

*The Journal of* **Public**  
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# Public Inquiry

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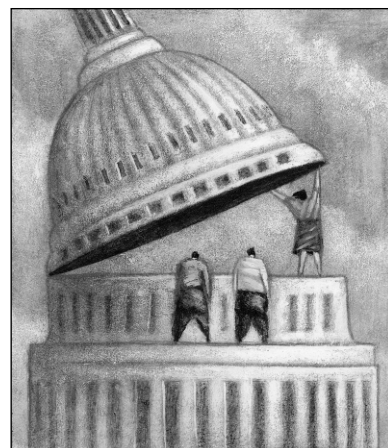
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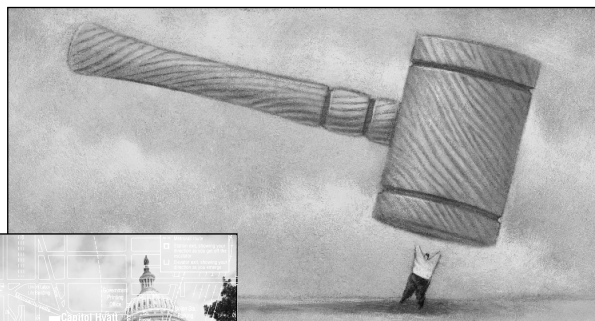
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# Arc Light

## Connecting the Dots between Agency Performance and Congressional Appropriations



Virginia L. Thomas

*“If properly implemented, the Results Act will assist Congress in identifying and eliminating duplicative or ineffective programs. We intend to monitor compliance with the Results Act at every step of the way to ensure that agencies are providing us with the information necessary to do our job, spending the taxpayers’ money more wisely.”*

Senator Ted Stevens, Chairman,  
Senate Appropriations Committee,  
June 24, 1997

### Verifiable Performance Pays Off, or it Will . . . or May . . .

Imagine May 2000. Your agency is testifying before its House or Senate appropriations subcommittee when suddenly the Democrats and the Republicans are drilling the witness about the actual evidence of performance or non-performance of your agency’s programs.

- At HHS, Congress wants to know the agency’s plan to evaluate the success of Head Start participants after they *leave* the program.
- OPM is asked what measures are being used to verify progress towards recruiting and retaining a better federal workforce.
- ONDCP is threatened with having its spending withheld until it demonstrates the actual effectiveness of an ad campaign.

This is no vision of the *future*. It is a small segment of the increasing number of “performance-oriented” questions posed in the FY 1999 appropriations cycle. The role of the Inspector General (IG) is likely to increase in the *next* round of hearings. After March 2000 (when the Performance Reports, as required by the Government Performance and Results Act, are due from agencies), the Congress is even more likely to ask the Inspector General to verify the validity of performance information Congress is receiving.

Inspector General offices may also receive congressional inquiries about programmatic overlap and duplication. The U.S. General Accounting Office (GAO) recently reported that, in the worst case scenario, there may be up to 118 other budget accounts or 465 program activities that relate to your agency’s performance goal. An OIG office may be able to report on other agencies’ progress of measuring or validating the measurements for programs similar to your agencies’ programs.

The Government Performance and Results Act (Results Act) became law in 1993. Passed with bipartisan congressional support and the Clinton Administration’s stamp of approval, the Act’s power lies in its focus on government outcomes—the intended results for taxpayers. The Results Act codified Washington’s desire to hold federal programs accountable for their performance and their use of taxpayer dollars. Congress is increasingly using performance information for funding, oversight or reauthorization decisions. This is occurring largely outside of much media scrutiny. It is a quiet but fundamental

change in the way Washington works—to the credit of many public servants in the Republican Congress and in the Clinton Administration.

## The Promise of Reliable Performance Information

Ultimately, this powerful oversight tool can tell us which tools of governance, such as regulations, tax incentives, educational campaigns, grants, or partnerships are effective and which are ineffective.

For example, if government's goal is to reduce teen smoking, right now we have little guidance on which of the existing federal efforts are showing the greatest return on tax dollars. Is it one of the two FDA regulations in existence? Is it a federally funded ad campaign? Are grants working? Are some grants working better than others? Does raising the cost for tobacco products work, or not?

Are we getting people off drugs, protecting our borders, reducing discrimination?

With credible information, the Results Act could provide a clue as to which of the 117 programs in 16 agencies that spend \$4.5 billion aimed at at-risk or delinquent youth annually could prevent another high school shooting such as occurred in Columbine, Colorado. It might tell us what works the best to bring non-english speaking students into english proficiency the fastest.

Better performance information could redirect precious resources, just as many governors or mayors have found at the state and local levels.

## Reliable Data is the Key

The law is useless, however, unless Congress can *rely* on the information it is provided by federal agencies. Congress is counting on having credible, results-oriented information about federal programs and they will be looking to the OIG community to verify that they are receiving *accurate* information about the effectiveness and efficiency of federal programs and spending.

Data needs to be verified. Telling Congress the truth about agency performance can't wait for March 2000, when the Results Act requires a new Performance Report to be issued.

Misleading performance data emerged during this year's appropriations cycle about how many poor people were, in fact, being served with federal dollars from the Legal Services Corporation (LSC). [For more information, see <http://www.heritage.org/library/background/bg1312.html>] In that case, Congress was initially provided with *inaccurate* performance data—data that attempted to make a case for increased federal funding. Yet, one-third to two-thirds of reported cases were collapsing under new scrutiny by GAO, IG audits and the press.

LSC found they had enormous problems in providing credible data on the *quantity* of poor people served by fed-

eral dollars. Yet, Congress is really salivating for improved *quality* of performance data across the board—who is getting served, who is turned away, is there long-lasting positive impact from governmental programs or is unintended harm occurring from federal involvement?

Congress expects to be informed by the IG of bad performance information as it becomes known, and particularly when it is being used by the agency to promote an inaccurate perception of program effectiveness. In a significant warning to Congress and the OIG community, GAO recently said that 20 of 24 of the major agencies were not expected to be able to provide credible performance data to the Congress relative to what agencies are trying to achieve with taxpayer money.

## Congressional Focus on Performance is Increasing

Without extensive press scrutiny, Congress has been strategically raising the level of discussion about performance with departments and agencies.

- Early in 1999, Chairmen Dan Burton of the Government Oversight Committee and House Appropriations Chairman Bill Young sent a letter to all 24 agencies covered by the Chief Financial Officers Act threatening to cut their funds if they didn't improve performance, particularly on the major management problems.
- House Majority Leader Dick Armey continues to focus congressional and GAO attention on further implementation of the Results Act. One letter Majority Leader Armey sent to all Inspectors General asked them to review the area of data validity in the Results Act process.
- On August 17, 1999, Senate Governmental Affairs Chairman, Fred Thompson, sent detailed and individual letters to the heads of federal agencies asking them to focus on specific and longstanding performance and management problems.
- In January 2000, a special Committee Report is expected from the Senate Appropriations Committee which details its judgment on FY 1999 Performance plans issued by agencies. In this report, the committee is expected to analyze the performance goals and measures for key programs and activities and address questions such as those posed below.

Are agency performance goals and measures:

- ✓ focused on the most important objectives of the program/activity?
- ✓ as results-oriented as they reasonably could be?
- ✓ reasonably challenging?
- ✓ subject to independent, verifiable, reliable measurement?
- ✓ excessive in number or in need of elimination?

- ✓ addressing the major management/performance problems identified by GAO and the agency's Inspector General?
  - ✓ evidencing coordination of cross-cutting programs and activities with other federal agencies or other units within the same agency?
  - ✓ indicative of clear linkages between and among the plan's annual performance goals, the mission and goals established in the agency's strategic plan, the agency's budget program activities, and its day-to-day operations?
- The Adult Education program at the Department of Education was rewarded by its House Appropriations subcommittee over the last 2 years for having designed logical performance measures and for having credible data.
  - A December 1998 Congressional Research Service report shows an increased use of performance measures, particularly by congressional appropriators in the 104th and 105th Congresses. In the 105th Congress, CRS found 45 public laws and 78 reports accompanying bills which referenced performance measures or the Results Act. In the 104th Congress, there were 14 public laws and 27 reports. Congress is showing an awareness and interest in incorporating performance information into its decision-making. If they do not like what they see agencies set forth voluntarily, Congress has shown a new interest in mandating the preferred measure for a program.
  - On September 15, 1999, a confirmation hearing for Sally Katzen for Deputy Director for Management at the Office of Management and Budget (OMB) was dominated by intense questioning from Senator Fred Thompson (R-TN) about the progress and leadership, or lack thereof, by OMB in solving longstanding management problems and showing leadership with agencies on the Results Act.

## Summary

Washington spends in one second, \$50,775, what most families earn in one year. Our government is a \$1.7 trillion entity with a \$5.6 trillion debt. Every day Washington is making decisions on how to shape federal programs and apply federal resources to make the wisest use of taxpayer dollars and achieve the greatest good for our citizens. Until recently, this debate has excessively centered on intentions, rather than actual performance and results.

