

Project On Government Oversight

Inspectors General: Many Lack Essential Tools for Independence

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EXECUTIVE SUMMARY

Inspectors General (IG) offices inside the federal government root out waste, fraud, and abuse and make government agencies function more effectively. Given this role, an IG who lacks independence is unlikely to be effective. Yet, after reviewing the responses of 49 IG offices to a survey sent out to all 64 statutory IGs, POGO has discovered some disturbing issues affecting the most fundamental ability of IGs to be independent.

At this writing, there are 64 Inspectors General that fall under either the Inspector General Act of 1978 and subsequent amendments, or parallel authority in other legislation. When Congress created the IG system, particular attention was paid to ensuring that IGs would be independent by requiring them to report both to their agency heads and to their respective oversight committees in Congress.

POGO's survey shows that many elements come into play when assessing the independence of IGs, including:

- ◆ **IG Candidate Selection.** In the past, an internal vetting process by the IG community helped ensure that IGs were highly qualified, but the process is no longer used. In recent years, candidates for IG positions reportedly have less auditing and investigative experience and are more politicized.
- ◆ **Budget Line Items and Authority.** Legislation in 1988 required the budgets for presidentially-appointed IGs to appear as separate line items in their agency's budget. But for the 34 IGs who are not presidentially-appointed, more than a few believe their offices suffer without this line item listing and access to Congressional appropriators. Their budgets are dependent on the good will of their agency heads, and the IGs have virtually no recourse when their bosses decline to seek or increase funds for their offices. For example, agency chiefs have retaliated against IGs for unwelcome reports by refusing to request, or threatening to withhold, funds for the IGs' offices.
- ◆ **Staffing and Spending Authority.** Many IG offices simply do not have enough staff to effectively perform their mission. Thirteen IG offices responding to POGO's survey had six or fewer staff members. In addition, several IGs must gain agency approval to spend their allotted funds. One IG told POGO he had suffered retaliation from his agency head for an unwanted investigation in the form of the refusal to promote a highly qualified senior member of the IG's staff. Another said her agency chief must approve all expenditures, even contracting audits.
- ◆ **In-House Counsel.** Many IGs, including the Department of Defense, lack their own in-house legal counsel and may be forced to use the agency's general counsel. However, an agency general counsel's role is to protect the agency, which is at odds with the IG's role. General Counsels also have the power to undermine IG investigations through decisions such as criminal referrals and redactions from IG reports.
- ◆ **Ease of Website Access and Use.** Several IGs said they had trouble posting reports on their own web pages without prior approval from agency management. This interference inhibits IG communications with Congress, agency employees, and the public.
- ◆ **Unfettered Investigative Authority.** Several agencies have, in addition to their IG office, another investigative unit whose functions overlap with the IG. This has created problems at

the Justice Department, where the IG is barred from conducting certain investigations, and the State Department, which lacks a formal agreement with the Bureau of Diplomatic Services to prevent interference.

POGO's recommendations to improve the situation include the following:

- ◆ **Combine the PCIE and ECIE into one Council of all IGs.**
- ◆ **Remove the Deputy Director of OMB as the Chair of the combined Council of IGs.**
- ◆ **Create a resource pool of professional employees for smaller IG offices.**
- ◆ **Extend the language for PCIE IG qualifications to DFE IGs.**
- ◆ **Revive the IG candidate selection committee.**
- ◆ **Set fixed terms of office for PCIE IGs.**
- ◆ **Make clear that an Inspector General may only be removed prior to the end of his or her term for cause.**
- ◆ **Establish separate budget authority and transparent public budgets for all IGs.**
- ◆ **Clarify the law so that once an IG's budget has been approved, expenditures can be made without further approval.**
- ◆ **Forbid IGs to receive cash awards or bonuses, but raise their pay.**
- ◆ **Require IG offices either to have their own counsel or to use another IG's counsel.**
- ◆ **Make clear that IGs should rely on their own in-house counsel for advice about how FOIA applies to IG reports.**
- ◆ **Ensure direct and clear links to the IG's web page, and provide IGs autonomy over the content on the web page.**
- ◆ **Expand IGs' subpoena power.**
- ◆ **Amend the Program Fraud Civil Remedies Act to apply to DFE IGs.**
- ◆ **Refrain for now from consolidating any of the smaller IG offices.**

PREFACE

WHO'S WATCHING THE WATCHDOGS?

As the thirtieth anniversary of the Inspector General Act of 1978 approaches, the Project On Government Oversight (POGO) has seized the opportunity to conduct a major review of the Inspector General (IG) system. The idea of the Inspector General is a good one, and IGs have been remarkably successful in the face of entrenched resistance from some agencies and officials over the past three decades.

According to the IGs' annual report to the President for Fiscal Year 2006, audits by Inspectors General during that time period resulted in \$9.9 billion in potential savings from audit recommendations; \$6.8 billion in investigative recoveries; 6,500 indictments or other criminal charges; 950 successful civil actions; and 7,300 suspensions or debarments.¹

A House of Representatives Committee Report concluded that, over the years, IG investigations have returned to the federal till billions of dollars recovered from companies and individuals who had defrauded the government, not to mention thousands of criminal prosecutions and debarments that have also resulted.²

Although the savings have amounted to billions of dollars, IGs should not be judged solely on the basis of the money saved or recovered from IG audits and investigations. Certainly some IGs have conducted significant investigations or inspections that had no monetary component. But while the sums saved have been enormous, efficiency and integrity cannot always carry an exact price-tag.

The focus of this inquiry is to determine best practices and current weaknesses of the system, and to make recommendations for improvements. The fundamental question is whether the IGs are able in actual practice to achieve the optimal balance between independence and accountability. The results of the review will be presented in two reports: this first one on issues involving IG independence and a later, second report on the other side of the balance: accountability.

A BRIEF WORD ABOUT ACCOUNTABILITY

The issue of accountability of federal Inspectors General has recently taken on troubling new significance as several IGs at major agencies have been accused of misconduct, while the system for dealing with misconduct has seemingly not worked³:

- *Former Commerce Department IG Johnnie Frazier* was accused of numerous ethical violations, including taking trips with no apparent official purpose at government expense, retaliating against employees who objected and refused to sign the travel vouchers, and

¹ President's Council on Integrity and Efficiency and Executive Council on Integrity and Efficiency. *A Progress Report to the President*, Fiscal Year 2006, Results in Brief, p. 2. www.ignet.gov/randp/fy06apr.pdf (Downloaded February 20, 2008.)

² Committee on Oversight and Government Reform, U.S. House of Representatives. "Background and Need for Legislation, Improving Government Accountability Act," Report 110-354. To accompany H.R. 928, p.8.

³ See letter dated August 17, 2007, from Danielle Brian, Executive Director, POGO, to Clay Johnson, III, Deputy Director for Management, Office of Management and Budget, raising issues of IGs who had engaged in misconduct but not been disciplined. [Appendix A]

destroying emails after he was informed of an investigation into his travel. Although Frazier ultimately was forced to resign, he was replaced by the very deputy accused by the Office of Special Counsel⁴ of carrying out the retaliation against the employees who had complained about Frazier's conduct.⁵

- *National Aeronautics and Space Administration (NASA) IG Robert W. "Moose" Cobb* was investigated by his peers on the Integrity Committee of the President's Council on Integrity and Efficiency for alleged misconduct. The investigation concluded that Cobb's relationship with then-NASA Administrator Sean O'Keefe, with whom he lunched, drank, played golf, and traveled, was so close as to be inappropriate; that he had informed the Administrator of an undercover operation and the pending execution of search warrants; and that he had intimidated and berated employees to the point of tears. Perhaps most shocking, however, is that this report was completed in November 2006, yet Cobb remains as NASA IG to this day.⁶
- *Former Securities and Exchange Commission IG Walter Stachnik* was strongly criticized in a Senate report for his mishandling of a whistleblower's complaint.⁷ The report stated that Stachnik had "failed to conduct a serious, credible investigation" into allegations made by former SEC attorney Gary Aguirre. Aguirre had charged that SEC officials blocked him from interviewing a key Wall Street executive during an investigation on the grounds the executive had "powerful political connections."⁸ Instead of interviewing Aguirre, the IG "merely interviewed his supervisors informally on the telephone, accepted their statements at face-value, and closed the case without obtaining key evidence."⁹ The report stated that Senate investigators had received numerous other complaints about the SEC IG, and found that the IG's reputation "appears to be that of an office closely aligned with management, lacking independence."¹⁰ Stachnik retired the same day the report was issued.¹¹

As mentioned above, these and other issues of IGs' accountability will be addressed in a separate report. In addition, POGO will examine questions of performance and effectiveness, and make recommendations on how the system may be improved to ensure that the watchdogs are themselves carefully watched.

⁴ The Office of Special Counsel is an independent federal investigative and prosecutorial agency whose stated mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.

⁵ Subcommittee on Government Management, Organization and Procurement, Committee on Oversight and Government Reform, U.S. House of Representatives. *Inspectors General: Questions of Independence and Accountability*, Fact Sheet, June 2007, p. 3. Hereinafter "Fact Sheet."

⁶ Fact Sheet, p. 2.

⁷ Minority Staff of the Committee on Finance, U.S. Senate, and the Committee on the Judiciary, U.S. Senate. *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management*, August 2007. p. 1. Hereinafter "Senate SEC Report."

⁸ Senate SEC Report, p. 6.

⁹ Ibid.

¹⁰ Senate SEC Report, p. 8.

¹¹ Kelley, Matt. "Bill Urges Independence for Agency Watchdogs," *USA Today*, January 11, 2008.

THE INDEPENDENCE OF INSPECTORS GENERAL

In order to create independent and objective units—(1) to conduct and supervise audits and investigations ... (2) to provide leadership and coordination and recommend policies ... to promote economy, efficiency, and effectiveness ... and to prevent and detect fraud and abuse ... and (3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies ... there is established ... an office of Inspector General.—Inspector General Act of 1978, Section 2, Purpose and Establishment of Offices of Inspector General

INTRODUCTION

Much of what you think you know about federal government Inspectors General is wrong.

They are not all fully independent watchdogs.

They are not all subject to Senate confirmation.

They are not all appointed by the president.

They are not all chosen for their law enforcement or auditing experience.

They do not even all fall under the Inspector General law.

