

The Journal of **Public Inquiry**

A Publication of the Inspectors General of the United States

Promoting Public Trust

*The Common Mission of the Federal Inspector General
Community and the Public Company Accounting
Oversight Board*

William J. McDonough

The Evolution of Organized Crime and Labor Racketeering Corruption

Gordon S. Heddell

Staying Off the Warning Track *Ethics Tips for the Political Appointee*

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Return-on-Investment *A Performance Tool That Can Work*

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Department of Health and Human Services OIG History *Changing with the Times*

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Ignorance of the Law Is No Excuse *What Every Office of Inspector General Needs to Know About Legal Authorities*

Thomas D. Coogan, Jr.

Rona S. Lige



Fall/Winter 2004-2005



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The Journal of Public Inquiry is a publication of the Inspectors General of the United States. We are soliciting articles from participating professionals and scholars on topics important to the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. Articles should be approximately three to five pages, single-spaced, and should be submitted to **Joanne Szafran**, General Services Administration, Office of Inspector General (JPFP), Room 5303, Washington, DC 20405.

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In This Issue

Welcome to the Fall/Winter 2004-2005 issue of *The Journal of Public Inquiry*. We are fortunate to present as our lead article the views of William J. McDonough, the Chairman of the Public Company Accounting Oversight Board (PCAOB), exploring the commonalities of mission for the PCAOB and the Inspector General (IG) community in the wake of the Sarbanes-Oxley Act of 2002. We thank Mr. McDonough for his valuable contribution to these pages.

Two Inspectors General have made significant contributions to this issue. Gordon S. Heddell, Inspector General of the Department of Labor (DOL), explains the unique responsibility that his office carries out: investigating labor racketeering and organized crime influence or control in unions, employee benefit plans, and the workplace. Also, Earl E. Devaney, Inspector General for the Department of the Interior, writes on ethics tips for political appointees.

In furtherance of the Journal's efforts to provide historic context to our activities, this issue's IG history article focuses on the Department of Health and Human Services (DHHS). Sheri Denkensohn and Stephanie London, attorneys in the DHHS Office of Inspector General (OIG), are co-authors of an article that traces the evolution of one of the oldest and largest offices within the IG community.

Performance measurement, which has been addressed in these pages in the past, is featured again in this issue. Dennis A. Raschka, Assistant Inspector General at the Department of Housing and Urban Development (HUD), details how the HUD OIG has used return-on-investment goals as a strategic tool with which to measure productivity.

Thomas D. Coogan, Jr., Special Counsel, OIG, Legal Services Corporation, together with Rona S. Lige, former attorney in the Postal Service OIG, furnish a way in which OIG staffs can remain current on relevant legal authorities.

We hope you enjoy this issue.

WILLIAM J. MCDONOUGH

Chairman, Public Company Accounting Oversight Board

Promoting Public Trust

The Common Mission of the Federal Inspector General Community and the Public Company Accounting Oversight Board

I was delighted to receive the invitation to communicate with the Federal Inspector General (IG) community in this forum.¹ It is a pleasure to address a group of public servants faithfully dedicated to the cause of promoting economy, efficiency, and effectiveness in government. With regard to the accountability business, I am writing as the representative of the new kid on the block—the Public Company Accounting Oversight Board (PCAOB)—to talk about the regulation and oversight of auditors.

How new is the new kid? By the time you read this, the PCAOB will have passed its 2-year anniversary, having opened its doors in early January 2003. Before then, the PCAOB existed only on paper, on the pages of the Sarbanes-Oxley Act of 2002.

I want to talk about how things have changed over the last 2 years, but first I want to point out how little things have changed. The fact that most regulators, investors, and even lawmakers believe there is much work to do approximately 3 years after Enron's collapse says much about how deeply public confidence was undermined as a result of corporate misdeeds. And yet we need only look at recent headlines to be reminded that potential accounting abuses at public companies are still a threat to public trust.

Sadly, I do not see the private sector in this country dignifying itself by a heroic response to the crisis in confidence that brought about the Sarbanes-Oxley Act. Some companies are doing the right thing and some

¹ In keeping with the PCAOB Ethics Code, the views expressed in this article are my own personal views, and not those of the Board, other Board members, or the PCAOB staff.

business groups are saying the right thing. More needs to be done and soon. My friends in Congress are still receiving heavy constituent complaints about grotesquely excessive executive compensation and responding to the latest examples of questionable financial reporting.

More than 25 years ago, the Congress ushered in a new model of Federal-sector accountability with its passage of the IG Act. I think most observers would agree with my assessment that the IGs have been a tremendous force for promoting responsible government ever since and have become a critical component of agency internal control structures.

In 2002, Congress used Sarbanes-Oxley to, once again, establish a wholly different approach to accountability, this time on behalf of the investing public. The biggest section of the Act, right up front in Title I, singled out auditors of public companies for a fundamental change in how they do business.

Before Sarbanes-Oxley, auditors of public companies wrote their own standards and regulated their own adherence to those standards. The Securities and Exchange Commission (SEC) had the power to prescribe the kinds of financial statements and other disclosures public companies should file. The SEC also has had the power to limit an auditor's ability to practice before the Commission in connection with those financial statements, if an auditor failed to live up to professional standards or violated the Federal securities law. But Congress and the President decided that more was needed, so they created the Public Company Accounting Oversight Board.

Sarbanes-Oxley established the PCAOB as an independent, private-sector regulator. All five Board members are appointed by the SEC, and our budget and rules must be approved by the Commission. We have a full-time staff of auditors, accountants, risk analysts, and lawyers—professionals of all types—who are absolutely dedicated to accomplishing the job that Congress assigned to us. That dedication is a common bond I know that we share with the IG community.

The PCAOB is not a government-sponsored or taxpayer-funded enterprise. Once a year, we submit our annual budget to the SEC for approval after which the Act requires public companies to pay a pro rata share of that budget based on relative market capitalization. Congress carefully prescribed that funding system to keep the PCAOB independent both of financing by accounting firms and of the political pressures that can come to bear on regulatory bodies that rely on Federal appropriations. Approximately 8,800 companies contributed to our support in 2004.

Our mission is to oversee the auditors of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair, and independent audit reports. We are going about that mission by fulfilling the four key tasks set out for us in the Sarbanes-Oxley Act: registration, inspections, enforcement, and standards-setting.

Registration

Under Sarbanes-Oxley and the Board's rules, any accounting firm that audits a company whose securities trade in U.S. markets, or plays a substantial role in those audits, must be registered with the PCAOB to continue doing that work. We built an online registration system from scratch and in time to meet the statutory deadline for U.S. firms to be registered as of October 22, 2003. By that deadline, 598 accounting firms were registered with the Board. By the end of last year, 1,423 accounting firms were registered with the Board. Two-thirds of the registered firms are based in the United States, but the Act applies to the auditors of any company whose securities trade in U.S. markets. With about 1,200 non-U.S. companies in our markets, and large overseas operations by many U.S.-based companies, it is not surprising that more than 500 non-U.S. accounting firms were registered with the PCAOB by the end of last year.

As I mentioned, registration is a prerequisite for accounting firms to continue their work as

auditors of public companies. It is also the foundation, established in the Sarbanes-Oxley Act, for the PCAOB to perform its important functions of inspections and enforcement.

Inspections

Regular inspections will occur every year for firms with more than 100 audit clients. There are eight such firms in the United States and one in Canada. Firms with one to 100 audit clients will be inspected once every 3 years. And when the Board thinks circumstances warrant, it can order a special inspection regardless of timing.

Our inspections take up the basic task that had been the province of the accounting profession's peer review system, but our inspections go much further than peer review ever did. Under the peer review system, reviewers focused on technical compliance with professional accounting and auditing standards and, on the basis of that review, opined on overall quality control.

At the PCAOB, we begin by looking at the business context in which audits are performed. We focus on the influences, both good and bad, on firm practices. These include firm culture and the relationships between a firm's audit practice and its other practices, and between engagement personnel in field and affiliate offices and a firm's national office. By doing so, we believe that we will gain a much better appreciation for the practices and problems that led to the most serious financial reporting and auditing failures of the last few years.

Needless to say, the largest single group of employees at the PCAOB is in our inspections division—all of them highly experienced auditors. They are based in our headquarters office in Washington, as well as New York, Atlanta, Dallas, Orange County, and San Francisco. Our newest offices are in Denver and Chicago.

