1, 2016, through February 28, 2017. We reviewed compliance with SEC OIG's system of internal policies and procedures, as outlined in the peer review checklists, and examined a sample of 20 case files for investigations closed during our review period. As planned, we conducted our work at the headquarters office in Washington, DC.

When fieldwork was concluded, we had an exit conference with IG Hoecker and (b) (6), (b) (7)(C) . In that meeting we explained that, overall, SEC OIG complied with CIGIE standards and Attorney General Guidelines and discussed the best practices and suggestions for improvement we identified during our review. After that

From: (b) (6), (b) (7)(C)
To: Hoecker, Carl W.
Subject: Re: Follow up
Date: Thursday, October 05, 2017 7:53:44 AM

I did. She's going to give you a call. There are also some things on my end that I need to do. Probably makes sense for me to check in with you end of next week.

From: Hoecker, Carl W. (b) (6), (b) (7)(C)
Date: October 5, 2017 at 7:05:45 AM EDT
To: (b) (6), (b) (7)(C) >
Subject: Follow up

(b) (6), (b) (7)(C)

I know everyone has year end stuff, but I wondered whether you had a chance to speak with Allison.

Regards,

Carl Hoecker

From: (b) (6), (b) (7)(C)
To: Hoecker, Carl W.
Subject: RE: Follow up
Date: Thursday, October 05, 2017 4:30:05 PM

This message was sent securely using ZixCorp.

I'll give you a call tomorrow.

From: Hoecker, Carl W. (b) (6), (b) (7)(C)
Date: October 5, 2017 at 3:30:09 PM EDT
To: (b) (6), (b) (7)(C)
Subject: RE: Follow up

This message was sent securely using ZixCorp.

Understand.

Carl W. Hoecker
Inspector General
Securities and Exchange Commission

From: (b) (6), (b) (7)(C)
Sent: Thursday, October 05, 2017 3:28 PM
To: Hoecker, Carl W.
Subject: RE: Follow up

This message was sent securely using ZixCorp.

Not able to call due to mtgs.

From: Hoecker, Carl W. (b) (6), (b) (7)(C) >
Date: October 5, 2017 at 2:57:19 PM EDT
To: (b) (6), (b) (7)(C) >
Subject: RE: Follow up

This message was sent securely using ZixCorp.

I think it was completed in Aug 2014. I will check for the period. Can you give me a quick call? (b) (6), (b) (7)

Carl W. Hoecker
Inspector General
Securities and Exchange Commission

From: (b) (6), (b) (7)(C)]
Sent: Thursday, October 05, 2017 2:42 PM
To: Hoecker, Carl W.
Subject: RE: Follow up

This message was sent securely using ZixCorp.

Carl can you please find me the date of your last peer review and the period it covered?

From: Hoecker, Carl W. (b) (6), (b) (7)(C)
Date: October 5, 2017 at 7:54:50 AM EDT
To: (b) (6), (b) (7)(C) >
Subject: RE: Follow up

This message was sent securely using ZixCorp.

Sure thing. Thanks. Call anytime (b) (6), (b) (7)(C)

Carl W. Hoecker
Inspector General
Securities and Exchange Commission

From: (b) (6), (b) (7)(C)
Sent: Thursday, October 05, 2017 7:53 AM
To: Hoecker, Carl W.
Subject: Re: Follow up

This message was sent securely using ZixCorp.

I did. She's going to give you a call. There are also some things on my end that I need to do. Probably makes sense for me to check in with you end of next week.

From: Hoecker, Carl W. (b) (6), (b) (7)(C) >
Date: October 5, 2017 at 7:05:45 AM EDT
To: (b) (6), (b) (7)(C)
Subject: Follow up

This message was sent securely using ZixCorp.

(b) (6), (b) (7)(C)

I know everyone has year end stuff, but I wondered whether you had a chance to speak with Allison.

Regards,

Carl Hoecker

This message was secured by **ZixCorp**(R).

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This message was secured by **ZixCorp**(R).

This message was secured by **ZixCorp**(R).

This message was secured by **ZixCorp**(R).

From: Hoecker, Carl W.
To: Allison Lerner (b) (6), (b) (7)(C)
Subject: Investigative Peer Review
Date: Monday, October 16, 2017 4:00:00 PM

Allison,

Thank you for your valuable discussion in the matter.

In connection with completing the Qualitative Assessment Review (QAR) of my office, I understand your team needs to review the internal inquiry/investigation conducted by my counsel's office. This matter was conducted by my counsel's office in anticipation of litigation and was not under the auspices of the Assistant Inspector General for Investigations (AIGI). However, you have indicated that you are unable to complete the QAR without reviewing the report and accompanying documentation.

