SEC. ___. REVISION TO CERTAIN OVERSEAS CONTINGENCY OPERATIONS-RELATED INSPECTOR GENERAL AUTHORITIES: WRITTEN NOTIFICATION AND HIRING AUTHORITIES.

(a) DESIGNATION OF CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR GENERAL ACT OF 1978.—

(1) NOTICE BY SECRETARY OF DEFENSE.—Section 113 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(n) NOTIFICATION OF CERTAIN CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR GENERAL ACT OF 1978.—(1) The Secretary of Defense shall provide to the Chair of the Council of Inspectors General on Integrity and Efficiency written notification of the commencement or designation of a military operation as an overseas contingency operation upon the earlier of—

"(A) a determination by the Secretary that the overseas contingency operation is expected to exceed 60 days; or

"(B) the date on which the overseas contingency operation exceeds 60 days.

"(2) The Secretary shall provide written notification of the termination of an overseas contingency operation for which the Secretary provided notice in accordance with paragraph (1) to the Chair and the lead Inspector General for such overseas contingency operation designated by the Chair under section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L).".

(2) ESTABLISHMENT AND TERMINATION OF LEAD INSPECTOR GENERAL BASED ON NOTIFICATION.—Section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L) is amended—

(A) in subsection (a), by striking "Upon the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days" and inserting "Upon receipt of a notification under section 113(n)(1) of title 10, United States Code, with respect to an overseas contingency operation";

(B) in subsection (d)(1), by striking "the commencement or designation of the military operation concerned as an overseas contingency operation that exceeds 60 days" and inserting "receipt of a notification under section 113(n)(1) of title 10, United States Code, with respect to an overseas contingency operation"; and

(C) in subsection (e), by striking "shall cease at the end of the" and inserting "shall cease upon the earlier of—

"(1) the date that is 90 days after the date on which the Chair of the Council of Inspectors General on Integrity and Efficiency and the lead Inspector General for such overseas contingency operation receive notice of the termination of such overseas contingency operation provided in accordance with section 113(n)(2) of title 10, United States Code; or

"(2) the end of the".

(b) HIRING AUTHORITY OF LEAD INSPECTORS GENERAL.—Section 8L(d) of the Inspector General Act of 1978 (5 U.S.C. App. 8L(d)), as amended by subsection (a)(2), is further amended—

(1) in paragraph (2)(E), by inserting "(but without regard to subsection (b)(2) of such section)" after "United States Code,";

(2) in paragraph (3), by amending subparagraph (C) to read as follows:

"(C)(i) An annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection shall continue to receive such annuity and shall not be considered a participant for purposes of chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

"(ii) An annuitant described in clause (i) may elect in writing for the reemployment of such annuitant under this subsection to be subject to section 824 of the Foreign Service Act of 1980 (22 U.S.C. 4064). A reemployed annuitant shall make an election under this clause not later than 90 days after the date of the reemployment of such annuitant."; and

(3) by adding at the end the following new paragraph:

"(5) A person employed by a lead Inspector General for an overseas contingency operation under this section acquires competitive status upon the completion of two years of service as an employee under this section.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend section 113 of title 10, United States Code (U.S.C.), to direct the Secretary of Defense to provide written notice to the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) of the designation or the commencement of an overseas contingency operation (OCO), and that such notice occurs upon the earlier of (1) a determination by the Secretary that an OCO is expected to exceed 60 days or (2) the date on which the OCO exceeds 60 days. This proposal also would modify section 8L of the Inspector General Act of 1978 to clarify that the CIGIE Chair's additional responsibilities commence upon receipt of the notification provided for in 10 U.S.C. 113. In addition, this proposal would amend section 8L to: (1) clarify the period of employment for temporary employees; (2) grant

competitive status for federal hiring purposes to temporary employees hired by lead IG after two years of service; (3) provide the same authority to provide waivers to Foreign Service annuitants as currently provided for reemployed Civil Service annuitants; and (4) clarify when the lead IG's responsibilities for an OCO concludes.