Although the regular inspection cycle began in 2004, in order to earn the confidence of the investing public, we launched our inspection program in

our start-up year of 2003 with "limited procedures" inspections of the Big Four firms. The Board's teams for these inspections included seasoned auditors who have an average of 12 years of auditing experience. Our inspection team leaders each have an average of 22 years of auditing experience.

The focus of those first-year inspections was to obtain a baseline understanding of the firms' internal systems of quality control over auditing. We focus on quality control from two perspectives: the overall quality control system of the firm and individual audit engagements.

A firm's quality control system provides assurance to investors and others that rely on auditors' opinions that a firm's auditors comply with professional auditing and accounting standards. Firm culture—including, for example, the "tone at the top" that management infuses into the organization, and the system by which partners and employees are compensated and promoted—is one of the most important elements of a quality-control system. The quality-control system also includes internal controls over decision-making relating to auditing issues and internal reviews of audit engagements.

In addition, we examine individual engagements to ascertain whether there are any unwritten practices that are inconsistent with quality control and to determine whether the quality control system is actually working. Failures to conform to applicable auditing and related professional practice standards, and failures appropriately and consistently to apply Generally Accepted Accounting Principles (GAAP) can be evidence of weaknesses in the firm's overall quality control.

In order to capture a significant sample of engagements at each firm, we designed our 2004 inspections program to review approximately five percent of the Big Four firms' public company audits—that is, more than 500 audits—and 15 percent of the next four largest firms' public company audits—or, about 150 audits. That adds up to more than 650 audits in addition to the small-firm audits that we selected on a case-by-case basis.

During our 2003 limited procedures at the Big Four, our inspectors examined portions of at least 16 selected audit engagements at each firm. Even in that limited sample, our inspectors identified significant audit and accounting issues that were missed by the firms and identified concerns about significant aspects of each firm's quality controls systems.

Our inspection process does not stop when we identify problems. Rather, we use the inspection process to drive improvements in audit quality by focusing the firms on aspects of their practices that may stand as impediments to the highest quality audit performance.

The Board issued its reports on the 2003 limited inspections in August. The reports contain a section that was made public and a section that is kept nonpublic because of limitations contained in the Sarbanes-Oxley Act. Specifically, the Act limits the public availability of any confidential information obtained in an inspection, as well as any Board findings that criticize or identify potential defects in a firm's quality control systems. The Act provides a firm up to 12 months to address criticisms or deficiencies in quality control. If the Board is satisfied with a firm's response, the criticisms or potential defects remain nonpublic.

The public portions of our inspection reports summarize the findings of our 2003 limited procedures, including instances in which our inspectors identified possible departures from GAAP, and applicable auditing and related professional practice standards during examination of specific company audits. When we find apparent departures from GAAP, we encourage the accounting firm to consider the issue and review it with the audit client. If the PCAOB believes the departure from GAAP is material to the company's financial statements, we will report that information to the SEC, which has ultimate authority for determining a company's compliance with GAAP.

Our public reports do not identify the companies whose audits we examine. We do describe our observations about apparent failures or

deficiencies in a firm's performance of audits, but we do not identify the clients. The Board will address many of the auditing problems we find during our inspections through a combination of standards-setting and supervision through the inspection process. Inevitably, however, situations will arise in which those tools are inadequate.

Enforcement

When we find serious violations of PCAOB standards or the securities laws by auditors under our jurisdiction, we will use the authority the Act gives us to investigate and, as appropriate, to impose disciplinary sanctions. Those sanctions can include significant monetary penalties, and also may include revoking a firm's registration (and thus preventing it from auditing public companies), or suspending or barring individuals from working on the audits of public companies.

Our authority to investigate includes authority to seek relevant documents and testimony from auditors and others, including client personnel. Because audit failures typically have an impact on the reliability of the financial statements the auditor was responsible for examining, we expect our investigations will often dovetail with investigations of the financial reporting itself and management's role in that reporting. We, therefore, expect to work very closely with the SEC in such cases.

Standards-setting

Our inspections and enforcement activities will also provide robust empirical and anecdotal evidence that will enable those developing auditing standards, our Board Members and staff, to set priorities and to identify needs to develop or amend standards. We have already embarked on an aggressive agenda that is aimed at strengthening auditing standards in areas that were of particular concern to the Congress, as expressed in the Act, and in areas that we identify internally through

our inspections or externally through outreach to investors, auditors, regulators, managers, academics, and others.

First, as required by the Act, we adopted interim auditing standards. The Board adopted as its interim standards the body of auditing standards that had been developed by the profession, through the American Institute of Certified Public Accountants (AICPA), as those standards existed on April 16, 2003. At the same time, we announced that we would review all of the interim standards and would determine, standard by standard, whether they should be modified, repealed, or made permanent. This will, of course, be a long-term project.

Second, the Board has developed and adopted three new standards: on references to PCAOB standards in audit reports, on audits of internal control over financial reporting, and on audit documentation.

As a result of these standards, audit reports on public company financial statements will now say that the audit was conducted in accordance with the standards of the PCAOB where it previously referred to Generally Accepted Auditing Standards. In the new standard for auditors' documentation of their work on audits, we ask that an auditor's work papers be sufficient to enable another auditor, such as one of our inspectors, to understand the work the auditor performed and the evidence that was obtained to support the auditor's report. Those of you conducting government audits in conformity with the Government Accountability Office's (GAO) *Government Auditing Standards* (Yellow Book) will recognize the similarity to GAO's discussion of audit documentation.

Finally, our auditing standard on internal control over financial reporting implemented a significant requirement of the Sarbanes-Oxley Act. Our internal control standard, formally known as PCAOB Auditing Standard No. 2, is one of the most important and far-reaching auditing standards the Board will ever adopt. Whereas in the

past auditors were required merely to consider internal control, not test it, now auditors must examine in detail and report on whether internal control over financial reporting is designed and operating effectively. Good internal control is also one of the most effective deterrents to fraud, and we expect our standard to help protect investors from the kinds of financial reporting scandals that the Act seeks to prevent.

The implications of our Auditing Standard No. 2 may be of great interest to many auditors in the Federal community. Historically, Federal IGs have not been required to render an opinion on internal control in conjunction with financial statement audits. We noted with some interest, however, that Congress recently directed the Federal Chief Financial Officers (CFO) Council and the President's Council on Integrity and Efficiency to conduct a study on the potential costs and benefits of requiring the CFO Act agencies to obtain audit opinions of their internal controls over their financial statements. As a result of this effort, significant enhancements to the current assurance structure, including a more comprehensive and coordinated approach to assessing the effectiveness of internal control over financial reporting, have been incorporated into a revised Office of Management and Budget Circular A-123, which was issued in December 2004.

While the Act requires auditors to follow our standards only when they are performing public company audits, we understand that our standards may be looked to in other contexts. While some public companies do go private, many more private companies go public. In addition, stakeholders other than public investors, such as lenders, have already begun to require auditors to provide audit reports according to our standards. There are a number of different approaches to auditing technique currently available, and it is our hope to work with other standards-setters to develop the highest quality standards. With this objective in mind, the PCAOB monitors closely the standards-setting of GAO, the AICPA's Auditing Standards

Board, and the International Auditing and Assurance Standards Board. In the current edition of the Yellow Book, GAO committed to a process of monitoring developments in PCAOB standard-setting. We at the PCAOB are equally committed to an open dialogue with GAO and other standards-setting bodies.

Because of the IG community's long experience on the front lines of oversight, we "new kids" at the PCAOB have great respect for your work. I am immensely proud of what the PCAOB has accomplished to date, but we are still a startup, and we have much work ahead of us. I hope that we can build a strong and mutually beneficial relationship with our colleagues in the Federal sector.

In conclusion, I would like to make you aware of a PCAOB initiative of which I am very proud. In March of 2004, my fellow Board members and I took what we believe is, at once, an extraordinary yet completely logical step by establishing an Office of Internal Oversight and Performance Assurance (IOPA) at the PCAOB. What is unusual, I believe, is that we created this office without any requirement to do so and without any prompting from external oversight organizations. We simply believe that an internal review function is an appropriate and important part of an effective governance structure. We also believe that the establishment of IOPA will help communicate to all concerned that, with regard to efficiency,

effectiveness, and integrity, the PCAOB sets high standards for its own operations.

IOPA's charter draws heavily on the principles that work so well in the Federal IG community. IOPA's director is independent from PCAOB's other senior managers and reports directly to the Board as a whole, and only the Board may hire, fire, or set the terms of compensation of the director. The office has complete access to PCAOB books, records, and staff, and is specifically charged to conduct performance reviews, inquiries, and other reviews in accordance with its self-developed risk assessments and planning processes. IOPA has adopted GAO's Yellow Book and conducts its performance reviews in accordance with those standards.