The office of Inspector General has a long history in the military, but is a relatively new phenomenon in civilian agencies. It was set up to be an internal watchdog within an executive agency to report on waste, fraud, abuse, and misconduct not only to the agency chief but also to Congress. This dual reporting system gives the IG strength, but also creates a tension that not all IG offices can withstand. In recent years, POGO has seen case after case in which agency chiefs batter their IGs by withholding resources, as well as a few cases of out-of-control IGs blocking investigations and running roughshod over their employees.

To conduct its review, POGO sought and received cooperation from the two coordinating councils for civilian IGs in distributing to their members a voluntary questionnaire asking basic questions about the IG offices' staffing, budgets, in-house counsels, and access to agency websites. POGO is grateful to those who responded, as well as to those who facilitated the request. The information supplied has contributed greatly to this report.¹² We are also grateful to the many people who spent numerous hours being interviewed and supplying information in response to our follow-up queries.

¹² As of the date of this report's publication, POGO has received 22 replies from the 30 presidentially appointed IGs, and 27 replies from the 34 agency appointed IGs, roughly a 77 percent response rate. The questionnaires and their responses can be found in Appendices B and C; they are similar except for the question about budget line authority, which PCIEs already possess. Although all of the factual data supplied by the IGs is contained in these appendices, some portions of the responses have been redacted to remove subjective reactions or opinions, and at least one joke. Our investigation has also been aided throughout by the valuable insight of a long-time expert on the IG system, Jackson W. Hufnagle, Assistant Director, Financial Management and Assurance, Government Accountability Office. Mr. Hufnagle has overseen the Government Accountability Office's reviews of the IG system for many years.

BACKGROUND

The first Inspectors General were military and fell within the chain of command, but, as far back as 1778, they were concerned about maintaining their independence. The young nation's first IG was Baron Friedrich Wilhelm von Steuben, who created the system at the behest of General George Washington, and who later clashed with him over reporting structure and independence.

NON-STATUTORY INSPECTORS GENERAL

The direct descendants of Baron von Steuben are the non-statutory Inspectors General, and they still have problems with reporting structure and independence. They are mostly found at the military service agencies; on military bases and posts; and at Department of Defense (DOD) intelligence agencies, including the National Security Agency, the Defense Intelligence Agency, and the National Reconnaissance Office.¹³

These IGs are generally uniformed officers who fall within the chain of command and who often serve for only short periods of time. They are not covered by the IG law or any parallel statute, and because they must report to their agency chiefs, they lack any semblance of independence.

A study commissioned by the DOD IG in 2002 noted that, whereas the mission of civilian IGs is “the prevention, and detection of fraud, waste, and abuse,” the orientation of the military services Inspectors General:

by law was directed toward “determining and reporting on the economy, efficiency, morale, discipline, and esprit de corps of each of the services.”...

It is difficult to reconcile the thrust of the civilian inspector general to the service inspectors general although they should be focused on the same goals ... a better Army, a better Navy, a better Air Force, and a better Joint Staff.¹⁴ [Appendix D]

Former DOD IG Eleanor Hill testified before Congress that:

Military IGs often requested that our office conduct top-level, particularly sensitive investigations since they did not believe they had the independence needed to conduct an investigation that would both be and appear to be objective. ... All of those IGs recognized that in investigations of very senior officials or in audits of programs dear to the agency head, the statutorily protected independence of the Departmental IG was critical to both the integrity of the inquiry and to the credibility of the findings.¹⁵

¹³ The only national security agencies with statutory IGs are the CIA, the Defense Department, the Director for National Intelligence (DNI), and the Special IG for Iraq Reconstruction (SIGIR).

¹⁴ Military Professional Resources, Inc. *Assessment of the Office of the Inspector General of the Department of Defense*, pp. 1-2. Obtained by POGO through FOIA in June 2007. Hereinafter “MPRI study.”

¹⁵ Statement of former Defense Department Inspector General Eleanor Hill before the Committee on Homeland Security and Government Affairs, U.S. Senate, July 11, 2007, p. 4. http://hsgac.senate.gov/_files/071107Hill.pdf (Downloaded December 11, 2007). Hereinafter “Eleanor Hill statement.”

Hill also recounted her dismay with press reports describing an investigation of NSA's "terrorist surveillance program" by the NSA IG, "who has limited resources and no statutory independence."¹⁶

Calling someone who lacks independence of agency leadership an "Inspector General" not only confuses the press and public, but can also create pitfalls for potential whistleblowers. The sincere military or national security whistleblower may believe he or she is approaching an independent arbiter and end up sadly mistaken.

Pending legislation would create statutory, agency-appointed Inspectors General for the NSA, DIA, and NRO, as well as the National Geospatial-Intelligence Agency. However, there are no plans to create such statutory IG offices for the military services. A separate presidentially-appointed Inspector General would replace the current agency appointee in the office of the Director of National Intelligence to oversee the activities of the intelligence community as a whole.

STATUTORY INSPECTORS GENERAL

Two hundred years after the Baron's service, Congress passed the Inspector General Act of 1978,¹⁷ creating statutory Inspectors General for the major federal agencies.

At that time, Congress was reacting partly to the revelations of the Watergate era, and partly to an ongoing scandal at the General Services Administration, which was the target of a series of investigations in the late 1970s into fraud, corruption, and mismanagement.¹⁸ In addition, an IG office that had been created two years earlier for the then-Health, Education and Welfare Department (now Health and Human Services) was seen by Congress as a roaring success. Members of Congress decided to institute similar offices in the other major departments and agencies. Although his agency heads were unanimously opposed to the concept, President Jimmy Carter supported it, and the modern civilian office was born.¹⁹

At this writing, there are 64 Inspectors General that fall under either the 1978 law and its subsequent amendments or, in the case of six IGs,²⁰ separate but parallel authority granted in

¹⁶ Eleanor Hill statement, p. 4.

¹⁷ U.S. Code "Inspector General Act of 1978 Title 5—Appendix." www.access.gpo.gov/uscode/title5a/5a_2_.html (Downloaded November 28, 2007.)

¹⁸ In fact, when he signed the Inspector General Act, President Carter cited "abuses in the General Services Agency [sic] and other places where fraud has been apparent." Frederick M. Kaiser and Stephanie Smith, "Investigations of Public Fraud and Corruption: Lessons and Legacies of a United States Procurement Scandal," *Police Studies: The International Review of Police Development*, Spring 1991, vol.14, p. 6.

¹⁹ Conversation with Frederick M. Kaiser, Specialist in American National Government, Government and Finance Division, Congressional Research Service, November 14, 2007. Also, "Monitoring Government, Inspectors General and the Search for Accountability," Paul C. Light, The Brookings Institution, Washington, D.C., 1993. Although Light's seminal work on the IG system was published some years ago, it has proved an invaluable resource to this investigation.

²⁰ Five of the six IGs are agency-appointed; they include the three legislative agencies (Government Printing Office, Library of Congress, and the Capitol Police). The other two agency-appointed IGs under separate but parallel authority are in the Office of the Director of National Intelligence, and the Special Inspector General for Iraq

other legislation. One of the hallmarks of the law is the unique dual-reporting responsibility given to IGs: they are required to report both to their agency heads and to their respective oversight committees in Congress. That dual-reporting structure was created specifically to keep the IGs independent, while still allowing them to bring problems to the attention of agency heads.

It is not always easy trying to serve two masters. Former State Department IG Sherman Funk testified in 1988:

The Hill is worried about the IG's being co-opted by management, and management is worried about our being a conduit to the Hill. We are stuck right in the middle. If we are seen talking to somebody from the Hill, "Ah-huh, the IG's leaking information or giving away stuff about his findings." If we get too cozy with management, we are being co-opted. This is what I call straddling the barbed wire fence.²¹

The Act specifically built in a number of protections to the independence of IGs, including the requirement that IGs report only to agency heads and not to lower-level managers. In fact, IGs are to operate only under the "general," not the day-to-day, supervision of their agency heads. There are also prohibitions on the ability of the agency head to prevent the IG from carrying out any audit or investigation or serving a subpoena.²² Furthermore, IGs are directed to report their findings—without alteration by their agencies—in semi-annual reports to Congress, and the reports are to be made public. The Act also requires the IGs to keep their agency heads and Congress fully and currently informed of any problems, deficiencies, abuses, or other serious issues.²³

THE IGs' COORDINATING COUNCILS

There are two coordinating bodies for statutory IGs—the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE)—which were

Reconstruction. Currently, the only presidentially-appointed IG under separate authority is that of the Central Intelligence Agency.

²¹ Senate Committee on Governmental Affairs. "Serious Management Problems in the U.S. Government, Hearings before, 101 Cong., 1 session." [GPO, 1989] p. 55, cited in "Monitoring Government, Inspectors General and the Search for Accountability," Paul C. Light, The Brookings Institution, 1993, p. 69.

²² The heads of six agencies—the Departments of Defense, Homeland Security, Justice, and Treasury; the Central Intelligence Agency; and the U.S. Postal Service—may prevent their IGs from initiating, carrying out, or completing an audit or investigation for specified reasons, including protecting national security or an ongoing criminal investigation. In each case, however, the agency head must notify the appropriate Congressional oversight committees of the reasons for the action within 30 days, or, in the case of the CIA, within seven days. Pending legislation would allow similar action by the Director of National Intelligence regarding a newly-created Inspector General for the Intelligence Community.

²³ These particular provisions of the law were recently emphasized in Congressional testimony by David M. Walker, Comptroller General of the United States, before the Subcommittee on International Organizations, Human Rights, and Oversight, Committee on Foreign Affairs, U.S. House of Representatives, October 31, 2007, Serial No. 110-114, p. 16. Hereinafter "Walker House testimony."

established by Executive Order 12805 on May 11, 1992. The councils:

- address integrity, economy, and effectiveness issues that transcend individual Government agencies, and
- increase the professionalism and effectiveness of IG personnel throughout the Government.

To accomplish their mission, the PCIE and ECIE members look to conduct interagency and inter-entity audit, inspection, and investigation projects to promote economy and efficiency in Federal programs and operations and address more effectively government-wide issues of fraud, waste, and abuse. The Council members also develop policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled IG workforce.²⁴

The executive order also designated the Office of Management and Budget (OMB) Deputy Director for Management as chair of both the PCIE and the ECIE; he or she, in turn, appoints an IG to serve as vice chair. Current OMB Deputy Director Clay Johnson III has, on more than one occasion, instructed the IGs that it is their responsibility to get along with agency heads, that they are part of the agency team, and that they should contribute to agency success.