1) CIGIE Chair OCO Notification

Section 8L(a) and (d)(1) state that the Chair of the CIGIE shall have additional responsibilities "upon the commencement or designation of a military operation as an overseas contingency operation." Yet there exists no mechanism to ensure that the CIGIE Chair is made aware of such events. Specifically, there exists no mechanism to ensure notification of a 10 U.S.C. 101(a)(13)(A) Secretary of Defense OCO designation. As a result, the lead IG designation for Operation FREEDOM'S SENTINEL (OFS) was delayed because neither the CIGIE Chair nor the Department of Defense Office of Inspector General (DoD OIG) were notified of the Secretary of Defense's January 1, 2015, OFS OCO designation. Additionally, there exists no mechanism to ensure CIGIE Chair notification of 10 U.S.C. 101(a)(13)(B) events comprising the commencement of an OCO. As a result, no notification was provided to CIGIE Chair or DoD OIG that reservists had been called to support Operation UNITED ASSISTANCE (OUA) in November 2014.

To remedy this, we propose adding a provision to 10 U.S.C. 113 directing the Secretary Defense to provide written notice to the CIGIE Chair of the designation or the commencement of an OCO.

2) The Lead IG Triggering Event

In section 8L(a) and (d)(1), an ambiguity exists as to when responsibilities of the CIGIE Chair are to be enacted. As written, they become effective upon "the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days." Yet no provision exists specifying exactly when an OCO exceeds 60 days. Additionally, there are no provisions to address instances when the commencement of a military operation and the designation of it as an OCO occur on different days. For example, when military operations in Iraq and Syria began in July 2014, and Operation INHERENT RESOLVE (OIR) was designated an OCO in October 2014, subsections (a) and (d)(1) provided conflicting information as to when the CIGIE Chair's responsibilities commenced.

Additionally, in discussions with congressional staffers, we learned that the 60-day provision was originally written into subsections (a) and (d)(1) in order to ensure that lead IGs were not designated for short-term OCOs. However, in situations where the Department of Defense fully anticipates that an OCO will last for many months or years, the 60-day requirement results in unnecessary delays. For example, execution orders for both OIR and OFS, issued the day each was designated an OCO, clearly indicated that multiyear operations were expected. Yet in both instances, CIGIE Chair responsibilities did not commence until 60 days had elapsed, resulting in a full 90 days before lead IG designations occurred.

To remedy this, we propose adding a provision to 10 U.S.C. 113 directing the Secretary Defense to provide written notice to the CIGIE Chair if the Secretary expects an OCO to exceed 60 days or, if the expected duration is unknown, after the 60th day of operations. We also propose that section 8L(a) and (d)(1) be revised to clarify that the CIGIE Chair's additional responsibilities commence upon receipt of the notification provided for in 10 U.S.C. 113.

3) Hiring Temporary Employees

As written, section 8L(d)(2)(E) and (d)(3)(C) limit the period of employment of temporary employees and annuitants to five years, as provided for in 5 U.S.C. 3161(a) and (b)(2). This provision was enacted to accommodate the anticipated five-year duration of a temporary organization. However, an OCO may last beyond five years. Without a remedy, lead IG agencies will have to terminate temporary appointments and rehire temporary employees, possibly during key periods of OCO oversight.

To remedy this discrepancy, we propose that section 8L(d)(2)(E) and (d)(3)(C) be revised to clarify that the period of employment is without regard to the limitations stated in 5 U.S.C. 3161(a) and (b)(2).

4) Granting Competitive Status to Temporary Employees

Section 3161 of title 5, U.S.C., contains no provision for granting competitive status for federal hiring purposes to temporary employees hired by a lead IG. This creates a disincentive for individuals to accept these appointments. To remedy this, we propose amending section 8L(d)(2) to permit employees hired by a lead IG or one of the other section 8L(c) IGs under 5 U.S.C. 3161 to be granted "competitive status" for federal hiring purposes after two years of service.

5) Hiring Foreign Service Annuitants

Section 3161 of title 5, U.S.C., contains no authority for hiring Foreign Service annuitants. This limits the State Department and U.S. Agency for International Development IGs' ability to hire qualified temporary employees. To remedy this, we propose that section 8L(d)(3)(C) be revised to extend authority to provide the same waivers for Foreign Service annuitants that are available for reemployed Civil Service annuitants.