I am also delighted to tell you that IOPA is led by an IG community veteran, Peter Schleck, who has assembled a first-rate inter-disciplinary staff of experienced professionals who have worked in IG offices, at the GAO, and in the private sector. Consistent with my desire for internal oversight that provides "real-time" quality assurance, IOPA has already completed a number of key reviews and provided the Board valuable insight on a number of operational and control issues as we build a model regulatory oversight enterprise.

As with our other key initiatives, I firmly believe that the establishment of IOPA will further contribute, as the Federal Inspectors General so well contribute, to the promotion of public confidence. 🏛️

GORDON S. HEDDELL

Inspector General, U.S. Department of Labor

The Evolution of Organized Crime and Labor Racketeering Corruption

Background

Labor racketeering is the infiltration and/or control of a union or employee benefit plan for personal benefit through illegal, violent, or fraudulent means. Organized crime groups often engage in labor racketeering. However, the types of organized crime groups that engage in labor racketeering and the methods they employ have evolved over time.

Although the government has made strides in the fight against traditional organized crime, new nontraditional organized crime groups have emerged alongside enduring forms of racketeering such as bribery and extortion. The field of organized crime groups has expanded to include new nontraditional, transnational groups from Asia and Eastern Europe among others, in addition to traditional groups like La Cosa Nostra (LCN) known also as the “Mafia.”

What remains unchanged is labor racketeering’s impact on American workers, employers, and the public through reduced wages and benefits, diminished competitive business opportunities, and increased costs for goods and services.

The Unique Role of the Department of Labor’s Office of Inspector General

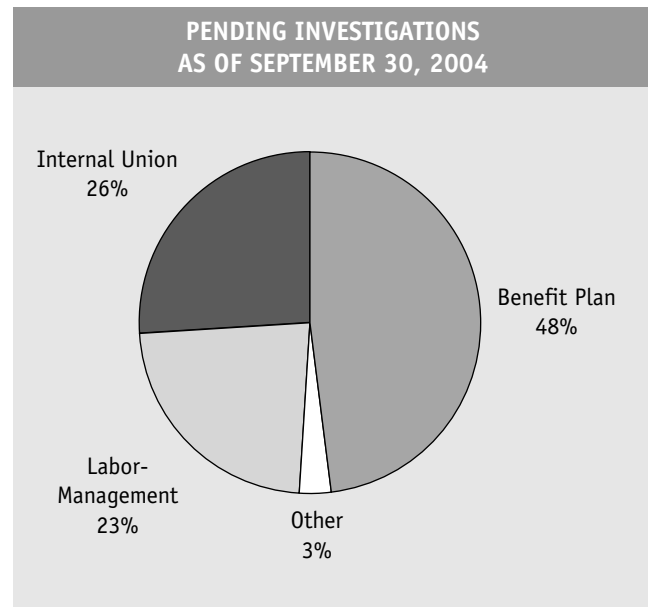
In addition to the normal investigative activities carried out by all Offices of Inspector General (OIGs), the OIG at the Department of Labor (DOL)

has a unique programmatic responsibility for investigating labor racketeering and organized crime influence or control in unions, employee benefit plans, and the workplace. This statutory mandate is undertaken as part of the Department of Justice's (DOJ) overall attack on organized crime and racketeering activities. Following U.S. Senate hearings in 1978 on the Labor Department's ineffective commitment to the Department of Justice Organized Crime Strike Force's attack on labor racketeering, the Secretary of Labor reassigned the enforcement program to an independent Office of Special Investigations. Later that year, when Congress passed the Inspector General Act, Congress recognized the need to safeguard the independence of DOL's labor racketeering program and placed the enforcement program in the independent DOL OIG. Within its jurisdiction, the OIG identifies and investigates labor racketeering and corruption in pensions and employee benefit plans, labor-management relations, and internal union affairs. Among our successes are the conviction of high-ranking members of the Gambino, Genovese, and Colombo LCN families as well as members of non-traditional organized crime groups.

From October 2003 through September 2004, the OIG's labor racketeering program had 130 open cases involving organized crime groups. In addition, during this time frame, our racketeering investigations resulted in over \$36.5 million in monetary accomplishments, including restitutions and forfeitures, plus 260 indictments and 143 convictions.

Traditional Organized Crime Groups and Racketeering Enterprises

Crime in the three traditional core areas of labor racketeering—pensions and employee benefit plans, labor-management relations, and internal union affairs—persists. The OIG has 359 pending labor racketeering investigations, of which over one-third involve organized crime.



Schemes involving bribery, extortion, deprivation of union rights by violence, and embezzlement used by early racketeers are still employed to abuse the power of unions. This activity is commonly seen in industries with a history of organized crime influence. Internal union affairs cases involving the “big four” international unions, namely the International Brotherhood of Teamsters, Hotel Employees and Restaurant Employees International Union, Laborers International Union of North America, and International Longshoremen's Association (ILA), still make up a significant portion of the OIG's racketeering investigations.

Despite major gains in the fight against organized crime, the influence of LCN continues with strong influence in the northeastern United States, Florida, the northern Midwest, and to a lesser extent other southern and western states. The OIG continues to monitor the efforts of such traditional organized crime groups to reassert control over the big four international unions, which have undergone anticorruption reforms.

Pensions and Employee Benefit Plans

Of the total OIG labor racketeering investigations, 45 percent involve pensions and employee welfare benefit plans. The vast sums of money involved in

this industry make it inherently vulnerable to corruption. According to DOL's Employee Benefits Security Administration, the total of all assets in Employee Retirement Income Security Act (ERISA)-covered pension plans at the end of 1999 was over \$4.4 trillion. Pension assets in multi-employer, union-sponsored plans have continued to increase in the past decade going from approximately \$220 billion in 1993 to nearly \$400 billion in 1999. These amounts represent the latest figures available.

In 1998, the OIG began targeting pension plan service providers who are controlled or influenced by organized crime or who are retained by pension plans whose sponsors have historically been associated with organized crime or union racketeers. As of September 2004, the OIG's inventory of 94 pension cases included 19 service provider investment activity investigations with plan assets exceeding \$1 billion potentially at risk.

OIG investigations have shown that abuses by service providers are particularly egregious because they have the potential for substantial dollar losses by affecting more than one plan at a time, and because service providers have the opportunity and sophistication to conceal their illegal activity through complex financial schemes. The OIG's work in this area has yielded excellent results, for example:

- An attorney for the Indiana Regional Council of Carpenters and a real estate broker pled guilty to charges of conspiracy and making \$65,000 in bribe payments to the secretary-treasurer of the Regional Council. The secretary-treasurer was also a former trustee of the Northwest District Council of Carpenters Pension Fund. They pled guilty to influencing the operation of an ERISA employee benefit plan. The attorney admitted to accepting \$200,000 in illegal kickbacks, which were made in conjunction with the fund's \$10 million purchase of 55 acres of land. The secretary-treasurer also pled guilty.
- In October 2003, the former president of Teamsters Local 25, who was also a benefit plan trustee, was sentenced to 34 months incarceration and 3 years probation and was ordered to pay a \$30,000 fine after pleading guilty to Hobbs Act extortion, conspiracy to embezzle from a benefit program, and filing false documents under ERISA. An OIG investigation found that he and another individual conspired to launder the proceeds of a \$100,000 extortion payment from representatives of an Ohio-based pharmaceutical corporation. This payment was made in connection with the settlement of a pension fund liability.

Labor-Management Relations

Labor-management relations cases involve corrupt relationships between management and union officials. Typical labor-management cases range from collusion between representatives of management and corrupt union officials to the use of the threat of "labor problems" to extort money or benefits from employers. Racketeering and the influence of organized crime groups persist in those industries that have traditionally been most vulnerable to organized crime, including the maritime, construction, surface transportation, garment-manufacturing, motion picture production, and gambling and hotel services industries. The OIG employs industry probes to examine labor and management components of such industries to expose corrupt relationships. OIG cases related to the maritime industry, for example, include 21 pending investigations involving the ILA. Significant investigations in this area include the following.

- An investigation of the New York and New Jersey waterfront that resulted in the conviction of the Gambino Crime Family boss and six associates of conspiracy, extortion, money laundering, and gambling.
- An investigation that led to the guilty plea by the acting boss of the Luchese Organized

Crime Family. He was found to have extorted money from New York City garment center businesses from the early 1980s through April 1998. He directed the extortion through threatened and actual use of physical injury and economic harm, the disruption of labor peace, and control over labor unions.