Obtaining credible data on program performance, an area where Inspectors General can help restore integrity and honesty, will be of greater importance in shaping congressional funding decisions next year. However, the jury is still out as to whether increased performance-based government is just a new paperwork blizzard or, with verifiable data, it will become the stepping stone to a smaller, smarter, common sense federal government worthy of Americans. The OIG community, along with GAO, may determine the answer. 🏠





# Moving Violations

## *A Selective Compendium of Current General Management Laws*

As a federal government manager, do you often wonder about the design, rationale and scope of the laws under which the Executive branch is required to function? How about what they all are? Well look no further! The Congressional Research Service (CRS) has done the legwork for you. On July 28, 1999, CRS issued the report *General Management Laws: A Selective Compendium*. Did you know that as of the close of 105th Congress, there were approximately 80 federal management laws, depending upon definition, thus making it easy to lose sight of laws that actually exist. This report, under the coordination of Ronald C. Moe, consists of a compendium of approximately 50 general management laws. Each section of the report was prepared by a CRS analyst responsible for monitoring the authorities and implementation of the several laws.<sup>1</sup>

It is no surprise that general management laws come in different shapes and sizes. Some are well known and dramatic, while others hold a lower profile. While the purpose of this report is to assist the congressional staff, I believe it also provides Federal managers with an excellent repository of the management laws for new managers, as well as a great opportunity for seasoned managers to reacquaint themselves with the very tools that they need to manage every working day. Believing that this entire document would be useful to all managers in differing ways and due to its size, I have opted to provide a snap shot of what it contains. I have provided for your convenience the introduction and table of contents. If you wish to obtain this report in its entirety, please contact the CRS (Library of Congress) directly using the order code RL30267. The CRS will revise and update this compendium at the close of each Congress.

... "General Management laws are intended to provide appropriate standards for government organizations and processes to ensure that the government is accountable and predictable in its actions. Uniformity, however, is not an end in itself, rather, in practice, the general management laws reflect the conceptual and legal agreements between Congress and the Executive branch regarding administrative behavior and performance. Exemptions to these laws are frequently provided by statute or agreement, thus permitting the flexibility critical to a climate of creative management."

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<sup>1</sup> The following CRS analysts contributed to the Compendium: Coordinator Ronald C. Moe, Henry Cohen, Roger Garcia, Harry Steven Hughes, Frederick M. Kaiser, Geneieve Knezo, Glenn McLoughlin, Bob Lyke, Louis Fisher, Thomas Nicola, Sharon Gressle, Leslie Gladstone, Suzanne Cavanagh, John R. Luckey, Richard Beth, John D. Motef, Virginia McMurtry, Ronald C. Moe, Harold Relyea, Stephanie Smith, James Saturno, Robert Keith, James M. Bickley, Dennis Zimmerman, Barbara Schwemle, William Whittaker, Carolyn L. Merck, Mildred Amer, Michael Seitzinger.

## EXCERPT

## Introduction

The purpose of this report is to assist congressional staff in understanding the design, rationale, and scope of the management laws of general applicability under which the executive branch is required to function. “General management law,” as used in this report, refers to those cross-cutting laws regulating the activities, procedures, and administration of all agencies of the U.S. government, except where exempted by category of organization or by a provision in their enabling statute. The quality of the general management laws is a crucial factor in maintaining the integrity and accountability of the executive branch to the President, and ultimately to Congress. This report covers congressional action through the close of the 105th Congress.<sup>2</sup>

General management laws are intended to provide appropriate uniformity and standardization for government organizations and processes. Uniformity and standardization by themselves, however, are not the objective of general management laws. Such an objective would stultify government as “one size does not fit all.” What these laws do reflect, therefore, are the conceptual and legal agreements between the branches respecting the management of the executive branch. In functional terms, general management laws are statements of presumption guiding governmental behavior; that is, certain doctrinal provisions reflected in legal language stand until and unless an exemption is permitted. Exemptions may be assigned by a general statute to a category of agency, or they may be present in provisions of the agency’s enabling statute. Exemptions from general management laws may be mandatory or discretionary.

General management laws come in various guises and may be dramatic in their coverage and impact, as is the case with the Administrative Procedures Act, Budget and Accounting, Paperwork Reduction, and Freedom of Information Acts, or they may be of relatively low visibility (although visibility is not necessarily equitable with impor-

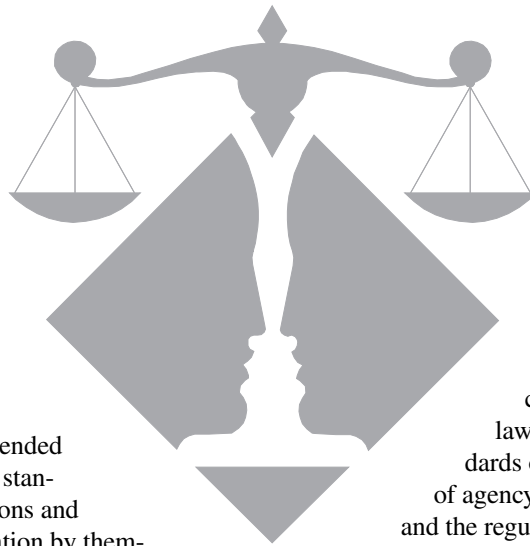
tance), such as the Federal Advisory Committee Act, and the User Fee Act of 1951. In recent years, a number of additional general management laws, such as Federal Managers Financial Integrity Act, have been enacted, each supported and justified on its own definition of a problem, but often with what some observers believe to be little consideration of its probable impact upon other related general management laws.

This report may be useful in addressing a number of questions of interest to Congress. Have general management laws, viewed both singularly and collectively, been designed to promote a consistent and comprehensible theory of management appropriate to the distinctive requirements of the government sector? Conversely, are the general management laws, viewed comprehensively, largely the sum total of many singular laws intended to achieve different and occasionally conflicting ends? Are there too many laws, or too few? Do they balance standards of legal accountability with the needs of agency management discretion? Are the laws and the regulations promulgated pursuant to them under the continuing supervision of, and subject to, periodic revision by central management agencies accountable directly to the President or, do the laws reflect a gradual presidential retreat from active management responsibilities? Do the laws encourage agency leadership to proceed largely on its own, seeking waivers from coverage and accommodations with other agencies, private contractors, and Congress? What interest does Congress have in current management laws? Do they provide opportunities to enhance the capacity of agency leadership to implement laws and policies, or opportunities to insure greater agency sensitivity to congressional committees? In short, Presidents, and less directly, although equally critically, Congress, both have a stake in the quality of the general management laws.

Two different schools of thought, each with permutations, inform discussion of management in the executive branch of government and relevant general management laws. One understanding, which forms the underlying basis for much of the current National Performance Review and reinvention exercise generally, is the call for an “entrepreneurial management paradigm.”<sup>3</sup> This paradigm (model)

<sup>2</sup> An earlier version of this Compendium (CRS Report 97-613 GOV) appeared in June 1997, and reflected the status of general management laws as of the close of the 104th Congress. This revised and updated Compendium provides a second status report on the general management laws in effect as of the close of the 105th Congress. This Compendium will be revised and updated at the close of future Congress.

<sup>3</sup> U.S. Office of the Vice President, National Performance Review, *From Red Tape to Results: Creating Government That Works Better and Costs Less* (Washington: GPO, 1993). David Osborne and Ted Gaebler,



**EXCERPT**

advances the idea that a set of generic management principles and incentives are equally applicable in the government and private sectors.

Under the entrepreneurial management paradigm, central management structures and controls, including general management laws, are to be limited in scope. Variations and exceptions for individual agencies are to be encouraged on the grounds that this enhances an agency's effectiveness, productivity, and technological receptivity, resulting in improved efficiency and lower costs. Most remaining central management in the executive branch is to be integrated with and (often) subordinated to the budget process or the specific needs of the individual agency and its mission.

A second school of thought, referred to as the "administrative management paradigm," has its foundation in constitutional legal theory.<sup>4</sup> This management paradigm accepts as its major premise the distinctive character of the governmental and private sectors, distinctions based on legal principles, not economic axioms. Governmental management has its basis in public law while private sector management relies principally on private law. Thus, managers in the governmental sector must find their authority for action in the laws, especially general management laws. In the private sector, on the other hand, accountability of managers ultimately rests with the private owners. Authority for managerial action is to be found in the promotion of the equity interests of owners and the fiduciary interests of the managers themselves.

The importance of this debate respecting the fundamental nature of management in the governmental sector is substantial. Is the management of a government agency (e.g., Bureau of Land Management in the Department of the Interior), essentially the same as management of a private corporation (e.g., General Electric) with managers being motivated by the same economic incentives, or, is the management of a government agency essentially different from management of a private corporation, with different motives and incentives at work?

