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United States Government Accountability Office
Washington, DC 20548

May 8, 2009

The Honorable Diane E. Watson
Chairwoman
Subcommittee on Government Management,
Organization, and Procurement
Committee on Oversight and Government Reform
House of Representatives

Subject: *Statutory Authorities to Prohibit Inspector General Activities*

Dear Madam Chairwoman:

This letter provides information you requested at the March 25, 2009, hearing entitled *The Roles and Responsibilities of Inspectors General within Financial Regulatory Agencies*. During the hearing, the former Inspector General (IG) of the Department of Homeland Security (DHS) testified that provisions of the Inspector General Act of 1978, as amended (IG Act), allow the Secretary of the Department of the Treasury to prevent the IG from pursuing an investigation or audit, including the issuance of subpoenas, under certain conditions.¹

Due to concerns about the possible inappropriate use of such authorities, you asked us to identify federal agencies that possess the authority under the IG Act to prohibit audits and investigations by their offices of inspectors general (IG offices) and to determine the extent to which such provisions have been used to limit the IGs' activities. We reviewed the IG Act to identify those IG offices subject to such authority and contacted each office identified to obtain information about the extent to which the relevant authorities had been exercised. In addition, we included the IG office at the Central Intelligence Agency (CIA), which was not established under the IG Act, but is subject to provisions in its enabling legislation that are similar to those in the IG Act.²

The IG Act provides specific protections intended to help ensure the independence of IG audits and investigations. For example, the IG Act prohibits an agency head from preventing an IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. However, the IG Act authorizes the heads of six agencies to prohibit their respective IGs from carrying out or completing an audit or investigation, or from issuing any subpoena if the head determines that such prohibition is necessary to prevent either the disclosure of certain sensitive information or significant harm to certain national interests. In addition, the enabling legislation for the CIA IG contains a provision that authorizes the CIA Director to prohibit the audits and investigations by the IG if the Director determines such prohibition is necessary to protect vital national interests of the United States. Table 1 shows a summary of the restrictive statutory provisions applicable to these seven federal agencies.

¹Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), codified as amended at 5 U.S.C. App.

²50 U.S.C. § 403q.

Table 1. Departments and Agencies with Statutory Authority to Prohibit IG Activities

Agencies and departments		Statutory authority	Official who may exercise authority	Permissible reasons for prohibiting IG activities
1.	Department of Defense (DOD)	IG Act, as amended § 8(b)(2)	Secretary	Necessary to preserve the national security interests of the United States
2.	Department of the Treasury	IG Act, as amended § 8D(a)(2)	Secretary	Necessary to prevent the disclosure of certain information or to prevent significant impairment to the national interests of the United States
3.	Department of Homeland Security (DHS)	IG Act, as amended § 8I(a)(2)	Secretary	Necessary to prevent the disclosure of certain information or to prevent a significant impairment to the interests of the United States
4.	Department of Justice (DOJ)	IG Act, as amended § 8E(a)(2)	Attorney General	Necessary to prevent the disclosure of certain information or to prevent the significant impairment to the national interests of the United States
5.	U.S. Postal Service (USPS)	IG Act, as amended § 8G(f)(3)(A)(ii)	Board of Governors	Necessary to prevent the disclosure of certain information or to prevent the significant impairment of the national interests of the United States
6.	Federal Reserve Board (FRB)	IG Act, as amended § 8G(g)(3)	Chairperson of the Board of Governors	Necessary to prevent the disclosure of certain information or to prevent significant impairment to the national interests of the United States
7.	Central Intelligence Agency (CIA)	50 U.S.C. § 403q(b)(3)	Director	Necessary to protect vital national security interests of the United States

Source: GAO analysis.

In 1982, Congress amended the IG Act to establish the Department of Defense (DOD) IG and placed the IG under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations or the issuance of subpoenas that require access to certain information.³ Specifically, the Secretary of Defense may prohibit the DOD IG from initiating, carrying out, or completing such audits or investigations or from issuing a subpoena if the Secretary determines that the prohibition is necessary to preserve the national security interests of the United States. However, Congress required that if the Secretary exercises this authority, the DOD IG shall notify certain congressional committees and the Secretary then shall state to those committees the reasons for exercising that authority.