- An investigation that resulted in the sentencing of eight individuals for violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act of 1970, extortion in violation of the Hobbs Act, and unlawful labor payments in violation of the Taft-Hartley Act. Those sentenced include members and officials of the International Union of Operating Engineers Locals 14 and 15, as well as members of the Genovese and Colombo Organized Crime Families. The investigation found that the union officials allowed contractors to violate collective bargaining agreements in exchange for kickbacks that they shared with the crime families. The crime families involved also used their influence to obtain membership in the locals for friends and family, as well as preferential job assignments.

Internal Union Affairs

Despite successes in diminishing organized crime influence in the big four international unions, criminal abuse of power involving union finances or property and damage to democratic practices still occur. Indeed, the OIG has seen a three-fold increase in the number of convictions in internal union cases since Fiscal Year 1998.

The OIG continues to receive specific allegations and intelligence of possible criminal activity involving high-ranking national and local union officials. We continue to identify criminal activity involving kickbacks, unauthorized perks and compensation, no-show jobs, and embezzlement from pension and welfare plans. Three of the big four unions have been subject to a court-supervised civil RICO monitoring or voluntary internal reform mechanisms, and

thus oversight remains necessary. The following are highlights of recent work in this area.

- In July 2004, the international president of the United Transportation Union was sentenced to 2 years imprisonment and 3 years probation, and was ordered to forfeit to the United States \$100,000. He pled guilty to labor racketeering conspiracy charges in a scheme to extort bribes from attorneys in exchange for becoming or remaining designated legal counsel for the union, a highly coveted position for attorneys.
- In June 2004, the president of the National Federation of Public and Private Employees and his sister, a former administrative assistant to the union, were convicted on charges including RICO violations and embezzlement of union assets. The investigation found that from 1994 to 2003, the president received almost \$500,000 from various employers while simultaneously representing the interests of the Federation and a maritime labor union. Additionally, the former administrative assistant embezzled more than \$116,000 from the Federation by issuing unauthorized payroll checks. The two also falsified travel and entertainment expense reports, thereby causing the Federation to pay thousands of dollars in personal expenses on their behalf.

Nontraditional Organized Crime Groups and Racketeering Enterprises

According to DOJ, there has been a rapid rise of transnational organized crime groups that are engaging in new criminal enterprises. These non-traditional groups from Asia, Russia, Eastern Europe, and West Africa have engaged in racketeering and other crimes against workers in both union and nonunion environments.

Nontraditional, transnational groups engage in abuses traditionally associated with organized

crime including extortion, money laundering, and insurance fraud. They also engage in complex financial schemes, immigration fraud and exploitation of undocumented aliens, and fraud against government benefit programs. Specifically, OIG investigations have found that nontraditional organized criminal groups are exploiting the DOL's foreign labor certification and Unemployment Insurance (UI) programs.

Fraud Against DOL Foreign Labor Certification Programs

The OIG is concerned that transnational organized crime groups are able to file false labor certifications with possible national security implications. We are seeing labor certification, visa, and related schemes by nontraditional groups. Labor certification fraud cases involve fraudulent applications that are filed with DOL on behalf of fictitious companies or applications using the names of legitimate companies without their knowledge. Immigration attorneys and labor brokers then collect fees up to \$30,000 from foreign workers for the fraudulent applications. From October 1, 2003 to September 30, 2004, OIG alien certification cases resulted in 86 indictments and 66 convictions.

Unemployment Insurance Fraud by Organized Crime Groups

Based on recent casework, the OIG is concerned about nontraditional organized crime exploitation

of the UI program through the use of identity theft. In one such case, 13 members of a Mexican nontraditional organized crime group were indicted for conspiracy, mail fraud, identity theft, and money laundering in connection with millions of dollars in fraudulent UI claims. The group defrauded four states' UI programs using at least 10,000 stolen identities. From September 1, 2003 through September 30, 2004, OIG UI investigations resulted in \$67.6 million in monetary results, 55 indictments, and 43 convictions. Increasingly, our cases involve high-dollar criminal enterprises, as opposed to fraud by individual claimants.

Combating Organized Crime Today

Identifying and combating new forms of racketeering crime and criminals while holding the line against more traditional forms of racketeering is a continuing challenge. For more than two decades, the OIG has worked toward this end in cooperation with DOJ and other entities. With the Federal Bureau of Investigation shifting its focus toward counterterrorism activities, the OIG will play a more critical role than ever in enforcing antiracketeering laws and combating the influence of organized crime in the workplace. In this regard, the OIG coordinates closely with the Justice Department to ensure that OIG investigators have a presence in localities where the need is greatest. 🏠

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Staying Off the Warning Track

Ethics Tips for the Political Appointee

While growing up in Boston, my father would sometimes take me to see the Red Sox play in venerable Fenway Park. Once I remember gazing out at the 37-foot-high left field wall, known as the “green monster,” noticing for the first time the reddish brown dirt between the wall and the field. My father explained to me that this was the “warning track” that tells the outfielder, as he attempts to catch fly balls, that he is about to hit the wall and could get hurt.

As I now contemplate the ethics challenges that all political appointees face, I am reminded of the notion of an ethics “warning track.” In the ethics arena, hitting the proverbial wall in Washington could mean going to jail. Like outfielders taking heed when they feel the soft dirt of the track beneath their feet, I believe that political appointees should not only learn to avoid hitting the wall, but also endeavor to stay off the “warning track” altogether.

Ethics Laws

In recent history, every President has come to Washington with the pledge that his administration will be more ethical than those that came before. As President George W. Bush begins his second term, he will undoubtedly reiterate his expectations to the heads of all executive departments and agencies for high ethical behavior during his presidency. It is not enough, however, that the President demands high standards of integrity and ethics in his administration; political appointees must also be provided with the information and good counsel they need to meet these ethical expectations.

Most political appointees enter office unprepared for the fishbowl environment into which they are appointed. They are often unaware of the scrutiny that they will be subject to by “warning track” inhabitants that include the press, their political opponents, special interest groups, a myriad of nongovernmental organization watchdogs, the Office of Government Ethics, and of course, the ever-present Inspectors General.

A clear understanding of how to navigate the ethics outfield is therefore imperative. In reality, few political appointees will ever hit the wall because our ethics laws tend to set the bar very high and virtually anyone with the intention to stay within the letter of the law can do so. In my experience, Federal prosecutors are very hesitant to charge any Federal official for ethics or integrity violations because, in part, the law as written is somewhat nebulous. A January 2001 Government Accountability Office study cited an average of fewer than 30 ethics cases are prosecuted annually by the Department of Justice’s Public Integrity Section, the entity that prosecutes ethics violations. In fact, of that number, most of the cases cited were against career government employees not political appointees. However, while few political appointees will ever face prosecution and potential jail time for ethics violations, they can and often do stumble on the ethics “warning track.” Unfortunately, in the Washington fishbowl, a stumble can often be as nasty as a fall.

As a Federal employee with well over 3 decades of government service and as the Inspector General for a department rich in scandal—Tea Pot Dome and Indian Trust to name just two—I am often asked by political appointees for advice about staying out of ethical trouble. I believe that a detailed knowledge and understanding of ethics laws and regulations will help, but it will never substitute for exercising sound judgment and common sense. In that vein, I offer the following advice.

Ethics Tips for Political Appointees

1. *When in doubt, seek advice, and always go to the proper source.*

The first part of this tip is easy to understand. It means to always err on the side of caution and seek ethics advice before engaging in an activity that presents even the slightest possibility of an appearance of a conflict of interest. The standard here should be the old adage: if you do not want to read about it on the front page of the *Washington Post*, then seek advice before doing it.

The second part of this tip is a little less obvious. The only advice that will actually protect an appointee is advice from the Designated Agency Ethics Official (DAEO). A classic mistake made by many political appointees is to seek advice from someone other than their DAEO. The most common error made by appointees is to depend on a department or agency lawyer who may know something about potential conflicts and ethics laws but whose advice, under the regulations, does not protect anyone. All ethics advice is not created equal. While anyone with some ethics knowledge (particularly attorneys) can offer ethics advice, it should only be accepted from someone who is formally designated to provide it. For political appointees, the most prudent ethics advice comes from a DAEO.