Accordingly, I will make the report and accompanying documentation available for you and/or your team to review in person at my office. Perhaps (b) (6), (b) (7)(C) can contact (b) (6), (b) (7)(C) to arrange mutually convenient time and further details to advance this.

Regards,

Carl Hoecker

From: (b) (6), (b) (7)(C)
To: Hoecker, Carl W.
Subject: Re: Checking in
Date: Wednesday, November 08, 2017 9:41:13 PM

She plans to finish by the Nov 30 end.

From: Hoecker, Carl W. (b) (6), (b) (7)(C)
Date: November 8, 2017 at 5:21:44 PM EST
To: (b) (6), (b) (7)(C)
Subject: Checking in

Christy,

Can you email me and Alison to see how we are doing?

Regards,

Carl Hoecker

From: Hoecker, Carl W.
To: Allison Lerner (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: Follow up
Date: Thursday, November 09, 2017 9:03:00 AM

Allison,

Hope all is well. I would love to hear your plans for next steps on our peer review, such as when we might expect a draft report. I am trying to balance our use-or-lose leave and holiday season commitments. If you want, we can chat on the phone.

Regards,

Carl W. Hoecker
Inspector General
Securities and Exchange Commission

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INSPECTOR GENERAL

November 15, 2017

Delivery via email

Allison C. Lerner
Inspector General
National Science Foundation
Office of Inspector General
2415 Eisenhower Ave.
Alexandria, VA 22314

Dear Ms. Lerner,

This is in response to the National Science Foundation, Office of Inspector General report on the Quality Assessment Review (QAR) of the Investigative Operations for the U.S. Securities and Exchange Commission (SEC), Office of Inspector General (OIG) dated November 13, 2017.

We appreciate the work of your staff and the professionalism they exhibited throughout the review. We are pleased that your review determined that the SEC OIG is in full compliance with the quality standards established by the Council of Inspectors General on Integrity and Efficiency. We are reviewing the observations made by your review team to determine how they may be effectively incorporated into our business practices.

We appreciate the opportunity to comment on the report and look forward to working with your agency in the future.

Regards,

Carl W. Hoecker
Inspector General

(b) (6), (b) (7)(C)

From: Lerner, Allison C. (b) (6), (b) (7)(C)
Sent: Wednesday, November 15, 2017 12:08 PM
To: (b) (6), (b) (7)(C)
Cc: Hoecker, Carl W.; (b) (6), (b) (7)(C)
Subject: Re: Response Memo to NSF OIG - QAR of the Investigative Operations for SEC OIG

Thanks so much

On Nov 15, 2017, at 11:05 AM, (b) (6), (b) (7)(C) > wrote:

> Greetings Ms. Lerner
>
> I am transmitting the attached response memo on behalf of IG Carl Hoecker.
>
> Regards,
>
> (b) (6), (b) (7)(C)
> Office of Inspector General
> U.S. Securities and Exchange Commission
> 100 F St. NE |Washington DC 20549| (b) (6), (b) (7)(C)
>
> FOR OFFICIAL USE ONLY: The information contained in this communication is intended for the sole use of the named addresses/recipients to whom it is addressed, in their conduct of official business of the United States Government. This communication may contain information that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552 and the Privacy Act, 5 U.S.C. 552a. Addressees/recipients are not to disseminate this communication to individuals other than those who have an official need to know the information in the course of their official government duties. If you received this communication in error, please do not examine, review, print, copy, forward, disseminate, or otherwise use the information. Please immediately notify the sender at (b) (6), (b) (7)(C) and delete the copy received.

<Response to NSF OIG Ref (QAR of the Investigative Operations for SEC OIG) 11-15-17.pdf>

7 Pages were withheld pursuant to FOIA Exemptions b(6) and b(7)(C)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

May 12, 2020

The Honorable Scott Dahl
Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW
Suite 825
Washington, DC 20006

Re: Integrity Case 890/909

Dear Mr. Dahl:

On behalf of the U.S. Securities and Exchange Commission (SEC or Commission), I am writing to inform you of the action that the Commission has taken in response to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) October 18, 2019 report concerning Mr. Carl Hoecker, Inspector General of the SEC.

On May 7, 2020, the Commission, as the deciding official in this matter, after receiving and reviewing the proposal of (b) (6), (b) (7)(C) , the SEC's Chief Human Capital Officer, suspended Mr. Hoecker from duty and pay status for a period of time it determined to be appropriate.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

(b) (6), (b) (7)(C)

cc: (b) (6), (b) (7)(C)