Surprises are to be avoided. With very limited exceptions primarily related to investigations, the OIG should keep the Agency advised of its work and its findings on a timely basis, and strive to provide information helpful to the Agency at the earliest possible stage ... OIG and Agency management will work cooperatively in identifying the most important areas of OIG work ...²⁵

That viewpoint is not unique to the current administration. During the Clinton administration, then-OMB Deputy Director Alice Rivlin sent out a memo noting with approval that the IGs had recently adopted a “vision statement” for:

working more closely with agency management and focussing [sic] more work on program outcomes. To put it simply, the IGs have pledged to focus more on whether Federal programs are working (the “big picture”) and less on identifying individual, minor infractions of procedures (the “gotchas”).²⁶

There is a subtlety here that echoes the dual nature of the IG’s existence: While a relationship between agency and IG of pure antagonism surely is not desirable, there are dangers associated with IGs being too closely identified with agency success. One such danger is that IGs may become—or be accused of becoming—overly involved in the management of agency programs.

²⁴ The Inspectors General. “IG Net: PCIE/ECIE Mission and Organization.” www.ignet.gov/pande/mission1.html, (Downloaded November 27, 2007.)

²⁵ “Agency and OIG Working Relationships,” Memorandum to members of PCIE and ECIE, from Clay Johnson III, July 9, 2004; see also Remarks of Clay Johnson, III, at a meeting of the ECIE, August 28, 2007.

²⁶ Office of Management and Budget. “Inspector General Vision Statement: Memorandum from Alice Rivlin, Deputy Director, Executive Office of the President,” April 11, 1994. <http://pogoarchives.org/m/go/ig/rivlin-memo-19940411.pdf>

That issue was recently the subject of an attack on the IG institution from a rather surprising source: OMB official and head of the Office of Federal Procurement Policy Paul Denett. According to published reports, Denett complained that IGs have “taken over the role of program manager,” adding that IGs “get aggravating sometimes.”²⁷ Denett further implied that IGs are a problem by stating, “They need to act professionally and back up their findings with fact that program managers and agencies can verify.” POGO is alarmed that a subordinate to Deputy Director Johnson would launch such an attack on an institution that Johnson supposedly oversees. Agency leaders should also be careful not to over-emphasize that IGs are part of an agency’s success, because this attitude could be construed as tipping the balance from independence to subordination.

Other dangers include the potential of scaring off would-be whistleblowers if they fear their complaints could be neglected or even compromised, and focusing too much on designing programs to solve agency problems, which could ensnare the IG in an improper investment in the success of programs that need instead to be examined with an impartial and critical eye.

IGs need to retain as much independence of thought and action as possible, even while acknowledging they are officers of the executive branch. In fact, as the Congressional Research Service points out, the IG law contains provisions designed to ensure IG neutrality, including a prohibition on the transfer of “program operating responsibilities” to an IG.²⁸ Although there are some who believe IGs should be helping agencies prevent problems rather than merely uncover them (working on the big picture vs. playing “gotcha”), the real value of an IG is the ability to bring the critical outsider’s eye into the agency.

Currently pending legislation would combine the PCIE and ECIE into a unified council for all statutory IGs and, by statute and clear funding authority, create “a forum for more sustained and organized IG initiatives on a government-wide basis,” as one IG explained to a House committee.²⁹ The coordinating and training functions of the councils would also be enhanced. Further, the legislation would retain the OMB Deputy Director as the “executive chairperson” of the combined council, but would transfer most of the actual duties to an IG chairperson, who would be elected by his or her fellow IGs for a two-year term.³⁰

The just-released Senate report supporting its version of the IG legislation noted:

While these Councils play a valuable role, they are badly in need of strengthening. The Councils operate on an ad hoc, shoestring budget, have no dedicated staff, and have limited legal authority for joint endeavors ... The bill gives the new Council a broad charter to conduct activities to build a strong, professional IG community and explicitly

²⁷ Weigelt, Matthew. “Denett: IGs are ‘Aggravating,’ and Overstep Boundaries,” *Federal Computer Week*, November 7, 2007. www.fcw.com/online/news/150732-1.html (Downloaded November 19, 2007.)

²⁸ Kaiser, Frederick M. “Statutory Offices of Inspector General: Past and Present,” *Specialist in American National Government, Government and Finance Division*, Order Code 98-379, updated September 27, 2007, p. 2.

²⁹ Statement of Inspector General Phyllis K. Fong, U.S. Department of Agriculture, before the Subcommittee on Government Management, Organization and Procurement, Committee on Oversight and Government Reform, U.S. House of Representatives, June 20, 2007, p. 2.

³⁰ H.R. 928, Section 4 and S. 2324, Section 7, both establishing a new Section 11(b)(3) to the Inspector General Act of 1978 (5 U.S.C. App.).

authorizes individual Inspectors General to pool resources for Council programs, including training.³¹

The White House has indicated it opposes making the councils statutory, on the grounds that it would restrict the president's constitutional authority.³² However, POGO believes there would be little encroachment on the president's executive powers from the transformation of two councils into one, or from the creation by statute of what has existed for many years by executive order. The unified council could and should be a stronger body for supporting the needs of individual IG offices when they need a temporary increase in resources. POGO acknowledges the constitutional need for an executive branch official to be the titular head of such a unified council, but applauds the concept of leaving all real duties and responsibilities to the IGs themselves.

TWO TYPES OF STATUTORY IGs: A WORLD OF DIFFERENCE

The IG Act and its subsequent amendments³³ established two types of statutory Inspectors General: those appointed by the president and those appointed by the head of the agency. [Appendix E] There is a world of difference between the two. The IGs who are presidentially-appointed and Senate-confirmed are viewed as having higher standing than those appointed by their agency heads. One of the latter group told POGO, "We're a little like the step-child of the IG community."

PRESIDENTIALLY-APPOINTED INSPECTORS GENERAL

The IGs for Cabinet-level departments and many of the largest federal agencies are appointed by the president and must be confirmed by the Senate. The law specifically requires that they be chosen:

without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.³⁴

Because they must be confirmed, presidentially-appointed IGs and their qualifications are, at least theoretically, subject to extra scrutiny.

These IG offices are members of the President's Council for Integrity and Efficiency (PCIE), and thus are frequently referred to as the "PCIEs," or as the "established IGs."

³¹ Senate Committee on Homeland Security and Government Affairs, Report to accompany S.2324, "Inspector General Reform Act of 2007," pp. 5-6.

³² Executive Office of the President, Office of Management and Budget, "Statement of Administration Policy re H.R. 928." October 1, 2007, p.2.

³³ The original IG Act of 1978 created OIGs in the major federal agencies ("the established agencies"). The 1988 amendments added IG offices to the Designated Federal Entities or DFEs. In this report, we refer to these acts and other subsequent amendments collectively as "the IG law."

³⁴ Inspector General Act of 1978 Sec. 3(a).

Amendments to the IG Act in 1988 provided all PCIE members with their own line item budget authority, or separate budget accounts. Most also have their own in-house counsel, with one significant exception—the Department of Defense. The PCIE IGs are in general well-staffed and have most of the resources needed to perform effectively.

The one downside to the presidential appointment of IGs is the possible politicization of the office. One way to insulate these IGs from the political process, and thereby to enhance their independence, would be to set fixed terms, ideally for seven years, for those IGs. Specific terms would span presidential administrations, while providing each IG enough time to gain expertise and accomplish objectives. These IGs would also be eligible for reappointment at the end of their terms, subject again to Senate confirmation.

AGENCY-APPOINTED INSPECTORS GENERAL

The other group of statutory IGs are not appointed by the president, but rather by their agency heads, and are therefore often at the mercy of those officials. The coordinating body for these IGs was established by the same executive order that set up the PCIE, and is called the Executive Council on Integrity and Efficiency, or the ECIE. Generally speaking, these IG offices can be found in smaller executive agencies, commissions, and boards, called Designated Federal Entities (DFEs). Not all ECIE agencies are small, however—several, such as the National Science Foundation and Amtrak, are relatively large, and the U.S. Postal Service is very large.

There are also three legislative IG offices—those of the Library of Congress, the Government Printing Office, and the Capitol Police. They do not fall under the IG law, but are covered by three separate statutes that each imposes responsibilities and duties parallel to the IG law. These IGs are agency-appointed so, although they are not executive agencies and therefore not technically DFEs, they are members of the ECIE. For ease of reference in this report, we use the terms “DFEs,” “agency-appointed IGs,” and “ECIE members” interchangeably and include in them the three legislative IG offices.

The legislative IGs were not placed directly under the IG law because to do so would have been seen as compromising the institutional integrity of Congress, theoretically allowing some executive branch control of the operations and activities of legislative agencies.³⁵ These legislative IGs could almost be said to straddle two worlds, since they belong to the ECIE, an executive body. Yet because they have separate legislative authorities, they are not always covered by changes made to the IG law. For example, legislation currently pending in Congress to improve the independence and resources of IGs would largely exclude these three offices.

At this writing, the IG Act does not require Inspectors General at the DFEs to be selected under the same criteria of political impartiality, integrity, or demonstrated ability as the PCIEs.³⁶ This

³⁵ Conversation with Frederick Kaiser, Specialist in American National Government, Congressional Research Service.

³⁶ Perhaps surprisingly, the separate authorities creating the three legislative IGs included that language.

is an egregious oversight, and the law should make clear that those fundamental qualities should be sought in all potential IG candidates.³⁷

There are a number of DFE agencies that are governed by boards or commissions, so those IGs actually have a bit more independence than those who must deal with only one agency head. As one IG for a six-member commission told POGO, “four of them have to get annoyed with me ... [so] my independence is pretty good.”

However, most DFE IG offices are small, under-resourced and often quite dependent on their parent agencies. Most do not have separate line items in the president’s budget, many do not have in-house counsels, some lack staff auditors or investigators, and some are unable—whether due to lack of funds or lack of approval from management—to bring in contract help when needed. A few are not even allowed to post reports on their own page on the agency website without agency permission.

Although there are significant differences between PCIE and DFE IGs, there is one area in which they are all too similar: due to anomalies in federal pay schedules, as well as the inadequacies contained in the 30-year-old IG law, some IGs receive literally \$20,000-\$30,000 less annually than some of their subordinates. This creates a severe disincentive to continued government service, as well as obvious morale problems. Because IGs should not be allowed to receive cash awards or bonuses, steps should be taken—regardless of the various pay schedules that apply to the different IGs—so that they are all paid commensurate with the total compensation received by senior staff at their agency.