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*Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (Reading, MA: Addison-Wesley Publishing Co., 1992). U.S. Office of the Vice President, *Businesslike Government: Lessons Learned from America's Best Companies* (Washington: GPO, 1997).

<sup>4</sup> The most prominent statement of the administrative management paradigm, is found in the first Hoover Commission report of the late 1940s, which emphasized the need for executive branch-wide accountability to the President and the necessity of comprehensive management laws. The need for uniform standards of basic procedures, processes, and practices across the agencies is the working presumption with exceptions and exemptions being assigned after a burden of proof has been met. U.S. Commission on Organization of the Executive Branch of the Government, *General Management of the Executive Branch* (Washington: GPO, 1949). For additional discussion of the role of public law in the administration of the federal government, consult: Philip Cooper and Chester Newland, eds., *Public Law and Administration* (San Francisco: Jossey-Bass, 1997)

This compendium of central management laws is not designed or intended to settle the debate between these competing interpretations of how the executive branch ought to be organized and managed.<sup>5</sup> Instead, the compendium is designed to provide information useful in determining what constitutes central management currently, what its basic statutory components are, and how these have changed in the post-World War II era. In addition, identifying central management laws and providing summaries of the principal ones can help to assess whether there is a need for revising and updating existing statutes, improving coordination among them, enacting new management statutes (or, conversely, repealing existing statutes), and reorganizing the central management agencies functioning under presidential direction. Finally, this compendium can assist Congress in its oversight role by providing a basis for comparing relevant practices among departments and agencies.

In order to accomplish the objectives of this compendium, five broad categories of central management laws have been identified: (1) Institutional and Regulatory Management and Evaluation; (2) Financial Management, Budgeting, and Accounting; (3) Human Resources and Ethics Management; (4) Procurement and Real Property Management; and (5) Intergovernmental Relations.

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<sup>5</sup> For an extended discussion of the theories of governmental management competing for acceptance today, consult: James P. Pinkerton, *What Comes Next: The End of Big Government—and the New Paradigm Ahead* (New York: Hyperion, 1995). Ronald C. Moe and Robert S. Gilmour, "Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law," *Public Administration Review*, 55 (March/April, 1995): 135-46. U.S. Office of the Vice President, National Performance Review, *Common Sense Government Works Better and Costs Less* (Washington: GPO, 1995). Barry Bozeman, ed., *Public Management: The State of the Art* (San Francisco: Jossey-Bass, 1994). B. Guy Peters, *Governing: Four Emerging Models* (Lawrence, KS: University Press of Kansas, 1996). Jonathan Walters, "Fad Mad," *Governing*, 9 (September, 1996): 48-52.

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## Conclusion

All in all, one can deduce from the excerpts provided that managing day-to-day government is no easy task. As stated by the CRS, this report on central management laws is not designed or intended to settle the debate between how the Executive branch should be organized and managed. Instead it provides a central repository of management laws and a foundation that can help assess where there is a need for revising and updating existing statutes, improving coordination among them, enacting new management statutes (or repealing existing ones), and reorganizing the central management agencies functioning under presidential direction. 📖



# Devices and Desires

## *Legislative Initiatives to Improve Government Operations*



Leonard Weiss

### Introduction

Proper discussion of the subject of this paper requires not just many pages but many volumes. In every Congress, there are literally dozens of laws passed with a claim of assuaging public concerns and improving the operation of government. Sometimes these claims are justified and sometimes not.

In order to make the subject manageable within the few pages allotted to this article, I shall discuss only a few of the major tools that have been created or transformed by Congress in response to rising public concerns about government performance beginning in the post-Watergate, post-Vietnam era. This eliminates consideration of many fundamental older laws that are at the heart of government operations like the Administrative Procedure Act of 1946, various reorganization acts beginning with that of 1949, the Freedom of Information Act, and others. Focusing on more recent legislation may give insight into the likely direction of future congressional activity in this area.

Finally, for the purposes of this article, “improvement” of government operations is taken to mean a rise in efficiency or productivity by the Executive Branch bureaucracy in carrying out authorized federal programs or activities.

### The Status of Government

Four decades ago, Americans had a very high opinion of their government, with polls reporting that at least two-thirds of those questioned agreeing with the statement that government could be trusted to do the right thing most of the time. Recent polls show the opposite, with more than 60% of Americans believing that government performs poorly and wastes money.

Has government actually deteriorated in America during the past 40-50 years?

The evidence is that in relation to the growth and complexity of American society, most government agencies are doing well in carrying out their mission. Transportation safety is at its peak, environmental regulation is producing significant pollution reduction, the marketplace is less risky for consumers than in the past, and government (at least the Executive

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\* Leonard Weiss was a staff director on the Senate Committee on Governmental Affairs from 1977-99. During his tenure, he was deeply involved in directing legislation creating new offices of Inspector General, the CFO Act of 1990, the GAO Act of 1981, the Federal Acquisition Streamlining Act, the Government Performance and Results Act, and many other statutes regarding government management. He is currently a private consultant.

Branch) has led the way via its own practices in satisfactorily adjusting its workplace environment in response to what a 1950's observer would have described as breathtaking demographic changes in the workforce. The state of the economy shows the wisdom of current fiscal and monetary policy, the mail is getting delivered mostly on time, and social security checks come out without a hitch to millions of seniors.

Perhaps, nothing illustrates the gap between perception and reality better than the reported complaint by a congressional constituent that she was opposed to a government role in our health care system because she didn't want government messing around with her Medicare!

The volatile, if not schizoid, nature of American attitudes toward government reflects in part an ideological battle between those who favor a narrower scope of government activity and those who favor a broader scope. For half a century following the Roosevelt New Deal, the scope of government activity rose relentlessly. The rise was halted following the election of Ronald Reagan. The Reagan message, amplified by some media outlets, that "government is the problem" resonated with a public that, over the previous decade, had witnessed and been disgusted by a series of colossal examples of government scandal and ineptitude ranging from the Vietnam debacle and the Watergate affair to the hostage situation in Iran and runaway inflation.

Yet, the public was not ready for a wholesale curtailment of government services. So the Reagan "revolution" caused no significant contraction of the scope of government responsibility, although some federal responsibilities were shifted to the states, and other responsibilities were passively exercised. Administrations have come and gone since then, but the political battle over government's role is ongoing and the battlegrounds are many. Interestingly, both sides see the operational nuts and bolts of government and government accountability as the lever by which they hope to win the argument or at least maintain significant political support for their position.

Thus, it is not surprising to see progressives and conservatives come together in support of initiatives that may be characterized as reforms of government operations. Both sides want to see government work as efficiently as possible. But both sides also recognize that any reform or change directed at process carries within it the seed for expansion or contraction of government activity depending on the nature of the reform.

Sitting between the two ideological factions are those who take a purely pragmatic view of government activity. They have no preset bias for or against government activity; they're for it if it makes life better in a sustainable fashion and they're against it otherwise, but in any event they also want

their government to operate fairly and efficiently.

One of the ongoing major themes of government reformers has been accountability.

### Congress and Accountability

While it is difficult to say what the greatest single action of Congress has been to foster accountability in government, surely its encouragement of the transformed role of the General Accounting Office (GAO) since the mid 70's (as exemplified by the GAO Act of 1981) ranks near if not at the top. The GAO, which started out purely as an accounting service within government, with a reputation for stodginess and inflexibility, has

developed over the past two decades into the premier investigative arm of Congress, performing program audits and evaluations that have been invaluable tools for Congressional oversight and budget decisions. The agency overcame its original image of crustiness and a longer-term image of bias against women to become one of the most progressive, innovative, and well-managed agencies in government. Its good record is not an easy achievement since it must answer to 535 opinionated and vociferous members of Congress, whose fortunes as representatives may rise or fall depending on the content of certain GAO reports. The ability to maintain considerable independence in the face of such a difficult challenge is a tribute to the dedication of the





Comptrollers General and to the Congress that saw the wisdom of expanding GAO's audit authority via the GAO Act of 1981 and investing the Comptroller General position with a 15 year appointment.

But reviewing programs in hindsight and from a distance may not prevent a disaster from occurring. The desirability of prevention or early detection of waste, fraud, and abuse is undeniable. So is the desirability of catching and punishing lawbreakers within the federal workforce and the contractor community. Toward these ends Congress created statutory Offices of Inspector General (OIG) beginning with HEW (now HHS) in 1976, adding OIGs in 12 additional agencies in 1978, and dozens more in 1989. There are currently 58 agencies with OIGs. The Inspectors General (IG), who report both to the head of their respective agencies as well as to Congress have been front line troops in the war on waste, fraud, and abuse. Much maligned by some senior executive branch managers and their allies, who claim the IGs intimidate federal managers from engaging in experimentation and innovation, the IGs have, on balance, acquitted themselves admirably in discharging their dual roles of exposing waste, fraud, and abuse when it occurs and helping their agency avoid pitfalls in the design of new programs or revamping of old ones.