³5 U.S.C. App. § 8.

In 1988, Congress again amended the IG Act to apply a similar provision at the Department of the Treasury.⁴ Congress authorized the Secretary of the Treasury to prohibit the Treasury IG from carrying out or completing an audit or investigation or from issuing a subpoena if the Secretary determines that it is necessary to prevent significant impairment to the national interest or the disclosure of certain sensitive information. Such information includes (1) ongoing criminal investigations or proceedings, (2) sensitive undercover operations, (3) the identity of confidential sources, including protected witnesses, (4) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior, (5) intelligence or counterintelligence matters, or (6) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person authorized federal protection under certain laws. The Treasury IG and the Secretary of the Treasury must follow a congressional notification process similar to that applicable to DOD.

Similar statutory authority was provided to the agency heads at DHS, the Department of Justice (DOJ), the United States Postal Service (USPS), and the Federal Reserve Board of Governors of the Federal Reserve System (FRB) through amendments to the IG Act.⁵ The heads of these agencies and the IGs must follow congressional notification requirements similar to those applicable to DOD and Treasury. At the CIA, the Director may prohibit the work of the IG if the Director determines such prohibition is necessary to protect vital national interests of the United States. If the CIA Director prohibits the CIA IG's activities for reasons authorized by statute, the Director must submit the reasons within 7 days to the intelligence committees and advise the IG that such a report was submitted as well as provide a copy of the report to the IG that is consistent with the protection of intelligence sources and methods. The CIA IG may also submit comments considered appropriate to the intelligence committees.

Our work was based on our March 25, 2009, testimony conducted in accordance with generally accepted government auditing standards. In addition, we reviewed the IG Act and related legislation to identify statutes that authorize the head of the agency to prohibit IG activities, and contacted the relevant IG offices to discuss implementation of these authorities. Based on the information provided by each IG office, no head of an agency, except for that of DOJ, had exercised the authorities in these statutes. DOJ IG staff provided information to show that the provisions applicable to the DOJ IG had been exercised once in the late 1990s to defer the release of an IG report containing sensitive information, and that a notification letter was sent to Congress.⁶

⁴5 U.S.C. App. § 8D.

⁵5 U.S.C. App. §§ 8I, 8E, 8G.

⁶In a letter dated January 23, 1998, the Attorney General exercised her authority under section 8E(a)(2) to direct the DOJ IG to defer release of a report entitled *The CIA-Contra-Crack Cocaine Controversy: A Review of the Justice Department's Investigations and Prosecutions*. The Attorney General stated in her letter that because the report contained information related to an ongoing drug investigation, she had determined that the release of the report at that time would lead to the disclosure of one or more of the categories of sensitive information specified in section 8E(a)(1). The IG, by a letter also dated January 23, 1998, notified Congress of the Attorney General's action. When the drug investigation was concluded several months later, in a letter dated July 14, 1998, the Attorney General notified the IG that the law enforcement concerns that had halted the release of the IG report were no longer applicable. On July 22, 1998, the IG publicly released the report without any change to the original report. A fuller description of the events that resulted in the Attorney General's decision to delay the public release of the report can be found on the DOJ IG's website at <http://www.usdoj.gov/oig/special/9712/epilogue.htm>.

We are sending copies of this letter to other interested congressional committees; the Deputy Director for Management of the Office of Management and Budget; the IGs at each of the seven agencies identified in this letter; and the Chairperson, Council of IGs on Integrity and Efficiency. Copies will be made available to others upon request. This letter will also be available at no charge on GAO's home page at <http://www.gao.gov>.

If you or your staff have any questions regarding this letter, please contact me at (202) 512-9406 or at raglands@gao.gov. Major contributors to this letter include Jackson Hufnagle, Assistant Director; Clarence Whitt, Analyst-in-Charge; Francis Dymond, Assistant General Counsel; and Jacquelyn Hamilton, Deputy Assistant General Counsel.

Sincerely yours,

A handwritten signature in black ink that reads "Susan Ragland". The signature is written in a cursive style with a long, sweeping underline.

Susan Ragland
Director
Financial Management and Assurance

(197203)

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