In recent testimony, Comptroller General David Walker, head of GAO, summarized well the realities facing Inspectors General:

With the growing complexity of the federal government, the severity of the problems it faces, and the fiscal constraints under which it operates, it is important that an independent, objective and reliable IG structure be in place at federal agencies to ensure adequate audit and investigative coverage of federal programs and operations. ... While the IG Act provides for IG independence, the ultimate success or failure of an IG office is largely determined by the individual IG placed in that office and that person’s ability to maintain personal, external, and organizational independence both in fact and appearance while reporting the results of the office’s work to both the agency head and to the Congress. An IG who lacks independence cannot effectively fulfill the full range of requirements for the office.³⁸

³⁷ In reaching this conclusion, POGO does not mean to cast aspersions on DFE IGs, most of whom are longtime respected career civil servants who have spent much of their professional lives in the IG community.

³⁸ Walker House testimony, pp. 16-17.

INDEPENDENCE MATTERS

An Inspector General who lacks independence is unlikely to be effective.³⁹ Yet POGO has uncovered some disturbing issues affecting the most fundamental ability of IGs to be independent: While there are many tools that could enable IGs to do their work both independently and effectively, some Inspectors General are forced to work without them. Among the essential tools that POGO has examined are adequate budget and staffing, authority to spend the budget once it has been appropriated, availability of in-house or conflict-free legal counsel, easy website access, and unfettered investigative authority.

Even though reports of IGs' having their independence violated may not be as newsworthy as those involving "watchdogs gone wrong," a few recent cases illustrate the assaults on independence experienced by some IGs:

- *General Services Administration chief Lurita Doan* responded to Inspector General Brian Miller's intensive audits of regional offices by suggesting that some auditing functions needed to be transferred from the IG to contractors. At a meeting with Miller and his aides in August 2006, Doan stated, "There are two kinds of terrorism in the U.S.: the external kind and internally, the IGs have terrorized the regional administrators."⁴⁰
- *Central Intelligence Agency Director Michael Hayden*, in perhaps the most astonishing known infringement of an IG's independence, launched an investigation of the agency's Inspector General, John Helgeson. According to published reports,⁴¹ the investigation (termed by the CIA a "management review") began as a disagreement between the IG and the agency's general counsel. Further, it appears the main complaint against the IG was that his subordinates had been too harsh in questioning CIA officers about their activities. The IG had earlier issued highly critical assessments of agency employees' activities in pursuing terrorists, and it is hard to escape the appearance of retaliation in this launching of a "management review." This unprecedented action violates the spirit if not the letter of the law, which states that IGs are to fall only under the general supervision of their agency heads. More recent reports have stated that the IG has changed procedures and will install an "ombudsman" in his office.⁴² It appears that this solution has been imposed on the IG against his will, and may have seriously damaged his independence.

³⁹ Of course, there can also be too much of any good thing: some have complained that IGs have run roughshod over their investigative subjects, and it may be that some IGs with significant political connections feel no constraints on their actions. That is why accountability, the other part of the balance, is equally important. Those issues will be addressed in Part II of POGO's investigation.

⁴⁰ The account of the meeting was obtained by the Associated Press and confirmed by two additional participants. Margasak, Larry. "Government Watchdogs Under Attack From Bosses." *The Associated Press*, December 27, 2006; Fact Sheet, p. 4.

⁴¹ Miller, Greg. "CIA Investigates Conduct of its Inspector General," *Los Angeles Times*, October 12, 2007; Mark Mazzetti and Scott Shane, "Watchdog of C.I.A. Is Subject of C.I.A. Inquiry," *The New York Times*, October 11, 2007.

⁴² Mazzetti, Mark. "CIA Tells of Changes for its Internal Inquiries," *The New York Times*, February 2, 2008.

- *Former Smithsonian Inspector General Debra Ritt* said that her agency chief pressured her to drop an audit of high-ranking officials. After Ritt refused to end the audit, and in fact reported on excessive expenditures claimed by top officials, her office budget was cut. Ritt resigned her post shortly thereafter.⁴³

Despite the many and varied ways in which agencies attempt to impinge upon the independence of their Inspectors General (an effort in which they all too frequently succeed), these assaults have received little attention from the media or from Congressional overseers. Legislation now pending in Congress may finally address some of these issues, but some basic problems will still remain.⁴⁴

IG CANDIDATE SELECTION

Shortly after the passage of the IG Act, the head of OMB “created an informal recruiting committee composed of only IGs to screen names and recruit candidates [for IG positions].”⁴⁵ In doing so, he ushered in what government scholar Paul Light has called the “glory days” of the Inspectors General. Ideally, an Inspector General should be chosen based on knowledge, experience, ability, and integrity, and the screening of candidates by IGs helped to ensure that IGs were chosen based on those criteria.

The three IGs who comprised the committee—two auditors and one investigator—tended to tilt toward candidates with similar backgrounds. Within several years, the committee had created a cadre of experienced auditors and investigators, favoring the promotions of those who had already served as assistant or deputy IGs, and cutting back on those whose backgrounds were in administrative or managerial roles.⁴⁶ By the end of the 1980s, there was an established community of experienced and professional IG staffers.

However, in 1989, after the end of the Reagan administration, the “glory” of the IGs began to dim. A combination of factors, primary among them a new administration that did not place a high priority on the IG process, led to this decline. The new administration of George H.W. Bush delayed in filling IG slots and let sitting IGs know their offices were under review, placing them in a tenuous position. At the same time, the screening committee lost its influence: although it continued to make recommendations, those recommendations were routinely ignored. The process soon fell into disuse,⁴⁷ and today there is no standard process for screening or selecting a pool of candidates.

In recent years, the administration of President George W. Bush has been accused of appointing a higher percentage of unqualified IGs than did the preceding administration; more than 60 percent of Bush’s IGs had prior political experience, while fewer than 20 percent had prior audit experience. In comparison, during the Clinton administration, 60 percent had prior audit

⁴³ Fact Sheet, p. 5.

⁴⁴ See Appendix F for specific legislative proposals pending in Congress at time of publication.

⁴⁵ Light, p. 107.

⁴⁶ Light, pp. 111 and 117.

⁴⁷ Light, pp. 131-135.

experience, and fewer than 25 percent had prior political experience.⁴⁸ If IGs were once again chosen from slates of qualified candidates submitted by other IGs, audit and investigative experience might once again become the primary criteria for candidate selection.⁴⁹

BUDGET LINE ITEMS AND TRANSPARENCY

The 1988 amendments to the IG Act required the budgets for all presidentially-appointed IG offices to appear as separate line items on their agency's budget submissions; once the agency's appropriations bill is enacted, the agency cannot alter the amount. In fact, many of the PCIE IGs are able to meet directly with congressional appropriations subcommittees to explain their requests, and even seek more funding. This ability contributes significantly to an IG's independence, as agencies often have no incentive to seek more funding for their internal watchdogs, and may in fact have considerable motivation to seek less.

Most of the DFE IG offices do not possess the advantage of being able to discuss their budget needs directly with Congress. According to survey responses, more than a few believe they suffer from the lack of individualized attention from anyone outside their agencies. Their budgets are dependent on the good will of their agency heads, and the IGs have virtually no recourse when those bosses decline to seek or increase funds for their offices. Agency chiefs have also retaliated against IGs for unwelcome reports by refusing to request, or threatening to withhold, funds for the IGs' offices.

The DFE IGs have been nearly unanimous in their desire for greater involvement in the budget process, and all of the IGs—PCIEs and DFEs alike—have favored proposals that would promote more transparency in their budget requests and the amounts ultimately appropriated. Although the White House has objected on constitutional grounds to any requirement by Congress that would impose conditions on the OMB process,⁵⁰ compromises have been discussed that would at least publicize any differences between the amount an IG requested, the amount the agency sought from OMB, and that which the president actually requested of Congress in his budget submission. The DFE IGs who spoke to POGO indicated their belief that this would help them immeasurably in gaining more of the resources they need to accomplish their mission. The publication of all IG budget requests, alongside the agencies' and the president's requests, could aid all IGs' offices and allow more scrutiny of the operations of both the agencies and their IGs.

⁴⁸ Fact Sheet. See also, for example, Pulley, John. "Watchdogs: Richard Skinner says the role of inspectors general is to investigate, but some IGs have become the target of investigators," *Federal Computer Week*, www.fcw.com/print/22_3/features/151467-1.html (Downloaded February 22, 2008.)

⁴⁹ POGO testimony in July 2007 raised this issue. See "Testimony of Danielle Brian, Executive Director, Project On Government Oversight before the Senate Homeland Security and Governmental Affairs Committee on 'Strengthening the Unique Role of the Nation's Inspectors General'," July 11, 2007. www.pogo.org/p/government/gt-070711-ig.html

⁵⁰ Executive Office of the President, Office of Management and Budget, "Statement of Administration Policy re H.R. 928." October 1, 2007, pp. 1-2.

STAFFING AND SPENDING AUTHORITY

The number of staff members in IG offices ranges from less than one (a part-time assistant) to hundreds. Of course, size alone is not absolutely determinative of an IG's ability to accomplish the mission. However, experts consulted by POGO believe that any IG office with fewer than six staffers is incapable of being effective and truly independent of its parent agency; the IG must rely on the agency for too much in the way of resources, whether administrative, legal, or otherwise. Most of the offices with fewer than ten staffers are found in the ranks of the agency-appointed IGs. In fact, a GAO report from July 2007 found that 19 of the 34 DFE IGs had ten or fewer staff members.⁵¹ Thirteen of the 27 DFE IGs who responded to our questionnaire said they have fewer than six staffers. [Appendix C]

Some of the smaller DFE IG offices have come up with creative solutions to persistent lack of sufficient staff: Some offices with roughly similar missions have pooled resources by sharing investigators, auditors, and legal advisers; some offices have reached agreements with other agencies for temporary "detailees"; and still other offices have contracted out some of the work.⁵² While POGO applauds the persistence and innovation, it is clear that more permanent solutions are required. Some functions are essential to the IG's mission and should therefore be performed by IG staff. Furthermore, IGs should not have to rely on personal relationships or the good will of their colleagues in order to get their jobs done.

A new combined IG Council could be given sufficient funding authority to create a pool of professional IG staff members who would be available to serve with different IG offices. This professional pool would consist of experienced lawyers, auditors, investigators and even administrative and support personnel such as IT experts, who would be attuned to the peculiarities of the IG world. In time this pool would become even more valuable as it developed institutional knowledge and experience.