6) The Lead IG Sunset

The current section 8L(e) contains no provision for concluding a lead IG's oversight responsibilities of an OCO other than at the end of a fiscal year in which appropriations are less than $100,000,000. Yet Operation ENDURING FREEEDOM concluded in December 2014 and OUA concluded in June 2016. Clarity in linking the termination of lead IG oversight of an OCO with the conclusion of an OCO may lead to more efficient allocation and prioritization of limited IG oversight resources.

To remedy this, we propose that the section 8L(e) sunset criteria be amended to mandate that a lead IG's responsibilities for an OCO conclude upon the earlier of: (1) the end of the fiscal year (FY) in which OCO appropriations are less than $100,000,000; or (2) 90 days after the CIGIE Chair receives official written notification that an OCO has concluded. We also recommend that 10 U.S.C. 113 be amended to include a provision ensuring that the CIGIE Chair is provided notification of the conclusion of an OCO.

Budget Implications: This proposal is funded in the FY 2019 President's Budget request.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
0107D	24,692					Operation and Maintenance, Defense-Wide, OCO	04	4GTV	
Total	24,692					--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 113 of title 10, United States Code, and section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L):

TITLE 10, UNITED STATES CODE

§ 113. Secretary of Defense

(a)***

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(n) NOTIFICATION OF CERTAIN CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR GENERAL ACT OF 1978.—(1) The Secretary of Defense shall provide to the Chair of the Council of Inspectors General on Integrity and Efficiency written notification of the commencement or designation of a military operation as an overseas contingency operation upon the earlier of—

(A) a determination by the Secretary that the overseas contingency operation is expected to exceed 60 days; or

(B) the date on which the overseas contingency operation exceeds 60 days.

(2) The Secretary shall provide written notification of the termination of an overseas contingency operation for which the Secretary provided notice in accordance with paragraph (1) to the Chair and the lead Inspector General for such overseas contingency operation designated by the Chair under section 8L of the Inspector General Act of 1978 (5 U.S.C. App. 8L).

INSPECTOR GENERAL ACT OF 1978

SEC. 8L. SPECIAL PROVISIONS CONCERNING OVERSEAS CONTINGENCY OPERATIONS

(a) ADDITIONAL RESPONSIBILITIES OF CHAIR OF COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY.—Upon ~~the commencement or designation of a military operation~~

~~as~~receipt of a notification under section 113(n)(1) of title 10, United States Code, with respect to an overseas contingency operation~~ that exceeds 60 days~~, the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) shall, in consultation with the members of the Council, have the additional responsibilities specified in subsection (b) with respect to the Inspectors General specified in subsection (c).

(b) SPECIFIC RESPONSIBILITIES.—The responsibilities specified in this subsection are the following:

(1) In consultation with the Inspectors General specified in subsection (c), to designate a lead Inspector General in accordance with subsection (d) to discharge the authorities of the lead Inspector General for the overseas contingency operation concerned as set forth in subsection (d).

(2) To resolve conflicts of jurisdiction among the Inspectors General specified in subsection (c) on investigations, inspections, and audits with respect to such contingency operation in accordance with subsection (d)(2)(B).

(3) To assist in identifying for the lead inspector general for such contingency operation, Inspectors General and inspector general office personnel available to assist the lead Inspector General and the other Inspectors General specified in subsection (c) on matters relating to such contingency operation.

(c) INSPECTORS GENERAL.—The Inspectors General specified in this subsection are the Inspectors General as follows:

(1) The Inspector General of the Department of Defense.

(2) The Inspector General of the Department of State.

(3) The Inspector General of the United States Agency for International Development.

(d) LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATION.—(1) A lead Inspector General for an overseas contingency operation shall be designated by the Chair of the Council of Inspectors General on Integrity and Efficiency under subsection (b)(1) not later than 30 days after ~~the commencement or designation of a military operation as~~receipt of a notification under section 113(n)(1) of title 10, United States Code, with respect to an overseas contingency operation~~ that exceeds 60 days~~. The lead Inspector General for a contingency operation shall be designated from among the Inspectors General specified in subsection (c).

(2) The lead Inspector General for an overseas contingency operation shall have the following responsibilities:

(A) To appoint, from among the offices of the other Inspectors General specified in subsection (c), an Inspector General to act as associate Inspector General for the contingency operation who shall act in a coordinating role to assist the lead Inspector General in the discharge of responsibilities under this subsection.