In most cases, unofficial ethics advisors and lawyers may prevent you from hitting the wall, but they may not be able to keep you from slipping onto the “warning track.” Those who are not fully immersed in ethics laws and regulations tend to interpret the law generally and answer only the “Can I do this?” question instead of “Should I do this?” Too often, such well-intended advice ends up putting an appointee in the middle of the “warning track,” which becomes rich fodder for the press, and political or ideological detractors. Giving ethics advice for them is, at best, a collateral duty not a full-time job. To prevent yourself

from slipping onto the “warning track,” you want to seek ethics advice only from your department’s DAEO.

Finally, when seeking advice from the DAEO, ensure that a written record of the question presented and the advice provided are documented. Assuming you follow the DAEO’s advice, this will resolve any questions about your actions in your favor.

2. Always recuse yourself from matters in which you have even the slightest appearance of a conflict of interest.

In regard to executive branch employees, recuse means the act of not participating in certain governmental matters. If your son or daughter works for the company seeking a government contract, recuse yourself. If you own stock in a company doing business with your department, recuse yourself. If your former law firm is representing a matter before your department, recuse yourself. If the state government from which you come has a matter pending before your department, recuse yourself. The obligation to recuse is ultimately the responsibility of the individual Federal official, and working under a recusal is simply the safest place to be. The bottom line is when in doubt, recuse!

Written recusals provide the strongest defense because they are the showstoppers. The DAEO may require that you provide written documentation of a recusal, or you may request this yourself. By putting your recusal in writing, disseminating it to the appropriate officials, and filing it in your ethics file, you have fully acknowledged that you may have a conflict of interest, and you have a written account of your decision. You may also communicate your decision orally to others, which is the second best defense because witnesses can attest on your behalf that you intended to recuse yourself. The weakest recusal is when you simply tell yourself that you will remain unbiased in a given situation. In essence, you simply believe that

you will always act appropriately in matters that may involve a conflict of interest. Again, this is a very weak defense and will not only put you on the “warning track,” it may put you right up against the wall.

3. Designate a screener whom you can trust to act objectively and who has been properly trained.

After exercising a written or oral recusal, it is sometimes advisable to designate a screener for the recusal. A screener will keep matters in which you have a conflict of interest from reaching you in the first place. If a company for whom you used to work prior to government service is seeking business with the department or agency to which you are appointed, a screener should recognize the potential conflict of interest and protect you from any knowledge of the matter. In this example, the screener should forward the company’s representatives to the most appropriate government official, such as a department procurement officer.

You must be careful, however, in designating a screener. Screeners, to effectively serve the purpose for which they are designated, must genuinely redirect matters of potential conflict and not simply substitute their decision for that of the recused appointee. A screener should do only that—screen matters for potential conflict and reflect them away from you. A screener should never be a substitute decision-maker. In the example above, the screener must not facilitate a contract award based on the assumption that this is what you would want to do if you were allowed to be involved. Not only will such an arrangement not pass the straight-face test, but it also runs afoul of the guidance on screeners published by the Office of Government Ethics. These provide, in part, that “[Recused] employees should understand that they are always personally responsible for ensuring that a commitment or a requirement to recuse is fulfilled. That responsibility does not shift . . . to an individual who screens matters from the employee.” To avoid such potential problems, ensure

that your screener knows how and what to screen. Your department or agency ethics office should be in a position to train screeners, and you should make sure that your screener attends training.

4. *Abide by your recusals.*

Now that you know whom to seek for advice, you know when to recuse yourself from matters, and you've designated someone to be your screener, you must remember to abide by your recusals. This may sound easy, but many political appointees are sometimes confronted with situations in which it is unclear what actions and responses are appropriate. For instance, a common mistake that many political appointees make is attending meetings or briefings with former associates or that involve matters from which they are recused. You should avoid any situation that deals with specific or general matters stated in your recusals in which former associates may have an interest, including attending meetings as well as corresponding (orally or in writing) with former associates. Remember that you live in a fishbowl and the appearance of an ethics violation can be just as detrimental as actually committing one. Such appearances erode public trust. Over the years, I have seen officials get into ethical trouble not because they weren't decent people but because they failed to recognize that they were confronting an ethics issue. Again, avoid falling onto the "warning track"—abide by your recusals.

5. *Do not mix official government business with politics or pleasure.*

Remember, as a government official, you are always in view and under the scrutiny of the press, the public, ideological detractors, and your political opponents. Although socializing with business associates is both acceptable and very common in the private sector, it is often considered unacceptable or inappropriate to do so in the public sector. Simply stated, do not mix government business with pleasure or partisan political activity. Become

well versed on the rules and regulations governing travel, gifts, and attendance at outside activities and social events. What may seem innocent may easily be construed as unethical behavior, particularly by those who do not have all of the facts. Having dinner with former associates may seem harmless, but you must be very cautious in your position as an appointed government official. Questions such as "Who paid for the meal?" and "What was being discussed at dinner?" can and will be asked. Holding a public position means you can no longer allow former business associates to pick up the tab or discuss matters that fall under your purview. Having entered the public sector, you can no longer mix business with pleasure or politics and you should avoid even the appearance of doing so.

6. *Distance yourself from former employers and associates.*

Once you become a government official, you will be recused from participating in matters before your agency or department involving your former employer and business associates. After being sworn into office, you are well-advised to publicly distance yourself from your former employer and business associates. Many political appointees stumble onto this part of the "warning track" by attending functions sponsored by former employers and participating in exclusive social events with former colleagues. The ethics rules do not govern purely personal relationships with former colleagues, but such relationships will always be burdened by the potential for a perception of conflict of interest. Regardless of how innocent or well-intentioned, meeting or socializing with former employers and colleagues who may have matters before your agency or department will be viewed with skepticism by even the most objective outside observer, although it is unlikely that the objective outside observer is the one watching you. One very common mistake that new appointees make is attending a going-away party or reception in

their honor after being appointed to their government position. Although attendance at such events may seem trivial, do not subject yourself to unnecessary suspicion and criticism by accepting such a post-appointment tribute.

The recent World Series win by the Red Sox reminded me of how close the difference between

winning and losing can often be. The same holds true for public service. Become familiar with Federal ethics rules so that you can maintain the public trust and remain in the game through the last inning. If you follow these tips, they will help you stay off the “warning track” and hopefully you will never come face-to-face with the “green monster.” 🦹

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Return-on-Investment

A Performance Tool That Can Work

Results! Results! Results! This was Clay Johnson's¹ mantra to the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). How do you take measure of an Office of Inspector General (OIG)? We all know that the latest performance measurement philosophy revolves around outcomes instead of outputs. This may be fine for major programs, but how does it work with an operation like an OIG. How do you determine the value or impact of an audit or investigation? These are sticky issues that each OIG wrestles with in deciding how to demonstrate what it has accomplished.

PCIE Measures

The Annual PCIE/ECIE Progress Report to the President reports on the following:

- total dollars captured
- recommendations that funds be put to better use
- management decisions on recommendations that funds be put to better use
- questioned costs
- management decisions on questioned costs

¹ Clay Johnson, Deputy Director for Management, Office of Management and Budget, March 25, 2004, Annapolis, Maryland.

- successful criminal prosecutions
- indictments and criminal informations
- successful civil actions
- suspensions and debarments
- personnel actions
- investigative receivables and recoveries

