<u>TESTIMONY OF CLARK KENT ERVIN, FORMER INSPECTOR GENERAL OF THE DEPARTMENTS OF STATE AND HOMELAND SECURITY, BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM'S SUBCOMMITTEE ON GOVERNMENT, MANAGEMENT, ORGANIZATION, AND PROCUREMENT – MARCH 25, 2009</u>

Thank you, Madame Chairman, Mr. Issa, and members for inviting me to testify today on "The Roles and Responsibilities of Inspectors General within Financial Regulatory Agencies." I want to stress at the outset that I am not an expert in financial matters, and so I cannot comment in detail on the various economic recovery programs underway and on the drawing board to address the present crisis. By virtue of my service as Inspector General of two important government agencies – the Departments of State and Homeland Security - I do, however, have considerable expertise with respect to the subject of how to make Inspectors General as independent of politics as possible. I know from my experience that independent IGs are a prerequisite for effective government.

Our nation is in the midst of an economic crisis that is graver than any since the Great Depression. One of the lessons that we are learning as we go along, yet again, is the importance of oversight. Had our financial regulatory bodies been more proactive and aggressive, this crisis could well have been averted altogether; certainly, its effects could have been minimized.

If the job of regulators in this context is to oversee the markets and industry, it is the relevant Inspectors General's job to oversee the regulators. The more independent the IGs, the more aggressive they can be in ensuring that regulators are as independent and aggressive as they should be. In my limited time here for opening remarks, I would like to make, in summary fashion, the following recommendations to enhance the independence of Inspectors General. I would be happy to expand upon any or all of them during the question and answer period.

First, it stands to reason that an IG is more likely to stand up to an agency head who balks at an aggressive Inspector General if the agency head lacks the power to fire the Inspector General. The IGs of most large and vitally important agencies are appointed by the President (and confirmed by the Senate), and only the President has the power to fire them. The IGs of the crucially important Federal Reserve Board, Securities and Exchange Commission, and Commodities Futures Trading Commission, however, are appointed by, and, therefore, can be fired by, their respective agency heads. These IGs, too, should be appointed by the President, confirmed by the Senate, and be subject to removal only by the President.

Second, like the Fed Chairman and the FBI Director, both of whom are supposed to be independent from presidential administrations even though they are appointed by a President, there should be a fixed term for Inspectors General. It matters less what the exact term is than that there be a term, though it would most helpful if the term were to be to be long enough to, in all likelihood, span presidential terms.

Third, of course, Inspectors General are human beings, and, therefore, they, like everyone else, are fallible. On occasion, then, an Inspector General *should* be removed from office. But, Inspectors General should be removed only for abusing their office, not for simply doing their jobs. An aggressive IG will, at least occasionally, rub his/her agency head and the incumbent Administration the wrong way. That is *not* cause for removal. At present, a President need only notify Congress in writing 30 days before he removes an IG that he is doing so and why, with any reason given being reason enough.

Fourth, provisions like the one in the statute for the Treasury IG that allow the Treasury Secretary to prevent an Inspector General from pursuing an investigation or audit, including the issuance of subpoenas, which, among other things, would “require access to sensitive information concerning… deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior,” and/or which could “significantly impair the national interests of the United States,” should be jettisoned so as to remove a temptation to use the provision as an excuse to prevent the IG from pursuing an investigation or audit that could merely prove to be politically harmful to the Administration or contrary to its ideology. One can easily see how such a provision could have been used by a Treasury Secretary to prevent an IG from looking at policies with regard to sub-prime mortgage lending and the variety of exotic financial instruments that lie at the heart of the present crisis.

And, finally, the greater the amount of money and the complexity of programs and operations an Inspector General has to oversee, the greater should be the resources given to his/her office to conduct such oversight. Since we are talking about huge sums of taxpayer money in the various bailout and recovery programs underway and yet to be begun, programs of mind numbing complexity, it is imperative that the relevant IGs be given resources that are commensurate with the huge responsibility that they have been asked to undertake with regard to the present crisis.

Thank you very much, again, for inviting me to testify today. I look forward to your questions.