(B) To develop and carry out, in coordination with the offices of the other Inspectors General specified in subsection (c), a joint strategic plan to conduct comprehensive oversight over all aspects of the contingency operation and to ensure through either joint or individual audits, inspections, and investigations, independent and effective oversight of all programs and operations of the Federal Government in support of the contingency operation.

(C) To review and ascertain the accuracy of information provided by Federal agencies relating to obligations and expenditures, costs of programs and projects,

accountability of funds, and the award and execution of major contracts, grants, and agreements in support of the contingency operation.

(D)(i) If none of the Inspectors General specified in subsection (c) has principal jurisdiction over a matter with respect to the contingency operation, to exercise responsibility for discharging oversight responsibilities in accordance with this Act with respect to such matter.

(ii) If more than one of the Inspectors General specified in subsection (c) has jurisdiction over a matter with respect to the contingency operation, to determine principal jurisdiction for discharging oversight responsibilities in accordance with this Act with respect to such matter.

(E) To employ, or authorize the employment by the other Inspectors General specified in subsection (c), on a temporary basis using the authorities in section 3161 of title 5, United States Code, <u>(but without regard to subsections (a) and (b)(2) of such section)</u> such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation.

(F) To submit to Congress on a bi-annual basis, and to make available on an Internet website available to the public, a report on the activities of the lead Inspector General and the other Inspectors General specified in subsection (c) with respect to the contingency operation, including—

(i) the status and results of investigations, inspections, and audits and of referrals to the Department of Justice; and

(ii) overall plans for the review of the contingency operation by inspectors general, including plans for investigations, inspections, and audits.

(G) To submit to Congress on a quarterly basis, and to make available on an Internet website available to the public, a report on the contingency operation.

(H) To carry out such other responsibilities relating to the coordination and efficient and effective discharge by the Inspectors General specified in subsection (c) of duties relating to the contingency operation as the lead Inspector General shall specify.

(3)(A) The lead Inspector General for an overseas contingency operation may employ, or authorize the employment by the other Inspectors General specified in subsection (c) of, annuitants covered by section 9902(g) of title 5, United States Code, for purposes of assisting the lead Inspector General in discharging responsibilities under this subsection with respect to the contingency operation.

(B) The employment of annuitants under this paragraph shall be subject to the provisions of section 9902(g) of title 5, United States Code, as if the lead Inspector General concerned was the Department of Defense.

~~(C) The period of employment of an annuitant under this paragraph may not exceed three years, except that the period may be extended for up to an additional two years in accordance with the regulations prescribed pursuant to section 3161(b)(2) of title 5, United States Code.~~

<u>(C)(i) An annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection shall continue to receive such annuity and shall not be considered a participant for purposes of chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.</u>

(ii) An annuitant described in clause (i) may elect in writing for the reemployment of such annuitant under this subsection to be subject to section 824 of the Foreign Service Act of 1980 (22 U.S.C. 4064). A reemployed annuitant shall make an election under this clause not later than 90 days after the date of the reemployment of such annuitant.

(4) The lead Inspector General for an overseas contingency operation shall discharge the responsibilities for the contingency operation under this subsection in a manner consistent with the authorities and requirements of this Act generally and the authorities and requirements applicable to the Inspectors General specified in subsection (c) under this Act.

(5) A person employed by a lead Inspector General for an overseas contingency operation under this section acquires competitive status upon the completion of two years of service as an employee under this section.

(e) SUNSET FOR PARTICULAR CONTINGENCY OPERATIONS.—The requirements and authorities of this section with respect to an overseas contingency operation shall cease upon the earlier of—

(1) the date that is 90 days after the date on which the Chair of the Council of Inspectors General on Integrity and Efficiency and the lead Inspector General for such overseas contingency operation receive notice of the termination of such overseas contingency operation provided in accordance with section 113(n)(2) of title 10, United States Code; or

(2) ~~at~~ the end of the first fiscal year after the commencement or designation of the contingency operation in which the total amount appropriated for the contingency operation is less than $100,000,000.

(f) CONSTRUCTION OF AUTHORITY.—Nothing in this section shall be construed to limit the ability of the Inspectors General specified in subsection (c) to enter into agreements to conduct joint audits, inspections, or investigations in the exercise of their oversight responsibilities in accordance with this Act with respect to overseas contingency operations.