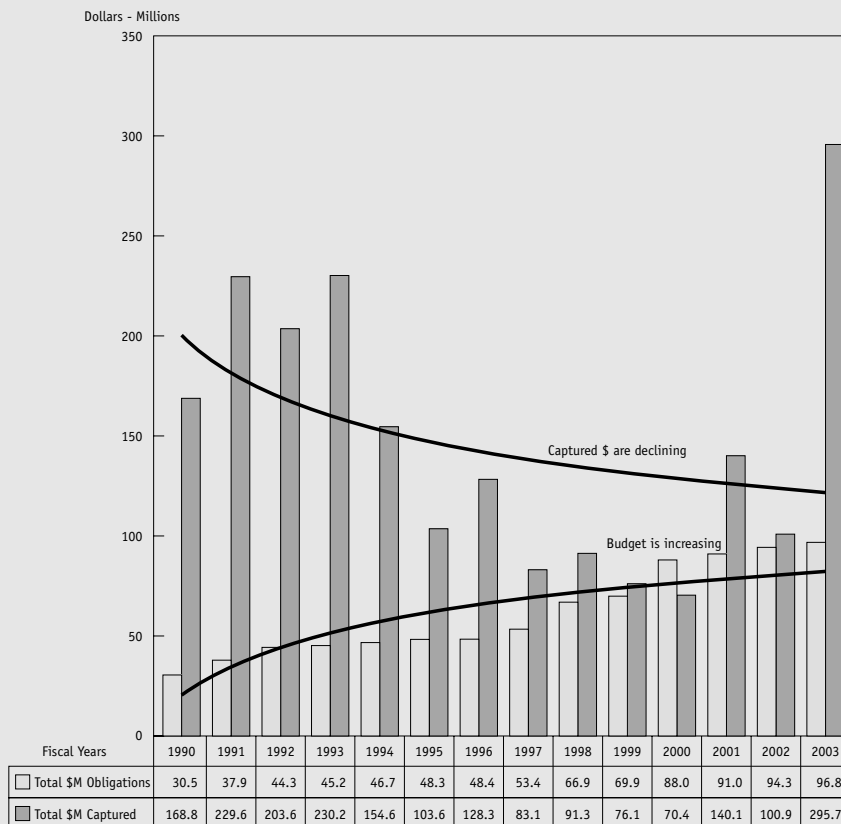
The numbers accumulated become very large and impressive, but what exactly do they mean? How can stakeholders know how well an OIG is performing? Some performance measure is needed not only to keep stakeholders informed, but also to serve as a compass for OIG staff. Harvard University, Kennedy School of Government writes this on Performance Measures: “Performance goals and measures motivate. People like to do well. Ambitious but achievable goals energize staff. Even without a direct link to goals or rewards, feedback improves performance. Performance measures

also help people see where their efforts are paying off and where they need adjustment.”²

At the U.S. Department of Housing and Urban Development (HUD) OIG, return-on-investment (ROI) goals have been included in our strategic plan as a means to internally assess how productive the staff is, and how we are measuring up against our own previous performance. About 2 years ago, we received a graph from our Office of Management and Budget budget examiner pointing out how low our average returns were when compared to other OIGs. This made us realize that our stakeholders were looking for some way to rate our work and were keying in on dollars.

² “Getting Results Through Performance Management” Public Sector Performance Management, Selected readings, http://www.ksg.harvard.edu/visions/performance_management/federal_memo.PDF.

12 YEAR COMPARISON OF COSTS AND RESULTS



Based on this query we started to analyze what our rate of return had been in the past. We were surprised to find a negative slope on our dollar accomplishments and an increasing curve on our operating costs. If we did not develop some strategy to address this trend, we would soon have negative returns.

What hit home was that dollars do count and tell a story. They were not the only thing that mattered, but it was clearly evident that we had slipped from what we were capable of doing. Our senior staff was determined to reverse the trend.

Our Plan for Increasing ROI

We began by including a goal in our strategic plan to maximize results and provide responsive audit and investigative work for mandated, requested, or self-initiated efforts. Our expectations for this goal were to achieve the highest ROI with available resources and provide quality results to customers in a timely manner.

Next, we started looking at how we computed and tracked our dollar accomplishments. We found we were undervaluing our efforts and not taking credit for good work that our staff was doing. We discovered that some of our offices never considered the category of funds be put to better use and those that did used varying criteria for making the computation. Therefore, we issued detailed policies and procedures to standardize how dollar results were determined.

Next, we began performing better risk analysis by mapping where HUD program dollars were concentrated versus where we had our staff located. Over the years Congress had shifted HUD program money to new locations. Grantees and beneficiaries of HUD funds changed while our offices had not. Consequently, we were spending much more on travel than was necessary to send our staff where the work was located. We have adjusted the locations of some of our staff to better match the work.

We looked for ways to reduce the time it took to do our work. By shortening time on jobs we would be able to do more of them. We found that report writing consumed a large part of most jobs,

so we concentrated on revising our reporting formats and teaching staff to use a faster and more efficient writing approach.

Finally, we encouraged the staff to do risk analyses on the discretionary assignments. OIG personnel used databases to find the assignments that most likely would find fraud, and then analyzed which of those would probably result in the most dollar returns, i.e., the largest ROI.

Our results have been immediate and substantial. We went from an ROI of 1.1 to 1 for Fiscal Year (FY) 2002 to 32 to 1 for FY 2004. There are three or four assignments that resulted in extraordinary results and caused this spike in results. However, even taking those out of the computations, our ROI still increased to almost 7.5 to 1 for FY 2004—almost 700 percent improvement in 2 fiscal years.

Why ROI?

**If it's worth doing,
it's worth measuring
and
what gets measured gets done.**

There is a difference of opinion among OIGs on using ROI as a measuring tool. Most OIGs compute ROI by dividing the dollar results of their audit and investigative reports by their budgets for the same period. A sampling of OIGs that use ROI computations show that an ROI can vary from about 7 to 1 up to 50 to 1 or more. The Government Accountability Office recently reported a 78 to 1 return. However, it is important to understand that rates among OIGs should not be compared. It is not fair to compare different OIGs because the programs and types of functions that the OIGs review vary widely. One OIG may review only regulatory programs with small dollar budgets, while another audits and investigates programs with large dollar disbursements. These extremes in programs will dictate what level of ROI

is possible. At HUD, billions of dollars go out to millions of participants. So it makes sense for us to be concerned about the accountability of funds, and how well we are doing at assuring proper expenditures. Deterrence is accomplished through holding violators responsible by making them either repay misused funds or spending their funds differently if they were not using them effectively.

However, the importance of ROI is for internal use. ROI rates only have meaning when compared to rates within the same OIG over time. Because the types of jobs that an OIG does will vary from one reporting period to the next so will the ROI rate. Further, it should be expected that ROI rates will go up and down over time due to the nature and timing of the work. For example, it is not unusual for multiple defendant investigations to take a year or more to develop and bring to indictment. What executives should be looking for is the long-term climb in the rate. It is similar to watching a stock index. There is one exception to this metaphor. Over time you can expect ROI rates to eventually hit a plateau since they cannot go up forever. This signals that you may have hit diminishing productivity returns.

Arguments Against Using ROI

ROI is a misnomer because most of it is not actually dollar returns to an agency. Most OIGs use the value of funds be put to better use in their semi-annual reports to Congress. There are some who consider these funds as “funny money” because, by definition, funds are not returned to the agency. Also, it troubles some that the dollar value that can be computed is often quite high. However, the concept of funds be put to better use comes straight from the Inspector General Act, and it would be difficult to quantify the impact of a lot of OIG work without this measure.

Another argument is that the agency will be criticized, as the Internal Revenue Service was a few years ago, for setting quotas. ROI should be used as a goal to help identify assignments that will

have the greatest chance for positive impact, not to compel staff to report inflated numbers. Having specific policies and procedures for computing amounts claimed will offset this potential problem. Part of every OIG’s follow-up procedure should include checking the accuracy and consistency of the computations of dollars claimed in their reports.

The Other Side of the Coin

Using ROI in your office can combat some problems common to OIGs. A frequent complaint of both auditors and OIG managers is that some assignments seem to go on and on with no end in sight. This can be called the “mile wide and inch deep” approach, when the staff has no pressure to end the job and can feel obligated to keep pursuing one lead after another in hopes of finding additional payoff. Auditors especially have a desire to audit an entire enterprise. They need something to guide them and prevent scope creep. Otherwise, before they know it, the job has gone on for a year with no appreciable results. Using ROI will lead to better “go/no go” survey decisions. Staff members will start doing what every private auditing firm does: job costing before making a bid on a job. Private firms know how long they will need to do the work, the specific scope of the work, what their staff mix and costs will be, and also forecast the profit return to the company. They end up using simple break-even analyses in bidding and accepting work, as should the OIG staff on its discretionary workload.

Some argue that Congress or other stakeholders mandate OIG work and so you have to do certain reviews regardless of its ROI. While this is true, it shouldn’t prevent using ROI principles on discretionary work. Most OIGs have more work that they can possibly handle. This makes it imperative to do some type of risk analysis when setting priorities on discretionary work. Depending on the percentage of the work that is mandatory versus discretionary, the dollar goal may simply need

to be lowered. The idea of goals is to give the staff a target to shoot for but, as with all goals, they should be attainable.

We have also taught our staff that time is money and, like a taxi meter, the costs continue to run whether the taxi is moving or not. We figured that the HUD OIG pays out \$35,000 an hour in salaries and benefits. At expenditure rates like that, you need your workforce to be engaged in as much productive work as possible.