That is not to say that the OIGs have been without controversy. Besides the previously mentioned concerns about the effect of the IGs on innovation in management, it is ironic that an institution that was invented and expanded by those with a more favorable view of the role of government in American life has probably helped reduce government's credibility with the American people. The work of the IGs and the latter's natural tendency to tout their accomplishments in terms of miscreants indicted or convicted and the amount of waste uncovered has a loyal following among today's media, which loves to report scandal and is not above hyping mistakes into scandal even when the real thing is absent. Thus, we have a steady stream of stories about waste, fraud, and abuse unleavened by context giving proper perspective to those reports. This feeds public disenchantment with government.

Nonetheless, it would be perverse to cut back the role of the IGs because of unbalanced reporting by the media. A private business can get away with writing off losses due to theft without a public report and doesn't need the consent of its customers to raise its prices to compensate (though it must worry about its competitive position and therefore will seek to take those steps to stop theft that do not cause its customers to shop elsewhere). Government does not have this option especially in the current climate of skepticism about public institutions. The IG reports provide one of many legitimate measures by which the public may judge government performance. It should not, of course, be the only measure.

### **Congress and Government Financial Management**

With the possible exception of tax collection, there is no area of government operations that is more negatively per-

ceived by the public than the way the federal government handles money. Numerous surveys reveal that Americans believe that as much as 50% of the money collected by government is wasted. It is certainly true that agency accounting practices have been abominable and in some cases virtually nonexistent. This, however, has begun to change in response to the Chief Financial Officers (CFO) Act of 1990, which established CFOs in all the cabinet departments and requires annual audited financial statements from the latter. This is something all major corporations do, but has never been done before by government agencies. "Clean" financial statements are being produced in increasing numbers of agencies, and the CFOs are gathering data which will ultimately enable unbiased judgments of agency performance to be made. The CFO Act also puts into place the organizational mechanism for reducing the accounting chaos created by the hundreds of different and incompatible accounting systems used by agencies and sub-agencies. The CFO Act was called by former Comptroller General Charles Bowsher as "the greatest advance in federal financial management in the last 40 years".

### **Congress and Government Procurement**

The creation of the National Performance Review (NPR) by the Clinton Administration under the direction of Vice President Gore has focused renewed attention on government management in recent years. One of the basic themes of the NPR is that decentralization of government management coupled with the introduction of competition and market forces into the delivery of government services will help create a government that "works better and costs less." Congress has worked cooperatively with the administration on this concept and has produced some notable associated laws, particularly in the area of government procurement.

The Federal Acquisition Streamlining Act and the so-called Clinger-Cohen Bill have given federal managers more flexibility in the purchase of computers and other equipment as well as outside services. Prior to enactment of these measures, most government purchases of computers and other items generic to the functioning of an office were carried out by the General Services Administration (GSA). While GSA remains the government's central agency for dealing with real estate, furniture, various housekeeping services, and the provision of many supplies, there is an unmistakable tendency to decentralize authority for the purchase of many items whose cost does not exceed a (rising) threshold. The use of electronic commerce by government managers is also rising rapidly in response to congressional encouragement and is destined to be a ubiquitous feature in government procurement activity. Finally, the increasing purchases by the Department of Defense of commercial off-the-shelf, as opposed to specially designed, items to meet their needs will also help reduce the kind of government waste exemplified by the famous \$600 toilet seat.

## Congress and Government Personnel

To state the obvious, any improvement in government operations is critically dependent on the people who carry out those operations. In 1978, Congress enacted the Civil Service Reform Act that, among other things, established the Office of Personnel Management (OPM), the Senior Executive Service (SES) and the Merit Systems Protection Board (MSPB).

The SES has provided special recognition for senior managers to enable the attraction and retention of good people in an era of severe pay compression within the federal workforce, and the MSPB has enhanced efforts to raise the confidence of whistleblowers that they will be protected from retaliation.

One of the consequences of the Civil Service Reform Act was the establishment of demonstration projects in the area of personnel hiring and pay-for-performance that have provided a base for future government-wide changes in personnel policy. While such changes, along with more recent innovations passed by Congress concerning locality pay (adjusting pay to regional cost-of-living factors) and civil service retirement (establishing the Federal Employee Retirement System and Thrift Savings Plan that allows for employees to invest a portion of their retirement contributions in stock or bond funds) serve to improve the prospects for attracting and retaining good employees, personnel issues will continue to be a significant problem in any overall plans for improving the operations of government. The problems go beyond the usual ones that are faced by any bureaucratic organization, public or private.

First, the rhetoric of government-bashing that has been a prominent feature of American political discourse since the mid-70s, has had an inevitable spillover into harshly negative attitudes by many Americans toward the civilian federal workforce. They are an easy political target and have suffered accordingly. There is no magic bullet to turn around this consequence of an ideological war. It has had significant repercussions already, based on the low numbers of students at our better universities who say they are planning a career in government.

Second, to say that federal workers have not been treated well over the past two decades is not to say that all morale problems in the workforce stem from outside causes. The failure to ease the mind-boggling difficulty of removing poor performers and implementing other personnel actions without the filing of lawsuits is also a source of despair among managers and productive workers, and feeds into negative popular images of government workers.

Third, the government workforce of the next century will have to be better educated, particularly in the use of high technology, if improvements in the delivery of services and the carrying out of agency missions are to continue. Civil Service laws mandating training opportunities are a poor substitute for reform of our educational system, which

should be regarded as *sine qua non* for creating a future pool of competent workers for government as well as for the private sector. As we look to the next century, the changing demographics of the American workforce in the direction of more minorities is likely to be reflected to an even greater degree in the federal workforce. An educational system that fails our minority population may overwhelm attempts to improve government operations by more direct means.

## Congress and Performance Measures

Complementary to the CFO Act described above, the Government Performance and Results Act (GPRA or Results Act) was enacted by Congress in 1993. (It is an interesting example of bipartisanship at work, in that the idea for the bill came from a republican but the bill that became the basis for serious consideration was drafted almost entirely by democrats). This law calls for the establishment of performance measures for federal programs so that both Congress and the Executive can have an agreed basis for determining whether a program is meeting its intended goals, and, by extension, whether more or less money should be devoted to the task. GPRA, like the CFO Act before it, started out with a modest number of pilot programs, but was quickly expanded to government-wide implementation. Because of the inherent subjectivity of performance measures, GPRA has the potential to become a weapon useful to both sides of the ideological debate on the breadth and reach of government. Should its implementation become politicized, however, its usefulness as a tool for improving government performance, as opposed to a tool to carry on politics as usual, would be diminished.

## Conclusion

Constant vigilance, attention to detail, and unwavering focus on what the American people reasonably expect from their government are the keys to keeping the federal government operating efficiently and effectively. It is a difficult job, and congressional oversight is an indispensable element in the effort, requiring a bipartisan approach in order to be helpful.

Another important element concerns access to information by the public. The Internet has made direct and easy access to information about government activity available to everyone online. As this information base expands and is better organized, the internet may eventually enable the interested public to understand better how well government is working without having to rely on anecdotal information served up by agenda-driven third parties. A connected online network of agencies, citizens, and representatives could provide an unprecedented opportunity for identifying and implementing needed changes to the way government is operating on an ongoing basis. There is a good deal of hard work ahead to make that vision a reality. 🏠

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JONATHAN J. RUSCH

*Special Counsel for Fraud Prevention, Fraud Section,  
Criminal Division, U.S. Department of Justice*