Further impeding independence is that some IGs do not have the authority to spend their office budget funds without further agency approval. Although most IGs are free to spend appropriated funds as they see fit, some are required to seek additional approval from agency chiefs before they can spend their own funds. One DFE IG stated that an agency-wide freeze had prevented her from hiring, even though her budget had provided funding for new staff. Another said her agency chief must approve all expenditures, even contracting audits, causing "micromanagement and eliminat[ing] the independence of the Inspector General"—and arguably violating the "general supervision" requirement of the IG law. Another IG told POGO that her agency chief would never say "never," but would instead delay approval indefinitely, effectively blocking the hiring of staffers.

⁵¹ Government Accountability Office. "Inspectors General, Opportunities to Enhance Independence and Accountability, Statement for the Record, David M. Walker, Comptroller General, to the Committee on Homeland Security and Government Affairs, U.S. Senate." July 11, 2007, GAO-07-1089T, p. 9. Hereinafter "Walker Statement for the Record."

⁵² Outsourcing IG work does raise some issues: Essential government functions should be performed whenever possible by government employees. In addition, as a CRS expert on IGs points out, such "privatizing" of audits and investigations tends to prevent the development of in-house expertise, and wastes time and resources because of the sporadic one-shot efforts.

During the course of this investigation, POGO discovered that agency chiefs can impose their wills on their IGs, or signal their displeasure with IGs' actions, by wielding bureaucratic processes and delays. For example, one IG said he was told point-blank by his former agency chief that the IG's request for additional funds would not be submitted because the agency chief knew the IG would then hire additional investigators, and the agency chief did not want any more investigations. Another IG told POGO he had suffered retaliation from his agency head for an unwanted investigation in the form of the refusal to promote a highly qualified senior member of the IG's staff to fill a vacant Senior Executive Service (SES) position. All SES hiring and promotions were frozen. After many months of intransigence, the agency head finally backed down and agreed to allow the IG to promote and hire SES staff. The agency, however, continues to control and process all SES hiring and promotions.

It is essential that IGs be able to control their own spending once a budget amount has been appropriated, and to make their own staffing decisions, whether hiring or promotions. Without these tools, an IG's independence can be severely compromised.

Special Case: The State Department

Although the Inspector General for the Department of State is presidentially appointed, it is clear from recent testimony by both the GAO and the Inspector General himself that the office is hobbled by a lack of resources.

Comptroller General Walker recently reported that from fiscal years 2001 through 2006, the State Department's budget increased by 55 percent in constant dollars. During that same period, however, the IG's budget grew so slightly that in constant dollars it actually decreased by 6 percent. Further, while the IG's office had an authorized staff ceiling of 318 for FY 2006,⁵³ the IG had only 185 staff on duty as of August 31, 2007. [Appendix B]

But the problems with the State Department IG's office run even deeper than the lack of resources and adequate staffing, according to GAO. In fact, the Comptroller General stated, "We continue to be concerned about the independence of the State IG, an issue that we first reported on almost three decades ago."⁵⁴ Walker identified several specific issues that he believes severely undermine the State IG's independence and effectiveness, including the following:

- The tendency of Department leaders to appoint management officials to serve as IG in an acting capacity. For example, from January 2003 until May 2005, four different Foreign Service Officers acted as IG. Management was thus investigating itself for significant periods of time.
- The use of Foreign Service Officers to lead IG inspections of the Department's embassies and bureaus. While it may be desirable to tap into the expertise of the ambassadorial corps to provide advice or consultation, having that officer lead the inspection creates at least the appearance of a conflict of interest.

⁵³ Walker House testimony, p. 6.

⁵⁴ Walker House testimony, p.14.

These issues call into question the independence of the State IG's office. The point was underscored recently in a letter from anonymous State Department employees in which the authors raise concerns about the Department's consideration of yet another ambassador for the post of Acting IG. They are dismayed over the recent tenures of ambassadors serving as Acting IGs: "Just look at the record. It was a disaster and it's about to be repeated"⁵⁵

IN-HOUSE COUNSEL

Another factor that presents serious problems for many IGs is the lack of their own counsel to provide in-house legal advice. Their methods of dealing with the situation vary considerably, from relying on other IG counsels to using the agency's general counsel. Being put in the position of having to rely on advice from the agency's general counsel is unacceptable because it is a clear conflict of interest: A general counsel's role is to protect the agency, whereas an IG's role is to audit, inspect and investigate it. Furthermore, general counsels have the power to undermine IG investigations because they affect such decisions as criminal referrals and what to redact from documents released through FOIA.

In addition, POGO has observed that, whether it is their natural adversarial bent or the desire to protect the agency and its chief at all times, the attitude of general counsels toward IGs seems often to be one of conflict and tension. In fact, one IG told POGO that the source of most IGs' headaches is their agencies' general counsels.

Another IG told POGO that he had refused to rely on his agency's general counsel and had insisted on hiring his own. However, after a two-year intensive investigation had ended, the IG realized he did not have enough work for a full-time counsel. Yet he was unable to find competent part-time attorneys. He now has a memorandum of understanding with the IG's counsel at another agency and finds the arrangement satisfactory for the time being.⁵⁶

One case that illustrates the tension between agency general counsels and Inspectors General is, as noted in the next section, an instance in which an agency general counsel insisted that the IG redact information from an IG report before it could be publicly posted. In this particular case, the general counsel had reached a conclusion about the applicability of freedom of information law that differed from that of the IG. Yet the IG felt forced to comply with the general counsel's interpretation. Whereas many IG offices do their own FOIA analysis, it can be "a mixed bag" in the IG community whether an IG is allowed to decide what information can be released under the Act. An IG must be allowed to make his or her own decisions, relying on in-house legal advice, as to any redactions necessary for public release of IG reports. This case underscores why IGs need access to their own legal advice, free from the influence of agency chiefs or general counsels.

⁵⁵ Anonymous letter dated January 12, 2008, addressed to Members of Congress, the executive branch, the media, and POGO.

⁵⁶ An expert consulted by POGO suggested that IGs may have difficulty engaging attorneys because anyone filling the position would not perceive an obvious career track or future within the agency. He noted that some IGs are attorneys, but in providing that in-house expertise may themselves be spread too thin.

Special Case: The Department of Defense

In-house counsel was not an issue for PCIEs with one striking exception: the Department of Defense Inspector General does not have its own counsel and relies instead on the Department's Office of General Counsel (OGC), which has delegated a deputy to advise the IG.⁵⁷ This presents a clear conflict of interest, especially when the IG must deal with numerous critical issues involving huge contracts and vital national security issues, because the General Counsel's mission is to protect the interests of the Department and its Secretary.

An outside assessment of the DOD IG's office in 2002, conducted at the request of then-IG Joseph Schmitz, recommended that "the Gordian Knot should be severed" between the Deputy General Counsel assigned to serve as the IG's counsel, and the Department's hierarchy. Military Professional Resources, Inc. (MPRI), which conducted the assessment, further recommended the creation of a "truly independent" counsel to the IG to remove the perception of serving two masters. [Appendix D, p. 62]

MPRI noted that the issue was not so much whether the Deputy General Counsel working for the IG would take positions at odds with the General Counsel, but whether that relationship "ever colors or clouds [his or her] objectivity." MPRI further stated that witnesses had provided "several significant examples" in which the positions held by the IG's Deputy General Counsel had "arguably been influenced by organizational or personal ties."⁵⁸

Former DOD Inspector General Eleanor Hill told POGO that she had not felt uncomfortable during her tenure by the lack of her own counsel, partly because she herself is an attorney, and partly because the OGC's designated liaison had been a competent and fair professional. However, she agreed that in general the DOD IG needs to be sure of receiving legal advice focused on the Inspector General's mission.

Jamie Gorelick, a former General Counsel for DOD, told POGO that she liked having a lawyer who reported to her but represented the IG. She said she would have worried that a second counsel in the Department might give legal opinions (e.g., on procurement law) that would be different from those of her office and therefore confusing to the Department. However, Gorelick agreed that the counsel for the IG needs to give independent advice. In her experience, after consultation between counsel to the IG and her office, every potential dispute was resolved. To her mind, the "fail-safe" was the IG's ability to report any problems directly to Congress.

The assignment of a Deputy General Counsel to the IG's office had been formalized in a Memorandum of Understanding between the two offices in 1985. But in February 2004, Inspector General Schmitz terminated the agreement. Later that same year, then-Deputy Defense

⁵⁷ POGO testimony in July 2007 raised this issue. See "Testimony of Danielle Brian, Executive Director, Project On Government Oversight before the Senate Homeland Security and Governmental Affairs Committee on 'Strengthening the Unique Role of the Nation's Inspectors General,'" July 11, 2007.

www.pogo.org/p/government/gt-070711-ig.html

⁵⁸ MPRI study, p. 62.

Secretary Paul Wolfowitz ordered that an Office of General Counsel of the Office of Inspector General be established within the Defense Legal Services Agency (DLSA).⁵⁹

However, that agency is also led by the General Counsel, who thus heads up two different staffs with often conflicting interests. As chief of DLSA, he advises all Department of Defense agencies and offices, including the Inspector General. Meanwhile, as head of the Office of General Counsel, he gives legal advice to the Secretary.

In August 2005, Schmitz declared in a memo that henceforth he would follow guidance from the PCIE that “the IG hires his/her own General Counsel,” but that “the DOD General Counsel has the final legal word at DOD.” Schmitz added that “independent and objective legal advice is essential to the Inspector General.”⁶⁰ However, Schmitz left his post shortly thereafter. The current IG still must obtain his legal advice from the DLSA, which reports to the General Counsel and is therefore not independent of the Department.

EASE OF WEBSITE ACCESS AND USE

It is essential for an IG to have a clearly identifiable and easily linked page on the agency’s website. For the past thirty years, the IG law has required IGs to submit semi-annual reports to Congress about their audits and investigations, and the clear intent has been that the vast majority of these reports should be made public. Further, agency employees and potential whistleblowers should be able to locate information about their agency’s IG, including hotline contact information, with just one click. However, not all agencies provide simple and direct access to the IG’s page for the public, agency employees, or even for the IGs themselves.