Using ROI is not the final measure of an OIG's performance. It is only a tool for making better decisions. There are audit or investigative assignments that sometime outweigh the ROI considerations. A public corruption case may not necessarily net a large recovery, but the impact on the integrity of the program is immense. For example, this last period our Region 1 Office of Investigation did not meet its dollar goal. However, the Region's agents completed a major investigation that led to the arrest of 13 individuals (a program executive director, other program officials, and relatives on a 100 count Federal indictment). The investigation disclosed violations of the Racketeer Influenced and Corrupt Organizations Act. This is an example where it is okay to miss an ROI goal because impact has been achieved, and we know the staff has been productive with its time. The ultimate purpose of the goals is to show results. It is acceptable if the results are through nondollar jobs. We use ROI as the main

measurement factor because it will be the most common type of result in our environment, but it is not the only measure.

Much of how you come out on this debate will center on how you believe ROI statistics should be used. Performance measures such as ROI have their most important impact when executives use them to motivate staff and highlight where improvements can be made. However, if executives use such measurements to punish managers for not meeting what can be considered arbitrary goals, then the system is used destructively and will inevitably hurt staff morale.

Summary

ROI is a measurement system that OIGs can use to determine that dollar results are at levels appropriate to their situations. ROI is only one of several tools available to an OIG in assessing its effectiveness, determining staff accountability, and explaining its impact to stakeholders. Besides ROI there are other measurements that when taken together can provide a balanced scorecard to track what an OIG intends to achieve. The bottom line seems to be that the usefulness of ROI goals depends on how important dollar impact is to the type of programs being reviewed, and how executives interpret and use ROI results to demonstrate to stakeholders that as much good work as possible is being done. 🏠

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Department of Health and Human Services OIG History

Changing with the Times

Formation of the First Statutory Office of Inspector General

The Office of Inspector General (OIG) for the Department of Health, Education and Welfare (HEW), the predecessor to the current Department of Health and Human Services (HHS), was established by statute in 1976, (Public Law 94-505). To ensure its passage, legislation for the Inspector General Act of 1976 was intentionally attached as an amendment to a noncontroversial, if obscure, Act to convey Federal land to the Shriner's Hospital for Crippled Children. President Gerald Ford signed the bill into law on October 15, 1976.

Many aspects of the original legislation establishing the Inspector General (IG) for HEW served as a template for the later Inspector General Act of 1978. For instance, the HEW IG was appointed by the President and subject to removal only by the President with a written explanation to Congress. Selection of the IG was based on demonstrated abilities in certain disciplines such as auditing, accounting, investigation, and public management. Also, the HEW IG was charged with auditing, investigating, and supervising the oversight of agency programs, and reporting regularly to the Secretary and to the Congress. To be insulated against improper influence, the IG was supervised directly by the Secretary and no other

subordinate officials. The grant of authority to the newly created OIG was broad and it would undergo significant growth before the end of the decade.

In 1977, newly elected President Jimmy Carter nominated Thomas D. Morris as the first Inspector General at HEW. Charles Ruff, a key figure in the Watergate Special Prosecution Force, became the first Deputy Inspector General. The first OIG had three components: the Audit Agency, Office of Investigations, and a newly established Office of Health Care and Systems Review.

The Audit Agency, now the Office of Audit Services, was well established in HEW. The Audit Agency was created in 1965, the same year Medicare and Medicaid came into existence. The Audit Agency's audit efforts were divided among three main categories: extramural (universities, nonprofits receiving HEW funding); state and local government units; and Social Security. Later, HEW systems were automated to enable the use of new analytical techniques and stratified sampling pilot projects. Development of the Health, Education, and Welfare Computer Audit System in 1978 brought the agency into the computer age.

Casper Weinberger formed the Office of Investigations and Security (OIS) within HEW in April 1973. By 1977 this office, now in the OIG, only had a staff of 26 investigators. However, within 6 months seven regional offices were added to what became known as the Office of Investigations (OI).

The legislation creating the HEW OIG directed that the office maintain a staff devoted exclusively to combating fraud and abuse in Medicare, Medicaid, and other health programs. To satisfy this requirement, the OIG created a new component called the Office of Health Care and Systems Review that provided fast turnaround and expert program assessments of complex health-care programs. Also, this office was a precursor to the current Office of Evaluation and Inspections.

In October 1977, Congress passed the Medicare and Medicaid Anti-Fraud and Abuse Amendments, and HEW was directed to fund state Medicaid Fraud Control Units. At the same

time, IG Thomas Morris also launched several investigative initiatives, of which three are particularly noteworthy: (1) Project Integrity, which screened Medicaid provider charges for improper billing; (2) Project Match, which identified fraudulent or ineligible welfare payments; and (3) Project Cross-Check, which identified individuals who had defaulted on their student loans.

In 1979, HEW experienced a year of dramatic changes. With the unprecedented surge in spending in Federal aid programs coupled with annual increases in health-care costs, Secretary Joseph A. Califano, Jr. overhauled the Department. The functions of the Department were distributed among several new agencies: the Social Security Administration, the Health Care Financing Administration (HCFA), the Family Support Administration, and the Office of Human Development Services (including the Head Start Program, the Children's Bureau, the Youth Program, and the Aging Program). In January 1979, the first OIG toll-free Hotline for fraud, waste, and abuse reporting was also established.

1980s—The OIG Shifts Its Focus

The 1980s brought a decade of change. Early on, the "E" in HEW was removed when an independent Department of Education was formed. The former HEW was recast as HHS. Under Richard P. Kusserow, who was IG from 1981-1992, the focus of the office changed as well.

The Single Audit Act transferred responsibility for audits of most Federal grantees, including state and local governments, to the grantees themselves with the OIG having oversight responsibility. This freed the Office of Audit Services to redirect its resources to internal controls and reviews of the efficiency and effectiveness of the Department's largest and most costly programs—Social Security, Medicare, Medicaid, and public health and welfare programs. This marked a fundamental shift in the day-to-day work of the OIG auditors.

The 1980s also saw significant changes in investigations. First, the Social Security Administration's Investigation Branch was merged into the OIG, nearly doubling the size of the office. In 1983, HCFA, Office of Program Integrity was merged into the OIG, eventually adding almost 200 experts in Medicare and Medicaid oversight to the office with many of these employees placed in OI. The enforcement powers of the investigators were enhanced in 1985 when the U.S. Marshals Service began deputizing agents and conferring upon them law enforcement capabilities, including the authority to carry firearms, make arrests, and enforce search warrants when cases so required.

Legislative and political events of the time also helped to strengthen the OIG. For example, the Federal Managers' Financial Integrity Act of 1982, the Civil Monetary Penalties Law, the Consolidated Omnibus Budget Reconciliation Act of 1985 and its 1986 Amendments, and the Medicare and Medicaid Patient and Program Protection Act of 1987 all extended the OIG's authority and increased its effectiveness. The OIG also had to stay current with rapid changes in the nation's health-care system, such as the rise of managed care, tremendous growth in the presence of health insurance plans, and dramatic increases in the costs of prescription drugs.

During the 1980s, the OIG realized a high rate of return on operating expenses, generated high quality annual and semiannual reports, and testified frequently before Congress. By 1990, the OIG testified before Congress 24 times in 1 year, thereby solidifying its reputation as an effective overseer of HHS operations and expenditures.

1990s—Health Care Takes Center Stage

The Department of Health and Human Services continued to evolve and expand in the 1990s in response to changing public and Congressional expectations. For the first time in American history, the health-care industry was becoming big business on par with automotive and manufacturing

industries. In fact, by the end of the decade, health care accounted for almost 14 percent of the economy. In addition, changing demographics and economic indicators required new approaches to Federal social services. In 1991, Secretary Louis W. Sullivan authorized the creation of a new operating division within HHS that would combine the Family Support Administration and Office of Human Development Service functions. This new office was called the Administration for Children and Families.

In 1993, June Gibbs Brown, who had served as Inspector General for the National Aeronautics and Space Administration and the Departments of the Interior and Defense, was confirmed as HHS's third IG. Brown fostered change in the OIG's organizational culture and brought about close collaboration among its components.