# Fraud Busters

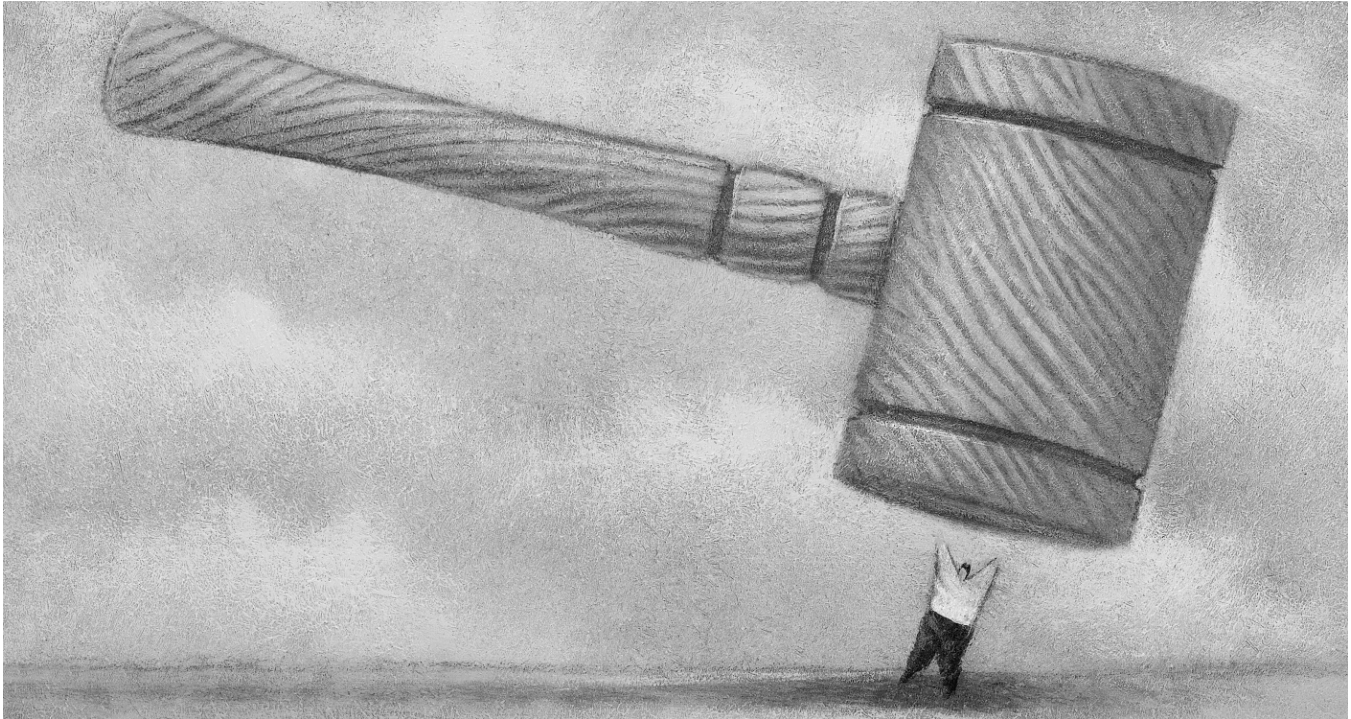
## *The Attorney General's Fraud Prevention Initiative*

For many years, the concept of fraud prevention meant relatively little to law enforcement authorities who investigated or prosecuted white-collar crime. Many dedicated and experienced prosecutors and investigators often felt that the best way they could prevent fraud was to lock up the criminals who committed it, and that fraud prevention, like other kinds of crime prevention, was simply “not in the job description.”

Increasingly, however, law enforcement is recognizing that preventing fraudulent conduct before it occurs advances two of the main purposes of the criminal law: deterring future criminal conduct and protecting the public from dangerous offenders. The mark of truly successful fraud enforcement is its effectiveness not only in apprehending those who have already violated the law, but also in preventing others from committing future acts of fraud. Fraud prosecutors and investigators, because of their experience and perspectives, know which portions of the public and private sectors are particularly susceptible to fraud. Through their investigations, they obtain a wealth of information about how criminals operate fraudulent schemes including whom they target, what weaknesses they look for, and what steps can be taken to prevent future fraudulent schemes. Unlike individual victims of fraud, members of the law enforcement community can use their experience and existing resources to help detect similarities between various types of fraudulent schemes and identify systemic conditions that encourage criminals to perpetrate fraud. In short, a greater emphasis on fraud prevention reinforces the traditional mission of law enforcement in combating fraud, since a primary goal of enforcement activity is to prevent the occurrence of future crimes.

The private sector is also coming to see the importance of fraud prevention in stemming the tide of fraud. In a 1998 survey by the consulting firm KPMG, 59 percent (compared to 52 percent in a 1994 survey) of U.S. companies and other organizations surveyed felt that the incidence of fraud would increase in the future. Moreover, two factors that the companies cited as contributing to the future rise in fraud increased significantly from 1994 to 1998: (1) insufficient emphasis on prevention and detection and (2) inadequate training of those responsible for fraud prevention and detection.

To encourage the law enforcement community and governmental agencies to place greater emphasis on the importance of fraud prevention in their law enforcement mission, Attorney General Janet Reno, on May 6, 1998, issued a Memorandum that established a Fraud Prevention Initiative at the Department of Justice (DOJ). This Memorandum was



sent to all United States Attorneys and Inspectors General and has the following four principal components:

(1) expansion of Systemic Weakness Reporting to all areas of fraud; (2) modification of the Department of Justice's Web site and promotion of other public awareness programs to educate the public about fraud and assist them in reporting fraudulent schemes; (3) promotion of "Exemplary Practices in Fraud Prevention"; and (4) establishment of an Attorney General's Award to recognize achievements in fraud prevention. [The full text of the Attorney General's Memorandum establishing the Initiative can be found on the Internet at [www.usdoj.gov/ag/readingroom/fraudprev.htm](http://www.usdoj.gov/ag/readingroom/fraudprev.htm).]

### Systemic Weakness Reporting

In 1997, the Attorney General required prosecutors and investigators in healthcare cases to report any systemic weaknesses they discovered in healthcare benefit programs, i.e. in Federal statutes, regulations, or policies, that failed to prevent, detect, or minimize losses due to fraud, waste, abuse, or mismanagement. This program proved to be so successful that the Attorney General established a separate reporting obligation for prosecutors and agents investigating all types of fraudulent activity (other than healthcare and tax fraud). Federal prosecutors and agents can submit a standardized form in reporting possible systemic weaknesses to the Department of Justice through the appropriate supervisory channels. The Fraud Section of the Criminal Division determines which reports identify issues of

national significance, refers the reports to the appropriate departments, agencies, or industries for corrective action, and follows up with departments or agencies to ensure that program changes are implemented.

To ensure that all components of federal law enforcement can take advantage of this process, I have met with dozens of Assistant U.S. Attorneys, federal agents, and Inspector General representatives to explain Systemic Weakness Reporting and to solicit their help in identifying systemic weaknesses that they have seen in their cases. The response of the law enforcement people in these meetings has been uniformly positive. One supervisory Assistant U.S. Attorney later told me that he went back to the prosecutors he supervised and told them, "Remember all those times when you've said, 'If only there was somebody we could tell about this [weakness]?' Well, now's your chance."

### Public Education and Awareness Programs

Some government agencies have extensive experience in informing and educating the public about different aspects of fraud such as, how to recognize it, how to avoid getting ensnared by it, and how to report it when they see it. Other agencies, even today, have not yet fully realized that if they can devise and carry out effective campaigns to make the public more aware of fraud and how to deal with it, they may be able to reduce the actual incidence of fraud within their jurisdictions or even investigate fraudulent schemes more effectively.



One road that a number of enforcement agencies have taken in their public education efforts is the “information superhighway” of the Internet. Both the Securities and Exchange Commission (SEC) and the Federal Trade Commission, for example, have used Web sites on the Internet to inform the public about recently discovered fraudulent practices in the marketplace and the common indicators of fraud. These sites ([www.sec.gov](http://www.sec.gov) and [www.ftc.gov](http://www.ftc.gov), respectively) are crosslinked with other Web pages to provide onestop access to all relevant information and to direct citizen complaints and referrals to the appropriate investigative offices.

To give citizens the greatest possible access to information about the fraudulent schemes we investigate, DOJ is in the process of modifying its Web site thus making it more informative to people with questions about various types of fraud, such as securities, healthcare, and telemarketing fraud. In addition to providing useful information to consumers about how to identify and avoid fraud, the site will provide links to various federal, state, and local agencies that have expertise in combating certain types of fraud. The Department of Justice’s telemarketing fraud Web page not only lists some of the standard practices that fraudulent telemarketers use to solicit customers, but includes photographs of “gimme gifts” (the inexpensive gifts that telemarketing schemes often give out to victims who have paid many times the value of these gifts) and even a video clip that shows an actual telemarketing “boiler room” in operation. It also provide the public with telephone numbers or cross-links to other government agencies or organizations that can receive complaints or provide further information to consumers. The Department of Justice intends to expand its Web pages to provide the public with information about all major areas of fraud, including cross-links to all Inspectors General Web-sites or other contact information for reporting fraud.

In addition, the DOJ will continue to increase public education about fraud through cooperative relationships with the public and private sector entities that have access to the mass media. Providing updates and bulletins about fraudulent activity to entities such as the National Association of Attorneys General and the American Association of Retired Persons (AARP) can greatly enhance prevention and enforcement efforts by spreading information about frauds and their indicators to a wider and more diverse audience. Along with DOJ’s Web site, these efforts can warn potential victims about their susceptibility to fraud and educate them about how to avoid such dangers.

### Exemplary Practices in Fraud Prevention

Some members of the law enforcement community, often in conjunction with the private sector, have taken a proactive approach towards fraud prevention by reaching out directly to the communities most at risk from fraud. Many of these

programs can be replicated by other offices that are experiencing similar problems with fraudulent crime without significant expenditures of personnel or resources.

For example, since December 1996, the Federal Bureau of Investigation, the Postal Inspection Service, the National Association of Attorneys General, and several other partners from the public and private sectors have combined their resources and experiences with regards to telemarketing fraud by conducting “reverse boiler rooms.” Staffed by members of these various agencies and companies and armed with phone lists seized from several fraudulent telemarketing operations, nearly 40 of these “reverse boiler rooms” have called approximately thousands of potential telemarketing fraud victims advising them about the dangers of fraudulent telephone solicitations and how to avoid becoming a victim. In the most recent of these “reverse boiler rooms,” conducted in Arizona in July 1999, the Arizona Cardinals football team not only allowed law enforcement authorities and the AARP to use its training facilities as the venue for the calls to consumers, but had members of the Cardinals team participate in the calls and in public-service announcements broadcast through the state.