All IGs who responded to POGO’s survey said there was a link on their agency’s website to the IG’s page, but some said the link was “not easy to find,” or “it could be more visible.” [Appendices B and C] Legislation recently passed requires that all IG pages be directly accessible via a clearly identifiable link from the agency’s home page.⁶¹ Many of the agencies have complied already, so that the IG can be reached with just one click from the agency home page, but others have not yet acted.⁶²

⁵⁹ Responses to Questions prepared by David H. Laufman, Nominee for the Position of Department of Defense Inspector General, July 18, 2006. <http://armed-services.senate.gov/statemnt/2006/July/Laufman%2007-18-06.pdf> (Downloaded December 2, 2007.)

⁶⁰ “Memorandum for Civilian and Military Officers and employees assigned to the Office of the Inspector General Department of Defense: Role of Legal Counsel within Office of Inspector General.” August 16, 2005, www.dodig.osd.mil/IGInformation/IGPolicy/Role_Legal_Counsel_081605.pdf (Downloaded December 3, 2007.)

⁶¹ According to the FY 2008 Omnibus Funding legislation:

“SEC. 522. Not later than 30 days after the date of enactment of this Act, the Departments, agencies, and commissions funded under this Act, shall establish and maintain on the homepages of their Internet websites- (1) a direct link to the Internet websites of their Offices of Inspectors General; (2) a mechanism on the Offices of Inspectors General website by which individuals may anonymously report cases of waste, fraud, or abuse with respect to those Departments, agencies, and commissions.”

⁶² As of February 19, 2008, 39 of the statutory IGs had complied and 24 had not (not included in this calculation is the Special IG for Reconstruction in Iraq). Most of these links are in very small type and require some scrutiny to find them. However, others are quite prominent. In this regard, we particularly applaud the Export-Import Bank and the U.S. Postal Service, which have displayed prominent icons that call attention to the IG office and its mission.

More troubling was that several IGs—mostly DFEs, but also some PCIEs—said they had trouble posting reports on their own pages without prior approval from agency management. One IG flatly stated that she was not allowed to post anything on her page without the approval of the agency head. Another reported constant friction with the agency webmaster, “who sought to limit some products from being placed on the web.” Yet another IG rather plaintively reported that the agency head had insisted that the IG not publish his reports on the website and that “to keep the peace, I don’t”—a disturbing violation of both the law and the public’s right to know.

One IG expert commented that agencies traditionally think of their websites as their “face to the world,” and they want to use them to put out nothing but good news. Given that mind-set, it’s easy to see why some agency officials would be loath to post IG reports, which so frequently report on agency problems or misconduct. However, it is clear that the law and the public demand both greater transparency and easier access to IG information.

Special Case: The Small Business Administration

In a cover note to a report dated July 2007 but not posted on its website until October, the SBA Inspector General stated as follows:

Report 7-28, SBA’s Oversight of Business Loan Center, LLC, contains numerous redactions that were requested by the Small Business Administration (SBA) Office of General Counsel (OGC). The SBA OGC believes that this text is subject to the deliberative privilege and bank examiners’ privilege and should not be disclosed under exemptions 5 and 8 of the Freedom of Information Act. Although the Office of Inspector General does not necessarily agree with the extent of these redactions, as a courtesy, we have agreed to redact this text.⁶³

The deletions included the majority of the IG’s recommendations, the agency’s response to those recommendations, and the Inspector General’s comments on the agency’s response. Senator John Kerry (D-MA), chairman of the Senate Committee on Small Business & Entrepreneurship, wrote to SBA Administrator Steven Preston, calling the redactions “surprising” and “questionable,” requesting additional documentation, and indicating he would hold hearings on the matter.⁶⁴

Despite the OGC’s position, the IG law requires the Inspectors General to publish virtually all IG reports, and pending legislation would impose further requirements on how quickly the reports must be made public on agency websites.

UNFETTERED INVESTIGATIVE AUTHORITY

Several agencies have, in addition to their IG office, another investigative unit whose functions occasionally overlap with that of the IG. For the most part, this does not appear to be a major cause of conflict or bar to IG independence because those IGs are not expressly forbidden to

⁶³ Small Business Association. “SBA’s Oversight of Business Loan Center, LLC.” July 11, 2007, No. 7-28. <http://www.sba.gov/ig/7-28.pdf> (Downloaded February 26, 2008.)

⁶⁴ Letter to the Honorable Steven C. Preston, Administrator, U.S. Small Business Administration, from Senator John Kerry, Chairman, U.S. Senate Committee on Small Business & Entrepreneurship, October 23, 2007. <http://sbc.senate.gov/record.cfm?id=286034> (Downloaded December 10, 2007.)

pursue any area of inquiry they may choose. However, one major exception to that is the Department of Justice.

Special Case: The Justice Department

At the Justice Department, the IG faces a clear conflict with the Office of Professional Responsibility (OPR), a unit created in 1975 in the wake of Watergate to oversee and investigate the professional conduct of Department attorneys. OPR thus predates the DOJ IG office, which was not established until 1988.

The Justice IG is precluded under current law from investigating allegations of professional misconduct by any Department lawyer, although the IG could probe whether the same attorney may have engaged in improper behavior not implicating his or her professional obligations. That means that OPR has the responsibility to investigate whether, for example, a Department attorney lied to a federal judge, but the IG would have jurisdiction to investigate whether that same attorney lied on his or her expense account.

Justice IG Glenn Fine testified in July 2007 that the situation is untenable and that he is the only IG prevented from examining an entire class of federal employees. He also believes that because OPR is not statutorily independent and reports directly to the Attorney General or Deputy Attorney General, obvious conflicts exist if the Attorney General himself is under scrutiny, as with the ongoing investigation into the circumstances surrounding the firings of several federal prosecutors.

Fine also pointed out that whereas his reports are sent to Congress and generally released publicly, OPR's rarely are. Further, he said, there is nothing so special about attorneys' misconduct that his office could not develop the expertise to handle such issues.⁶⁵

H. Marshall Jarrett, the head of OPR since 1998, told POGO that because Justice Department prosecutors perform "core executive functions," such as putting people in prison and litigating on behalf of the United States, issues of professional misconduct should be handled by those who are sensitive to those core executive functions. Jarrett said he doubts that the State Department's IG would investigate how Department officials conduct their diplomatic duties, or that the Defense Department's IG would examine how its generals perform on the battlefield.

Jarrett also maintained that because his office investigates the conduct of individuals—whereas the IG mainly examines programs—he is prevented by privacy laws from releasing his reports publicly.

The Justice Department's official position supports that of Jarrett:

Over the past 31 years, OPR has developed a special proficiency in investigating matters related to those professional rules of conduct that only apply to lawyers at the Department, as opposed to other Department employees. The professional obligations of

⁶⁵ Statement of Glenn A. Fine, Inspector General, U.S. Department of Justice, before the Senate Committee on Homeland Security and Government Affairs, July 11, 2007. http://hsgac.senate.gov/_files/071107Fine.pdf (Downloaded December 11, 2007.)

DOJ attorneys originate from many sources, including the Constitution, statutes, case law, court rules and orders, state rules of professional conduct, regulations, and Department of Justice policies.... OPR is staffed and led entirely by *career* lawyers.⁶⁶

A good compromise has been proposed that would give the IG the responsibility to investigate any allegations of misconduct involving either the Attorney General or the Deputy Attorney General, while OPR would retain its authority over all other DOJ attorneys.

Special Case: The State Department

In its responses to POGO's questionnaire, the State Department IG replied "Yes," without elaboration, to the question whether another Department unit overlaps or conflicts with the work of the IG. The office did not reply to POGO's request for more details. However, recent testimony by Comptroller General Walker put the spotlight on the Bureau of Diplomatic Security (DS).

The Comptroller General testified that because DS reports to the Undersecretary for Management, its investigations are functions of management, whereas the IG by law should be independent of management. However, DS, "as part of its worldwide responsibilities for law enforcement and security operations, also performs investigations that include passport and visa fraud both externally and within the department."⁶⁷

But the IG office's clear mandate by law gives it authority over any allegations involving employee misconduct regarding passport or visa fraud. Walker said GAO investigators had been told that IG officials "were aware of DS investigations in these areas that were not coordinated with the State IG."⁶⁸

The Comptroller General testified that unlike other agencies with similar overlap, DS and the State IG had no written or formal agreement to coordinate these activities. Walker was further disturbed by the disparity between DS, with approximately 32,000 employees, and the IG, which "had a total of 21 positions in its investigative office with 10 investigators onboard at the time of our review."⁶⁹

Walker said the IG's office had been unable to reach a formal agreement with DS, adding: "Frankly I don't know how much leverage the Inspector General has with the Bureau of Diplomatic Security because the Bureau of Diplomatic Security is much, much bigger than the Inspector General's Office."⁷⁰

⁶⁶ Statement on Proposal to Merge the Justice Department Office of Professional Responsibility (OPR) into the Justice Department Office of Inspector General (OIG), provided to POGO by Dean Boyd, spokesman, National Security Division, U.S. Department of Justice, September 26, 2007.

⁶⁷ Walker House testimony, p. 24.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Walker House testimony, p. 41.

Special Case: Good News about Health and Human Services

The IG office at the Department of Health and Human Services (HHS) recently extricated itself from an agreement with an internal investigative unit of the Food and Drug Administration (FDA), a component of HHS. A memorandum of understanding signed in 1988 between the IG and the FDA's Office of Internal Affairs (OIA) had allowed OIA to investigate allegations of FDA employee wrongdoing, at a time when the IG's office lacked sufficient resources.

However, over time there was at best confusion and at worst conflicts of interest. FDA investigations of senior officials could not be considered impartial, as the OIA investigators were not independent of FDA management. Several Members of Congress had taken on the issue. Representative Bart Stupak (D-MI), chairman of the House Energy and Commerce Committee's oversight subcommittee, had called for the suspension of the agreement, pointing out that the situation had grown so dire that:

FDA criminal investigators have been sent to harass and intimidate FDA scientists who have refused to compromise their scientific integrity. On the other hand, there have been no publicly disclosed investigations of senior FDA officials who violate whistleblower rights.⁷¹

Senator Chuck Grassley (R-IA) had complained of the systemic problems embedded in the FDA partly as a result of the agreement. He applauded the abrogation of the agreement and praised the IG for "restoring independence" to investigations of FDA employees, adding:

Cutting the tie is good for the public. It strengthens the role of the Inspector General. And in our system, the Inspectors General are vitally important independent watchdogs within the federal bureaucracy.⁷²

Subpoena Power

Another issue that currently impedes IGs is their limited power to compel testimony and to seek electronic evidence. The law does not currently allow Inspectors General to issue subpoenas for testimonial evidence and is unclear about evidence stored in various electronic forms. Frequently, an investigator needs access to someone who can offer information informally, or explain a document. The Legislation Committee of the National Procurement Fraud Task Force,

⁷¹ The Honorable Bart Stupak's Opening Statement for the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce. "The Adequacy of the FDA to Assure the Safety of the Nation's Drug Supply." March 22, 2007. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:35502.wais (Downloaded February 25, 2008.)