In 1995, two events had a significant impact on HHS. First, the Social Security Administration was moved from HHS and made a freestanding agency. Nearly 260 OIG staff transferred to the new agency. The second event was the implementation of Operation Restore Trust (ORT), a demonstration project involving five states (and later expanded to all states), multiple Federal agencies, and the nursing home, home health, and durable medical equipment industries. ORT was designed to test the success of several innovations in fighting fraud and abuse in the Medicare and Medicaid programs. The original 2-year demonstration project accomplished \$188 million in receivables, 74 criminal convictions, 58 civil settlements, and 218 exclusions. Inspector General June Gibbs Brown testified numerous times before Congress on this and other OIG work and consistently made a case that a coordinated and consistent effort in combating fraud, waste, and abuse in health-care programs necessitated both an increased and stable source of funding for the OIG. Ultimately, ORT provided one of the most persuasive arguments for increasing OIG funding due to its success and visibility. ORT also changed the way the OIG does business by placing a far greater emphasis on interdisciplinary teams and

partnerships both internally and with other Federal agencies, and state and local law enforcement entities.

Drawing on the success of the ORT program, in 1996, Congress passed the Health Insurance Portability and Accountability Act (HIPAA). Among other things, HIPAA provided a stable funding source for the OIG and also increased the resources available to the OIG and other agencies responsible for health-care fraud, such as the Department of Justice. In addition, HIPAA expanded OIG responsibilities to include: (1) coordination of Federal, state, and local enforcement efforts targeting health-care fraud; (2) responsibility for providing industry guidance concerning potentially fraudulent health-care practices; and (3) establishment of a national data bank to report final adverse actions against health-care providers. The law enhanced the OIG's ability to use its administrative enforcement tools to exclude fraudulent providers from the Medicare and Medicaid programs. It also created, for the first time, a Federal offense exclusively for health-care fraud.

With additional resources and new responsibilities, IG Brown established the Office of Counsel to the Inspector General (OCIG) reporting directly to the IG and assigned exclusively to OIG matters. Prior to 1996, the OIG obtained legal guidance from the Department's Office of the General Counsel. However, after passage of HIPAA, the expanded scope of the OIG responsibilities necessitated greater legal support. Since its inception, OCIG has been an integral part of OIG functions and specifically charged with the HIPAA-mandated provision of providing industry guidance, monitoring corporate integrity agreements, and providing legal counsel and representation for the OIG staff in health-care fraud enforcement.

In 1997, HIPAA funding also permitted the OIG to open offices in more states increasing the number of states with an IG presence to 26. (By 2002, the OIG had offices in all 50 states, the District of Columbia, and Puerto Rico.) To keep up

with the increasing workload, HIPAA funds were used to hire new staff, and the total staffing levels increased from 902 in 1996 to 1,258 within 2 years. These changes dramatically enhanced the OIG's capabilities for initiating new projects and studies.

The OIG also received national attention for its cost-saving initiatives and innovative and far-reaching audits and evaluations. The Balanced Budget Act of 1997 (BBA) took many of the OIG's recommendations and incorporated them into law. Some of these recommendations included specific fraud, waste, and abuse prevention measures; others represented broad restructuring of programs that made them less vulnerable to abuse. The BBA had a particularly significant impact on nursing homes, home health agencies, and durable medical equipment suppliers and, according to the Congressional Budget Office, saved almost \$70 billion over a 5-year period.

The 1990s also marked a shift away from investigations of individual providers to nationwide investigations of large corporations engaged in widespread abusive and fraudulent health-care practices. For instance, a 1996 settlement with a home health corporation after a comprehensive investigation involving all OIG components resulted in \$225 million in recoveries. By 2000, the OIG was achieving record investigative recoveries, including an unprecedented \$840 million settlement with a national hospital chain.

OIG in the 21st Century—National Events Present New Challenges

The events of September 11, 2001 had a significant impact on the work performed by the OIG. Traditionally, the OIG had performed some oversight of HHS activities related to national security and health-care readiness in the event of a national disaster. However, after the terrorist attacks, Secretary Tommy G. Thompson asked then IG Janet Rehnquist to increase OIG oversight

to include the review of areas of potential vulnerability, the readiness and capacity of government responders at all levels, and security at Federal and other laboratories. The OIG immediately prioritized audits and evaluations related to bioterrorism preparedness and response. Work on bioterrorism-related projects includes evaluations of the effectiveness of the Centers for Disease Control and Prevention's bioterrorism preparedness efforts and the ability of states and localities to deploy the National Pharmaceutical Stockpile (now known as the Strategic National Stockpile). This area continues to be a priority for the Department and the OIG.

The OIG's health-care oversight and enforcement work remained vital especially since other law enforcement partners, such as the Federal Bureau of Investigation, focused on anti-terrorism activities. During the late 1990s, OIG audits and evaluations revealed numerous instances where the Federal Government and the states paid too much for Medicare and Medicaid prescription drugs. Growth in the programs, coupled with significantly increased use of prescription drugs, resulted in inefficiencies that cost the Medicaid program billions of dollars. In addition, OI, in conjunction with the Department of Justice, investigated a number of major pharmaceutical companies regarding drug pricing, kickbacks, and illegal marketing practices. These investigations resulted in more record settlements for the OIG. For example, recoveries from cases against major pharmaceutical companies totaled more than \$2 billion in 2002-2003.

Since the late 1990s, the OIG has reported on instances in which Medicare, like Medicaid, was paying too much for certain covered drugs. Similar findings with respect to durable medical equipment pricing received significant publicity in early

2000 and were the subject of a Congressional hearing. The OIG found that the Medicare and Medicaid programs paid much more for certain durable medical equipment than other Federal health-care programs, or for prices widely available in the marketplace. The problems identified by the OIG on pricing of drugs in the Medicare and Medicaid programs and findings related to payment for durable medical equipment were important considerations during negotiations and debate on the Medicare Prescription Drug, Improvement and Modernization Act (MMA).

On December 8, 2003, President Bush signed the MMA into law. The law brings about the most sweeping changes to the Medicare program since its inception in 1965. The MMA contains a Medicare prescription drug benefit, includes a restructuring of the traditional Medicare program, and institutes other changes in both Medicare and other Federal health programs. The MMA also creates substantial new OIG oversight responsibilities and contains a number of provisions that direct specific work to be conducted by the OIG. These include provisions related to pricing of prescription drugs and durable medical equipment and supplies. As in the past, the OIG is focusing on meeting the new challenges presented by this law.

Although recent years have seen a major organizational change, the OIG's statistical accomplishments remain extraordinary. In Fiscal Year 2004, the OIG reported savings of approximately \$30 billion, in addition to obtaining over 500 criminal convictions and approximately 260 civil actions. Also, despite the necessary shift of national enforcement efforts to address terrorism, the work of the OIG continues to receive significant attention from other Federal agencies, the Congress, patient advocacy organizations, the academic community, and the health-care industry. 🏠

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Ignorance of the Law Is No Excuse

What Every Office of Inspector General Needs to Know About Legal Authorities

The saying goes “what you don’t know can’t hurt you.” Whoever said that probably is unemployed after losing their job for not doing something they were supposed to do, or even worse, incarcerated after doing something they shouldn’t have done. So perhaps an improvement on “what you don’t know can’t hurt you” might be “ignorance of the law is no excuse” or “what you don’t know can hurt you.” As a general matter, it is important for every citizen to know about the law. It is even more important for government officials, and especially government law enforcement officials, to know and understand the laws that authorize their actions.

To assist the government officials at the United States Postal Service (USPS) Office of Inspector General (OIG), the Office of General Counsel for the OIG developed a summary of laws relevant to the USPS OIG.

We then revised the list of laws by eliminating the authorities that were applicable to the USPS only. The purpose of this revision was to develop a list of laws relevant to all OIGs that could be shared throughout the Inspector General (IG) community. To expand the availability of this list, it has been posted at www.ignet.gov/related1.html#general under the General Reference tab for anyone who is interested in knowing the major laws applicable to IGs.

The list of relevant laws, which is designed for general guidance, includes statutory provisions from the United States Code, regulations from the Code of Federal Regulations, and other legal authorities such as Executive Orders, Office of Management and Budget Circulars, and Attorney General and President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency guidelines. The list does not contain all relevant authorities. For example, it does not list agency-specific laws such as the Postal Reorganization Act of 1971 or the Legal Services Corporation Act that are applicable to individual agencies. In addition, all items on the list may not apply to all agencies. For

example, the Government Paperwork Elimination Act and the Administrative Procedures Act, which are not applicable to the USPS, are included on the list because they apply to most agencies.

The list is current as of February 2005 and may need to be updated due to changes in the law, which occur often. Also, although we attempted to identify all laws, the list may not be exhaustive. Please consult your legal advisor to ensure that the list is complete, the listed legal authority applies to your agency, and the law is up-to-date.

We wish to thank the many attorneys and support staff from the IG community who contributed to this effort. 🏠