In another project, the SEC has conducted several “town meetings” throughout the United States in order to educate consumers about the dangers of fraud in the stock market. Often hosted by the Chairman of the SEC, these town meetings have provided an excellent opportunity to explain deceptive and confusing stock market schemes, and to publicize the efforts of the SEC against such kinds of fraud. Through its Campaign on Savings and Investment, the SEC seeks to carry its messages about responsible and prudent investing to all corners of the United States.

The Department of Justice has begun to bring these kinds of “exemplary practices” to the attention of U.S. Attorney’s Offices and other federal law enforcement agencies. Ultimately, DOJ hopes to provide prosecutors, agents, and investigators with packets of information on various exemplary practices so that they can conduct similar

**Other agencies, even today, have not yet fully realized that if they can devise and carry out effective campaigns to make the public more aware of fraud and how to deal with it, they may be able to reduce the actual incidence of fraud within their jurisdictions or even investigate fraudulent schemes more effectively.**

projects or programs in their jurisdictions, either individually or in cooperation with other organizations.

**Some members of the law enforcement community, often in conjunction with the private sector, have taken a proactive approach towards fraud prevention by reaching out directly to the communities most at risk from fraud.**

which the Attorney General first made this summer, is available to attorneys, agents, and employees within the Department of Justice, as well as to teams that include personnel from DOJ and other agencies or private-sector orga-

### **Attorney General's Award for Fraud Prevention**

Finally, to encourage government agencies to devise their own fraud prevention efforts, and to recognize those who successfully identify systemic fraud problems or implement effective fraud prevention programs, the Attorney General directed the creation of an annual Award for Fraud Prevention. This Award,

nizations. With this Award, DOJ hopes to motivate attorneys and investigators involved in fraud investigations to use their experiences and creativity to develop successful strategies and programs to prevent fraud.

### **Implications for the Inspector General Community**

The Fraud Prevention Initiative is a significant development in fraud prevention that should be welcome news to the Inspector General community. As they investigate specific instances of fraud, waste, and abuse in various programs, Inspectors General are often in the best position to identify systemic weaknesses in those programs. Where institutional factors may delay or impede an agency's recognition and response to those weaknesses, Inspectors General should not hesitate to bring those situations to the attention of the Department of Justice, so that they can be appropriately coordinated and addressed through the Initiative. Inspectors General may also benefit from developing or participating in public awareness and education programs that address the types of fraud they investigate every day. The Initiative, in short, offers Inspectors General an effective means of enhancing their own fraud prevention efforts and collaborating with other agencies to integrate fraud prevention more completely into their law enforcement missions. 🏠

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JOHN KAMENSKY

*Deputy Director, National Partnership for Reinventing Government*

# Imagining Competency

## *The Work of the National Partnership for Reinventing Government*



John Kamensky

In early 1993, an intrepid band of newly-minted reinventors, led by Vice President Al Gore, set out to forever change the face of government. Our mantra was to “create a government that works better, costs less, and gets results Americans care about.” To do this, we advocated putting customers first, cutting red tape, empowering employees, and getting back to basics. Today we remain focused on changing government, but we want to deliver the ultimate goal of reinvention—restoring Americans’ trust in their government.

In 1963, 76 percent of Americans thought that the federal government did the right thing most of the time. By 1993, only 21 percent thought so. The President and Vice President invest time on reinvention because they believe—absent trust—Americans will not rely on one another to overcome challenges they cannot meet alone. This bond of mutual reliance, they say, is the essence of democratic self-government and without trust, they fear the long-term health of democracy is at risk.

In the early years, we followed—somewhat—the more traditional route of government reformers. After all, this was the eleventh reform effort this century. We did studies, made recommendations, had them endorsed by the President, and set about getting them implemented. After five years, we claimed \$136 billion in savings, reductions in the Federal workforce exceeding 372,000, the elimination of 250 programs and agencies, as well as the creation of more than 4,000 customer service standards. Sticking with traditional measures of success, President Clinton issued more than 50 directives and Congress passed nearly 90 laws containing our recommendations.

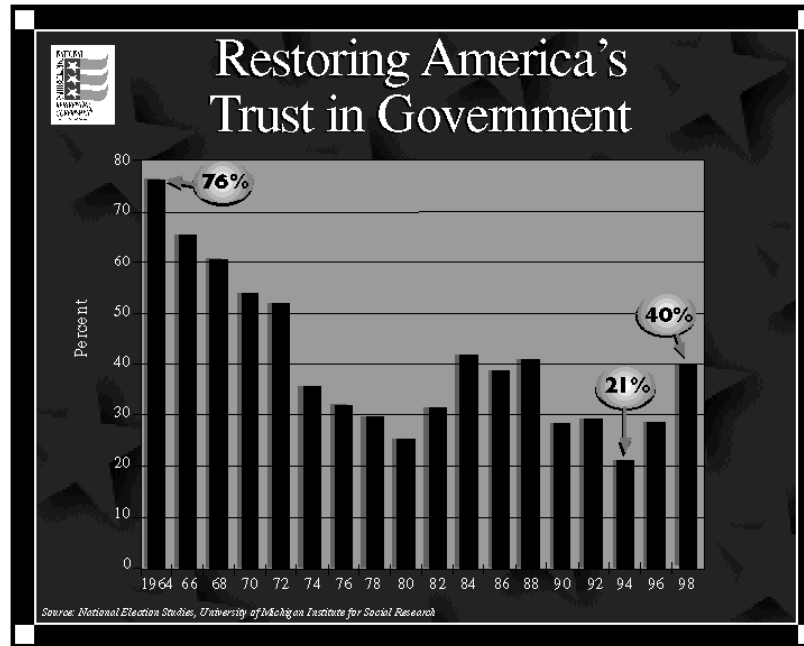
The ultimate measure of the National Partnership for Reinventing Government’s (NPR) success will be our efforts to restore the public trust in government. We know that between 1994 and 1998 the level of public trust in the Federal government nearly doubled.<sup>1</sup> Further, we know from numerous studies that increases in public trust are linked to increasing the involvement and participation of the American public in governmental activities.<sup>2</sup> Accordingly, in 1998—building on our successful foundation for



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<sup>1</sup> University of Michigan, National Elections Studies, 1958-1998, available from the Inter-university Consortium for Political and Social Research.

<sup>2</sup> See, for example, *Deconstructing Distrust: How Americans View Government*, Pew Charitable Trusts (1998), and *A Government to Trust and Respect: Rebuilding Citizen-Government Relations for the 21st Century*, National Academy of Public Administration (June 1999).



reinvention—we launched five sets of changes in the government’s culture that we believe will further increase public trust in government. These include:

- **Focusing on agencies with the most interaction with the public and businesses.** We’ve shifted our attention from departmental activities and cross-agency reforms, such as travel and procurement, to those agencies that the public sees as “The Government.” We figured that if we wanted to change Americans’ views of government, we should work with agencies that directly deal with the public and businesses. Vice President Gore calls the heads of these agencies his “first team.” We call them “High Impact Agencies.” Unlike the traditional designation of high risk agencies, these are a mix of highly successful organizations (like FEMA and the Postal Service) as well as those facing significant management challenges. The common thread is their pervasive connection with citizens and private enterprises. We work with 32 agencies directly and help them learn better ways to interact with their customers. Now they are committed to achieving a series of goals by October 2000 that will cause their customers to say, “Wow! That’s different!”
- **Connecting with employees and the public.** We think it is important that Federal employees and the public know how much the government is changing. Change starts by changing dialogue. One of our key objectives is to create a new dialogue involving employees and the public. Instead of focusing on problems, failures, and mismanagement, Vice Presi-

dent Gore asked us to focus on what worked, showcase successes and spread the desire for innovation throughout government. So, shortly after the original NPR report was released in 1993, we developed the “Vice President’s Hammer Award.” This program recognizes teams of federal employees that embody the principles of reinvention in their work. To date, we’ve recognized more than 1,200 teams claiming a total of \$37 billion in savings or cost avoidances. For the general public, we’ve recently launched an “Web Magazine”—called REGO (for “reinventing government”)—with electronic articles about how government has changed to serve the taxpayers and its customers.

- **Achieving results no one agency can achieve alone.** Important national goals cannot be reached by any single federal agency. Just look at the war on drugs—more than 50 different Federal agencies are involved, and even more state and local agencies. The challenge is getting multiple stakeholders to work together toward common goals. We’ve launched a number of initiatives to increase collaboration between Federal, state, and community programs aimed at solving common problems.