⁷² "Grassley says Independent Reviews of FDA Employee Misconduct will better Serve Public," press release, November 29, 2007. http://grassley.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=8d0fa73d-b24f-9bf5-0a0d-5ca46c438a0b&Month=11&Year=2007 (Downloaded December 3, 2007.)

which is chaired by two PCIE IGs, recommended that IG subpoenas be expanded to include evidence obtained through interviews:

Many fraud matters are brought against companies, and being able to compel interviews from employees or customers during investigations would be invaluable in investigating and prosecuting a case. [Appendix G, p. 8]

Pending legislation would amend the law to make clear that IGs' subpoena power would cover "electronically stored information, as well as any tangible thing." However, the bills currently before Congress would not provide the testimonial subpoena power that is also vital.

Program Fraud Civil Remedies Act

Another important device currently missing from the DFE IGs' toolbox is the authority to bring administrative actions to recover relatively small amounts of money defrauded from various federal programs. The Program Fraud Civil Remedies Act (31 USC 3801) empowered only the PCIE IGs to seek such recoveries, so DFE IGs must depend upon the Justice Department and its U.S. Attorneys' offices to do so. Yet, the U.S. Attorneys are generally not interested in bringing actions for recovery of anything under \$500,000. Because DFE agencies tend to be smaller even sums less than \$500,000 can be significant, and the IGs have, since 1988 when most of them were created, been clamoring for authority to pursue such recoveries in vain.

CONVERSION AND CONSOLIDATION

For several years, GAO recommended that the largest DFE IGs, such as the U.S. Postal Service, Amtrak, the National Science Foundation, and the Federal Reserve Board, be converted into presidentially-appointed IGs, and that the smaller ones be consolidated with other, larger IG offices. In more recent reports and testimony, however, GAO has backed away from "conversion" and tended to focus more on "consolidation."⁷³

However, serious consideration should be given to converting several DFE IGs into presidentially-appointed ones. Those that POGO considers potential candidates for conversion are the following:

- The National Science Foundation, due to the large amounts of grants handled by the agency;
- The Securities and Exchange Commission, because of the significant issues its employees confront, and the potential for insider dealings or other inappropriate or illegal manipulations of the securities markets; and
- The U.S. Postal Service, due largely to its sheer size.

⁷³ Walker Statement for the Record, July 11, 2007, p. 11.

A 2002 GAO survey of IGs found that most of the presidentially-appointed IGs believed that the work of the DFE IGs:

could be strengthened through consolidation, including the ability to issue hard-hitting reports when necessary, to audit issues of high risk, to review issues across agencies, to get attention to recommendations made by the IGs, and to plan work. In addition, the Presidential IGs indicated that consolidation could strengthen the DFE IGs' use of resources by increasing control over spending and budget requests, the availability of investigative resources, the ability to minimize duplication of audit efforts, the ability to share methods and technology specialists and to use human capital skills efficiently.⁷⁴

It perhaps goes without saying that most of the DFE IGs disagreed with their colleagues' conclusions, although GAO seemed persuaded that the benefits of consolidation would far outweigh any possible detriments. Several DFE IGs questioned why the GAO would have considered the views of the PCIEs in determining their future. One said the PCIE IGs have little or no knowledge of the IG community as a whole, or the issues facing other agencies' IG offices.

Many of the agency-appointed IGs surveyed by the GAO were concerned that their agencies' particular issues and concerns would lose focus if they were consolidated into another agency's IG office, where the parent agency would soak up most of the time and effort. They felt that "consolidation could result in weaknesses affecting the day-to-day contact of IGs and DFE agency officials, knowledge of the DFE agency missions and priorities, and the availability of resources to cover DFE agency issues."⁷⁵

GAO concluded that conversion and/or consolidation of selected DFE IGs "could serve to enhance the overall independence, economy, efficiency, and effectiveness of the IG community."⁷⁶ But it recognized potential weaknesses from consolidation, conceding:

that if appropriate actions were not taken to mitigate potential weaknesses, consolidation could weaken (1) the ability of the DFE IGs to have day-to-day contact with senior DFE agency officials, (2) communication between the DFE head and the IG, (3) the ability of the DFE agency head to get the attention of the IG, (4) the knowledge of DFE agency missions, (5) the knowledge of DFE agency priorities, and (6) the resources to cover DFE issues. However, we believe that ... proactive steps could be taken to reduce the related risks and mitigate their impact on IG effectiveness to an acceptable level. For example, where appropriate a consolidated IG could maintain onsite facilities at DFE agencies with one or more dedicated staff to foster day-to-day communication ... the IGs could leverage the detailed knowledge of the DFE agencies' missions and priorities by obtaining information from existing DFE IG personnel.⁷⁷

⁷⁴ Inspectors General, Office Consolidation and Related Issues, Report to the Chairman, Committee on Government Reform, U.S. House of Representatives, August 2002. p. 3. Hereinafter "GAO-02-575."

⁷⁵ GAO 02-575, p. 4.

⁷⁶ GAO 02-575, p. 50.

⁷⁷ GAO 02-575, p. 52.

GAO suggested that one of the largest of the DFE IGs, Amtrak, could be consolidated with the PCIE IG of the Transportation Department because their agencies' functions are similar.⁷⁸

Additional consolidations suggested by GAO that at first glance seem logical included:

- Combining the Farm Credit Administration DFE IG with the Department of Agriculture PCIE;
- Consolidating with the Commerce Department five smaller IGs with related missions: Federal Communications Commission, Corporation for Public Broadcasting, Appalachian Regional Commission, U.S. International Trade Commission, and the Consumer Product Safety Commission; and
- Folding into the Justice Department's IG the Legal Services Corporation, the Equal Employment Opportunity Commission, and the Federal Trade Commission.

While government efficiency is always desirable, such consolidations could result in the loss of important understanding of agency missions, programs, and systems by IG offices. Very careful study should be undertaken before any of these radical changes should be imposed. Although consolidating DFE IG offices with larger PCIE IGs may seem logical and intuitively appealing from the point of view of efficiency, changes contained in pending legislation could add to the independence and efficiency of the DFEs without losing the benefit of an onsite watchdog with knowledge of that particular agency.

CONCLUSION

Far more than dollars and cents, the most important single attribute of a successful Inspector General is independence—from internal agency influence, from outside pressures, from personal or political or institutional conflicts. Government agencies are more likely to succeed in their missions if they have strong internal watchdogs to keep an eye on their operations. But those watchdogs must possess basic tools in order to perform their own mission.

This report has surveyed the most important of those tools and demonstrated how an IG's independence is impaired when he lacks any one of them. The inescapable conclusion is that an IG who lacks independence is an imposter – even calling such an office “Inspector General” confuses the press and public and can create pitfalls for potential whistleblowers. The sincere employee or whistleblower may believe he or she is approaching an independent arbiter with a serious issue and end up sadly mistaken.

The institution of the Inspector General has more than proved its worth over the 30 years that it has existed. POGO is deeply committed to a system of watchdogs such as the Inspectors General who can help agencies function more effectively and efficiently. In the coming months, as our review of this important institution proceeds, we hope to continue to offer insight into how best to achieve the optimal balance between independence and accountability.

⁷⁸ GAO 02-575, p. 55.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS FOR ALL IGS

1. ***Combine the PCIE and ECIE into one Council of all IGS.*** The creation of a statutory Council of all IGS will strengthen the concept of an IG community, increase the sharing of resources, and enhance their abilities to coordinate programs across agencies and to train a professional class of IG employees.
2. ***Remove the Deputy Director of OMB as the Chair of the combined Council of IGS.*** Removing the Deputy OMB Director as Chair and replacing him with an IG is a necessary step in continuing the professionalization of the IG workforce. The Deputy OMB Director would serve as a figurehead Executive Chair, presiding over Council meetings and serving as liaison to the White House.
3. ***Create a resource pool of professional employees for smaller IG offices.*** The new Council of IGS should be given sufficient budget to cover its own administrative needs and the establishment of a pool of dedicated professionals to assist IGS when the need arises. A resource pool for IG offices, which would provide trained government auditors, investigators, information technology experts, and lawyers, would be both more efficient and more effective, particularly for the smaller DFE IGS.
4. ***Extend the language for PCIE IG qualifications to DFE IGS.*** The language mandating that presidentially-appointed IGS should be appointed “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations” must be extended to cover agency-appointed IGS as well.
5. ***Revive the IG candidate selection committee.*** The selection committee should be established in the Council of IGS. Nobody understands the work required of an IG office better than an IG. Having a slate of well-qualified candidates from which to choose will not encroach on executive powers, as the president or agency head would not be forced to choose one of the recommended candidates. However, Congressional and public opinion would surely force the appointing authority to explain why he or she would ignore such a recommendation.
6. ***Set fixed terms of office for PCIE IGS.*** Presidentially-appointed IGS should be appointed for fixed terms of seven years, with the possibility of reappointment. POGO has concluded that fixed terms for the DFE IGS, however, would be unwise and unnecessary. Most DFE IGS are career civil servants and are already protected from being fired by Civil Service or Senior Executive Service provisions. But forcing them to leave their positions at the end of a seven-year term could create real hardships for the dedicated public servant. POGO was further persuaded that longevity in office can be a positive force in the offices of agency-appointed IGS. The value of a career DFE IG’s institutional memory is particularly important in small offices without a large cadre of long-time employees.

7. ***Make clear that an Inspector General may only be removed prior to the end of his or her term for cause.*** Cause would be defined as any of the following grounds: permanent incapacity; inefficiency; neglect of duty; malfeasance; conviction of a felony or conduct involving moral turpitude; knowingly violating a law, rule, or regulation; gross mismanagement; gross waste of funds; or abuse of authority. In any case, the president or agency head should be required to inform the appropriate Congressional committees at least 30 days prior to the removal or transfer of an IG.