For example, we are improving service delivery by sponsoring “hassle free communities” (where Federal, state, and local service delivery is integrated into a single set of transactions), are working with “one stop” service centers for businesses in Houston and Atlanta. Some agencies are integrating the delivery of business export services and job training.

■ **Using balanced sets of measures to drive agency operations.** The experience of the Internal Revenue Service (IRS) a few years ago is instructive: focus on a single set of measures (in their case it was maximizing collections) and you can easily get out of kilter. Congress and the public made that abundantly clear in oversight hearings. IRS responded by making dramatic changes in the past year.

The Government Performance and Results Act (Results Act) encourages a focus on outcomes, but the IRS example shows that program performance measures need to be balanced with measures of customer and employee satisfaction. We're advocating the use of a balanced set of measures—and are promoting them through independent surveys. We believe this strategy will drive cultural changes in key agencies by broadening the dialogue about what's important, from the top of the agency to the front lines.

In 1998, we conducted the first-ever governmentwide employee survey (which we are currently repeating). We found reinvention was making a difference. Employees in organizations where reinvention was a priority said they were twice as satisfied with their jobs, were three times as likely to see customer service as important, felt more empowered to do their jobs, and faced less red tape. However, only about one-third of employees thought they were in organizations placing a priority on reinvention. Realizing this, the Vice President met with the leaders of the High Impact Agencies to emphasize the importance of improving employee satisfaction.

This year, we are sponsoring the first-ever governmentwide customer satisfaction survey, which is being conducted by the University of Michigan and Arthur Andersen, LLP. Using a methodology long employed by private sector companies, we'll soon see how well Federal agencies stack up against each other and private sector operations.

■ **Creating an electronic government.** The widespread use of the Internet in the past decade—along with the increased use of cell phones, express mail, CNN, video machines, etc.—has dramatically changed the private sector. It has also changed the public's expectations of quality service. Citizens likewise expect government will adopt these changes—at less cost, of course. Making government accessible—through information and service delivery—is the critical next step in transforming Americans' experience with their government. We've encouraged the creation of cross-agency websites for different categories of users, such as students, businesses, and seniors. From the perspective of the targeted customers, these new websites will become the “virtual agencies” of the future.

We're also encouraging agencies to move “back office” functions to an electronic platform. The Federal Energy Regulatory Commission, for example, shifted the filing of nearly three-quarters of a million pieces of paper each month to an electronic filing system that has benefited both the customers as well as the agency. The Veterans Health Administration and the General Services Administration are now able to close some of their warehouses because customers can order supplies electronically directly from the manufacturer—with a better audit trail. Hundreds of similar opportunities exist to dramatically improve services and cut costs.

These strategies are catalytic. That is, they will take on a life of their own and develop networks and continue to help agencies become more results-oriented, performance-based, and customer-driven. More importantly, we believe improvements in public interactions generated by increased effectiveness should increase the public's trust in government.

### Shifting the Dialog in the IG Community

In the world of reinvented agencies, the role of the Inspectors General (IG) is changing. Like NPR, the IGs are committed to restoring trust in government. They too are beginning to shift their focus. In 1994, the President's Council on Integrity and Efficiency said: “We are agents of positive change, striving for continuous improvement in our agencies' management and program operations, and in our own offices.”<sup>3</sup> Paul Light, a recent contributor to this journal said, “Investment in inspections and management analyses are . . . important to long-term success of Government.”<sup>4</sup>

From my vantage point, there are four things the IG community could do that would improve government operations and contribute to agency reinvention efforts.

**First, pay attention to the same things your agencies are trying to focus on.** Look at those mission-critical programs that touch the public customers of your agency. Encourage cross-agency partnerships that are focused on outcomes that no single agency can achieve. Encourage agency leaders to use a balanced set of measures to drive performance and create accountability. Reinforce the dialogue of reinvention within your agencies. One of the insights Paul Light has made is that the different “tides of government reform” are based on different philosophies that—like waves on the beach—lay on different audit expectations, some of which conflict with each other. The traditional

<sup>3</sup> PCIE, Inspectors General Vision and Strategies to Apply Our Reinvention Principles, January 1994.

<sup>4</sup> Paul Light, “If I Were King of the Forest: Allocating Staff in a Multi-front War,” the Journal of Public Inquiry, Fall/Winter 1998, pg. 38.

auditing approach may be valuable, but there are other approaches that may be equally valid. Auditors in the 21st century will need to be open to the reality of conflicting philosophies of accountability and be sensitive to the fact that there may be more than one “right” approach.<sup>5</sup>

**Second, put your audit results in a broader context that furthers an agency’s mission.** Too often, micro-results are over-sensationalized to get attention—\$325 hammers, \$76 screws, credit card vacations to Bermuda, etc. These often lead to “never again” legislative amendments. While professionally satisfying, this sometimes degrades government effectiveness rather than making it work better—or cost less. For example, a few years ago there was a congressional effort to “repeal the use of ‘slush fund’ credit cards” because one agency’s auditors found some isolated individuals misused their government travel cards. While abuses need to be addressed, the missing context was that government employees abuse their travel cards less often than their private sector counterparts, and the cards improve accountability and significantly cut processing costs. In fact, DoD and GSA travel reforms (including the card) will cut processing costs by nearly \$1 billion a year. Jeopardizing this progress based on isolated examples of abuse would be professionally irresponsible. We have to move from simplistic “never again” recommendations to the reality of acceptable levels of vulnerability and responsible risk.

**Third, take on the role of “referees” in the performance measurement arena.** From financial statements to agency reports on the Results Act, to interagency outcome measures, auditors can ensure program managers get performance information when needed that is reliable enough to make critical decisions. Don’t try to create the measures or necessarily second-guess them. But be there to

let managers know if they are honest. If we are going to shift to an increased focus on results, investing more audit attention on the reliability of the data will be of increasing value to policymakers and the public. Defining this role in the next few years will be a significant step in creating a focus on results information that is not only useful, but used.

**Finally, continue to reinvent yourselves.** There are examples of IGs that have reinvented themselves, including the Army, Air Force, Navy, and GSA. A 1998 article in this journal tells a wonderful story of how GSA’s IG office reinvented itself.<sup>6</sup> It makes sense to continue the dialogue begun by these pioneers and look at some of their best practices. Move toward a consultant role to managers and policy makers; de-emphasize the traditional role of controllers of process and compliance. Benchmark critical agency processes with other agencies and the private sector. Promote the use of technology and creative solutions. We say we need to reinvent the government, and that includes the IG offices!

### We Don’t Have All the Answers

Reinvention is an evolving effort. While we don’t have all the answers, the IG community will be an integral part of helping restore trust in government in the 21st century. The challenge of ensuring accountability and raising public trust will continue. 🏠

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*Interested in sources for some of the facts cited or just interested in more info about reinvention? See our website at [www.npr.gov](http://www.npr.gov). Comments? I can be reached at [john.kamensky@npr.gov](mailto:john.kamensky@npr.gov).*

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<sup>5</sup> Paul Light, *The Tides of Reform: Making Government Work, 1945-1995* (New Haven, CT, Yale University Press) 1997.

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<sup>6</sup> Rhudy Tennant, “Firing Up the Audit Engine at the General Services Administration,” *Journal of Public Inquiry*, Fall/Winter 1998, p. 53.



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SALLYANNE HARPER

*Chief Financial Officer, Environmental Protection Agency*

# Dollars and Scents

## *Are the CFOs on the Trail of Something Good?*

**T**he Chief Financial Officers' Council (CFOC) is one of the best examples we have today of cross-agency cooperation, idea sharing, and support for management reforms in government. It brings together the government's top financial management professionals—both political and career—to develop practical solutions to common problems. This mix ensures a high level of experience, a commitment to leadership and innovation, and the kind of stability needed to bring about change over time. It also helps mitigate the effects of the “NIH” (“Not Invented Here”) syndrome, whose symptoms include an organization's over-dependence on its own “common wisdom” and a reluctance to try out potentially useful approaches that have been developed by other organizations.

### **Historical Perspectives**

To appreciate what the CFOC has to offer to agencies and the public today and in the future, it is important to look at its origins. The CFO Act provided the essential impetus for professionalizing the position of Chief Financial Officer at the major departments and agencies. Ed DeSeve, the Office of Management and Budget's (OMB) former Deputy Director for Management and himself a former CFO at the Department of Housing and Urban Development (HUD), recalls:

The full implementation of the CFO Act began in earnest following the transition in 1993. At this time, individuals were specifically recruited to be CFOs. Previously, the office had been a collateral duty in a broader job. The iteration of the CFOC that I encountered, coming as HUD's CFO in 1993, was one dominated by OMB and fragmented in that it did not include the DCFOs [Deputy CFOs] as members.