Although administrations have traditionally balked at what they consider such a limitation on executive power, POGO is persuaded by the analysis of the Congressional Research Service that ample precedent exists for statutory limits on the president's authority to remove officials appointed with the advice and consent of the Senate.⁷⁹

8. ***Establish separate budget authority and transparent public budgets for all IGs.*** Like the presidentially-appointed IGs, the agency-appointed ones also need to have an actual line item in the president's budget submission to the Congress. Further, agencies must be required to submit a separate statement comparing the IG's request with the agency's request, and with the president's final submission to Congress.
9. ***Clarify the law so that once an IG's budget has been approved, expenditures can be made without further approval.*** IGs must be able to control the expenditure of their own budgets once the amount has been approved. Agencies should not be allowed to delay hiring or other expenditures by an IG – delays that sometimes amount to denials.
10. ***Forbid IGs to receive cash awards or bonuses, but raise their pay.*** Regardless of the various pay schedules that apply to the different IGs, steps should be taken so that IGs are paid commensurate with the total compensation received by senior staff at their agency.
11. ***Require IG offices either to have their own counsel or to use another IG's counsel.*** It is essential that every IG have access to independent legal advice, either in-house or from other IGs, and in no case should an IG be allowed or required to use the agency's general counsel for legal advice. In the case of IG offices that are too small to support a full-time staff attorney, the IG should be able to share counsel with another IG or to seek assistance from attorneys employed by the joint council of IGs.
12. ***Make clear that IGs should rely on their own in-house counsel for advice about how FOIA applies to IG reports.*** Information that is generated within the IG's office and from its own investigation—such as the IG's recommendations and agency responses to those recommendations—should not be subject to redaction by the agency general counsel.
13. ***Ensure direct and clear links to the IG's web page, and provide IGs autonomy over the content on the web page.*** All IGs' web pages must be easily accessed directly from their agencies' home pages. IGs must have absolute autonomy over their own websites, and

⁷⁹ Statutory Inspectors General: Legislative Developments and Legal Issues, pp. 3-8. See also its appendix of select statutes that provide similar limits on the president's authority, pp. 17-18.

must be required to post promptly all public reports in a form easily and directly accessible, printable, and downloadable. Information about the IG office's operations, including how to file complaints or use the hotline, must be easily accessible.

14. ***Expand IGs' subpoena power.*** All IGs need to have their subpoena power specifically broadened to include electronic documents, tangible records, and the power to compel formal depositions, interviews, and other informal assistance.
15. ***Amend the Program Fraud Civil Remedies Act to apply to DFE IGs.*** The agency-appointed IGs must be granted the authority to recover administratively the smaller but still significant sums defrauded from U.S. government programs. This authority must be granted to the IGs and not just to their agencies.
16. ***Refrain for now from consolidating any of the smaller IG offices.*** If all of the preceding recommendations are adopted, it may well be that the smaller agency-appointed IG offices will gain sufficient independence and resources that they will be able to function effectively and accomplish their missions.

SPECIFIC AGENCY RECOMMENDATIONS

1. ***Enact legislation to make clear that all provisions of law aimed at enhancing the independence of statutory IGs should equally apply to the three legislative Inspectors General.*** Congress has either ignored or forgotten the three IGs in its own backyard by failing to include them in proposed legislation. These IGs need the same tools as other IGs in order to perform their mission. The fact that they are included within the ECIE makes clear there is no overwhelming issue of separation of powers that should prevent their being granted the same powers and authorities as all other statutory IGs.
2. ***The Peace Corps IG should be excepted from that agency's five-year limit.*** It may be desirable for most Peace Corps employees to serve only for five years, with the possibility of two extensions for a total of eight and a half years at the agency. However, POGO believes that limitation is deleterious to the mission of the Peace Corps IG's office. The Peace Corps IG should be exempted from this limit, and the IG should have the same terms of service as do most of his colleagues in the DFE IG community.
3. ***Justice Department IG and the DOJ Office of Professional Responsibility should compromise.*** POGO was persuaded that the special situation at the Justice Department and the history of the OPR allow for some continuing authority of the OPR in investigating allegations of improper professional conduct. However, because the Counsel of OPR reports to the Attorney General and the Deputy Attorney General, POGO supports a compromise whereby the IG would have the authority to investigate any allegations of professional misconduct involving the offices of the Attorney General or the Deputy Attorney General. All such accusations against any other Justice Department attorneys would still be referred to the OPR for investigation. DOJ should ensure that OPR informs the IG of all cases it opens.

4. ***Boost the budget of the State Department OIG.*** While most IG offices are underfunded, the State Department OIG is under-resourced to the point of crisis. It is unacceptable that, in the past five years, the State Department's budget has soared by 55 percent, while that of its IG has actually declined in real dollars by 6 percent.
5. ***Require the State Department Bureau of Diplomatic Security and the Office of Inspector General to execute a formal written Memorandum of Understanding.*** The MOU should delineate the respective areas of responsibility, making clear that the IG should have unfettered investigative authority over all matters of waste, fraud, abuse, and misconduct concerning any Department employee. Consideration should also be given to including provisions allowing for DS to share resources with the IG as and when necessary.
6. ***Require the Department of Defense Inspector General to employ its own general counsel.*** The Defense Legal Services Agency, which reports to the DOD General Counsel, fails to address the essential fact that the DOD IG must have permanent access to his or her own in-house counsel.
7. ***GAO should conduct an extensive investigation of the military and intelligence non-statutory IGs.*** The current situation in which literally hundreds of military "inspectors general" lack independence and answer to their agency chiefs is unacceptable. The same applies to the Department of Defense intelligence agencies that still do not have statutory IGs.
8. ***Congress must reconsider the current mish-mash of IGs serving the civilian intelligence community.*** Pending legislation would substitute a presidentially-appointed IG to oversee the entire intelligence community for the agency-appointed IG serving under parallel authority in the Office of the Director of National Intelligence. The CIA OIG is presidentially-appointed, but also serves under authority parallel to the IG Act. While POGO agrees that this vital community should have an IG subject to both presidential appointment and Senate confirmation, the question of how the IG for the entire intelligence community will relate to other IGs in the community, whether PCIE, DFE, or non-statutory, is troubling and needs to be clarified.

ACRONYMS AND GLOSSARY

CIA	Central Intelligence Agency
CRS	Congressional Research Service
DFE	Designated Federal Entity
DIA	Defense Intelligence Agency
DLSA	Defense Legal Services Agency
DNI	Director of National Intelligence
DOD	Department of Defense
DOJ	Department of Justice
DS	Bureau of Diplomatic Security
ECIE	Executive Council on Integrity and Efficiency
FDA	Food and Drug Administration
FOIA	Freedom of Information Act
GAO	Government Accountability Office
GSA	General Services Administration
HHS	Health and Human Services
IG	Inspector General
IT	Information Technology
LLC	Limited Liability Company
MPRI	Military Professional Resources, Inc.
NASA	National Aeronautics and Space Administration
NRO	National Reconnaissance Office
NSA	National Security Agency

OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPR	Office of Professional Responsibility
PCIE	President’s Council on Integrity and Efficiency
SBA	Small Business Administration
SEC	Securities and Exchange Commission

Congressional Research Service

The Congressional Research Service (CRS) is the public policy research arm of the United States Congress. As a legislative branch agency within the Library of Congress, CRS works exclusively and directly for Members of Congress, and their Committees and staff on a confidential, nonpartisan basis.

Designated Federal Entity

A federal bureaucratic term for smaller agencies, boards, and commissions.

Defense Intelligence Agency

The Defense Intelligence Agency (DIA) is a major producer and manager of military intelligence for the United States Department of Defense.

Defense Legal Services Agency

The Defense Legal Services Agency (DLSA) provides legal services to the Office of the Secretary of Defense, Department of Defense Field Activities, and the Defense Agencies.

Director of National Intelligence

The Director of National Intelligence (DNI) serves as the head of the Intelligence Community (IC). The DNI also acts as the principal advisor to the president; the National Security Council and the Homeland Security Council for intelligence matters related to the national security; and oversees and directs the implementation of the National Intelligence Program.

Bureau of Diplomatic Security

The Bureau of Diplomatic Security (DS) is the security and law enforcement arm of the Department of State.

Executive Council on Integrity and Efficiency

A council that coordinates and enhances governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs. The ECIE comprises the agency-appointed IGs.

Freedom of Information Act

The Freedom of Information Act (FOIA), Title 5 of the United States Code, section 552, generally provides that any person has the right to request access to federal agency records or information. All agencies of the U.S. government are required to disclose records upon receiving a written request, except those records that are protected from disclosure pursuant to nine exemptions and three exclusions.

General Services Administration

The General Services Administration (GSA) is an independent agency of the United States government, established in 1949 to help manage and support the basic functioning of federal agencies. The GSA supplies products and communications for U.S. government offices, provides transportation and office space to federal employees, and develops government-wide cost-minimizing policies, among other management tasks.

Inspector General

The Inspector General (IG) is a type of investigator charged with examining the actions of a government agency, military organization, or military contractor as a general auditor of their operations to ensure they are operating in compliance with general established policies of the government, to audit the effectiveness of security procedures, or to discover the possibility of misconduct, waste, fraud, theft, or certain types of criminal activity by individuals or groups related to the agency's operation, usually involving some misuse of the organization's funds or credit.

National Reconnaissance Office

The National Reconnaissance Office (NRO) is a joint organization engaged in the research and development, acquisition, launch, and operation of overhead reconnaissance systems necessary to meet the needs of the Intelligence Community and of the Department of Defense. The NRO conducts other activities as directed by the Secretary of Defense and/or the Director of National Intelligence.

National Security Agency

National Security Agency/Central Security Service (NSA/CSS) is the United States government's cryptologic intelligence agency, administered under the Department of Defense.

Office of General Counsel

The Office of the General Counsel is responsible for providing legal advice, counsel, and support to the Secretary, Deputy Secretary, and all Departmental elements of its agency.

Office of Inspector General

Office of the Inspector General (OIG) is a sub-agency that is part of Cabinet departments and independent agencies of the United States federal government. Each office includes an Inspector General and employees charged with identifying, auditing, and investigating waste, fraud, and abuse within the agency.

Office of Management and Budget

The Office of Management and Budget (OMB) is a Cabinet-level office, and is the largest office within the Executive Office of the U. S. president. OMB is tasked with giving expert advice to senior White House officials on a range of topics relating to federal policy, management, legislative, regulatory, and budgetary issues.

Office of Professional Responsibility

The Office of Professional Responsibility, which reports directly to the Attorney General, is responsible for investigating allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR.

President's Council on Integrity and Efficiency

A council that coordinates and enhances governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs. The PCIE comprises the presidentially-appointed IGs.