Those who saw the segregation of DCFOs into a separate working group of their own—the Council Operations Group—as a potential weakness worked to bring the two groups together to consolidate their expertise in a more balanced partnership with OMB. DeSeve describes how “a group of CFOs and their Deputies met in an infamous series of brown bags and plotted changes we believed would be beneficial, including having the Council set the agenda, and including DCFOs as full members.” He credits Alice Rivlin (then CFOC chair) and Hal Steinberg (OMB “point person”) with implementing these changes,

resulting in a “committee structure and priority-setting mechanism that has survived largely intact today.”

The CFOC-OMB partnership developed strength and synergy over time, keeping their combined sights on some of the biggest and more perplexing management issues that agencies needed to address. This fruitful collaboration seems to work well for all concerned. In DeSeve’s experience: “If I could participate with an energetic network of 40 or 50 highly motivated and trained individuals who had chosen their own goals and were pursuing them according to a self-directed Five Year Plan, I was doing my job in a very effective way.” The CFOC has also earned the respect of private sector peers. According to Thomas V. Fritz, President and CEO of the Private Sector Council, “the CFO Council has come a long way. From an amorphous group of government managers to a strong entity of government leadership—the Council has been a driving force of government management reform and improved financial management.”

### A Wider, More Proactive Outlook

CFOC efforts may begin with ensuring compliance with statutes such as GPRA, GMRA, FFMIA, and the CFO Act itself, but the group’s outlook is much wider and more proactive. The CFOC’s partnership with OMB and Department of Treasury has been the source of some of today’s best thinking in the areas of planning and strategic management across the government. John Koskinen, former Deputy Director for Management at OMB and now chairman of the President’s Council on Year 2000 Conversion, describes the CFOC as “a leader in increasing the focus of government agencies on strategic planning and performance management” as mandated by GPRA. He credits the CFOC with helping agencies to “understand the powerful tool for improving program results that was contained in the provisions of the Act,” enabling agencies to move from simple compliance to a focus on managing for results.

At the same time, the CFOC aims to ensure that the government’s financial management personnel bring the best skills to their jobs, have the right tools at hand, do their jobs to the public’s satisfaction, and make that vital connection between their work and their agencies’ missions.

CFOC success stories from the first decade of its existence include efforts in a number of key areas.

### Building Professional Expertise

The CFOC is a leader in government efforts to develop a diversified corps of professionals, not just in financial management but also in the areas of planning, budgeting, and overall resource management. The group’s integrated approach springs as much from its sense of management as a multi-faceted art, requiring a variety of complementary skills, as it does from GPRA’s emphasis on the cycle of planning, budgeting, program implementation, and performance measurement. CFOs across government are working in support of professional development for departments and agencies that vary widely in the work they do and the results they seek, but are unified in their need to manage programs well and describe the outcomes—and costs—of those programs.

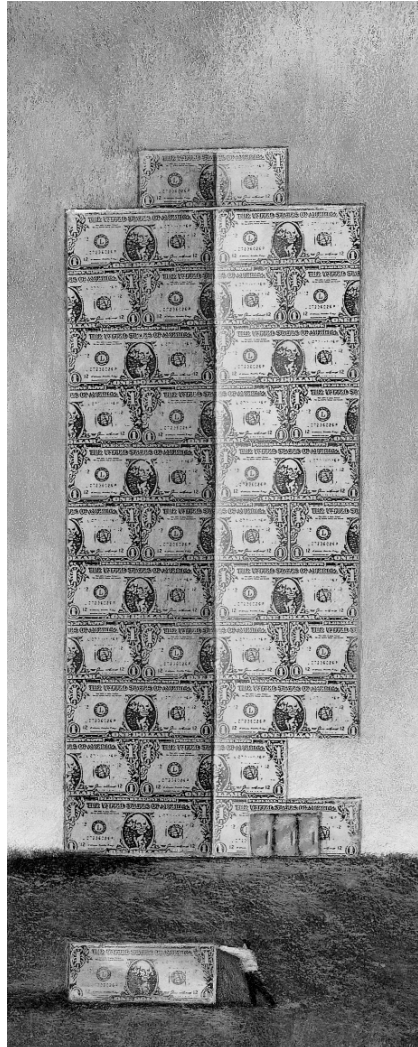
To accomplish this, the CFOC has compiled a comprehensive tool kit for financial managers. It guides them from assessing their organizations’ workforce needs and planning for development of a workforce with the right skills for the future; to solving problems common to recruitment and retention of the best candidates; to identifying a set of core competencies that can help employees plan for their own career development and help managers target training resources strategically where they will be most effective.

Most recently, CFOC member agencies participated in a benchmarking study of financial management practices across government and industry to identify and adopt best practices. The results of this study, which looked at over 45 private sector service organizations with individual revenues

in excess of \$1 billion and assessed a range of processes from core transactions to decision support, pointed out some key areas in which the CFOC can target future efforts.

### Creating Systems That Work

Early on, the CFOC recognized a need to modernize the government’s management of financial data, ensuring consistency and compliance with professional standards, and



expanding the government's ability to report clearly on its use of public funds to achieve results that are important to American citizens. According to OMB Director Jack Lew, "the CFO Council's designation of agency financial accountability as its priority goal, and its efforts towards achieving that goal, are the principal reasons for the unprecedented improvements in federal financial management and the quality of federal financial information."

The CFOC's partnership with Treasury and the network of government Chief Information Officers (CIOs) has been critical to success in this area. Steve App, Treasury's Deputy CFO, notes that "agency CFO organizations have been catalysts for improving financial and program management decision making through the creation of a sound, disciplined foundation for collecting, analyzing, and disseminating accurate, timely, and useful financial and program performance information." The CFOC's past and ongoing efforts to forge links with the CIO Council, in support of stronger planning and more effective investment strategies in areas of common interest, promise considerable benefit in years to come. App and others agree that, "based on the financial reporting and systems infrastructure put in place by agency CFO organizations over the past 10 years, CFOs are ideally positioned to serve as information brokers and strategic partners to agency program leaders as the 21st century begins."

The CFOC has established an equally valuable partnership with the Inspectors General (IG), who comprise the members of the President's Council on Integrity and Efficiency (PCIE). The two organizations are working together in several areas, including support for agencies' compliance with the Federal Financial Management Improvement Act (FFMIA). In this regard, CFOC and PCIE are collaborating on a methodology for reviewing agencies' financial management systems which, under FFMIA, must comply with federal financial systems requirements, applicable federal accounting standards, and the U.S. Government Standard General Ledger.

### Accountability to the Public

The best-run private corporations can point to healthy balance sheets and robust returns on investment to demonstrate their management capabilities to shareholders. With a body of "investors" encompassing the entire U.S. citizenry, government has a bigger and even more important job to do. Norwood (Woody) Jackson, former OMB Deputy Controller, identifies CFOC leadership as "the cornerstone of improved Federal financial management. The CFO Council and its members individually have done an extraordinary job of providing that leadership—evidenced by the increasing number of agencies receiving unqualified opinions on their financial statements—such opinions being the norm in corporate America." The CFOC serves as a support network for each CFO agency working to earn a "clean," or

unqualified, audit opinion on its annual financial statements. It is also a key partner in the ongoing development of a set of governmentwide financial statements that merit the same "clean" audit opinions. The CFOC recognizes that one of the best ways to inspire public confidence in the way that government manages the public's business is to generate a financial picture that professional auditors can endorse without reservation. Its goal of unqualified opinions for 100% of CFO agencies is well within reach.

GPRA implementation gives the CFOC another opportunity to promote strategic planning as a means to turn government's focus towards the results of agencies' work, and enhance agencies' ability to assess what those results cost. CFOC members have found in GPRA a valuable tool for agencies to designate, describe, and pursue results with greater precision. John Koskinen sees CFOC members' work on GPRA compliance as critical: "only by defining what a program is trying to accomplish, determining indices of progress, and measuring outcomes against the overall program goals can managers increase the likelihood of the program's success." As GPRA implementation places more emphasis on measuring for results, we can expect to see a continuation of the good work that has already been done by the CFOC and PCIE. Among the most helpful of their cooperative ventures has been the presentation of joint sessions on performance measurement. These discussions were organized to strengthen member agencies' abilities in the areas of performance assessment, alignment of budgets and programs, integration of performance measures and financial measures, and using GPRA plans in support of decision making. By bringing together the considerable expertise represented by the CFO and IG communities, this kind of collaboration has proven useful to all.

### Innovation for Better Service

The past 10 years have witnessed the emergence of multiple new technologies and tools for doing business, dramatically increasing organizations' potential to provide timely, effective, and efficient services that appeal to their customers. The CFOC has seen to it that government adopts innovative practices to keep pace with these changes in a number of areas. CFOs have been instrumental in using the innovations codified in the Debt Collection Improvement Act to close in on delinquencies in student loan repayment and enforce child support orders, combining good fiscal management with protection of the public interest. By taking advantage of the multiple economies offered by electronic commerce, CFOs are making sure that government business is done faster, more accurately, in a customer-driven environment. The CFOC estimates a savings of \$800 million in administrative costs for FY 1998 alone, thanks to the use of e-commerce.

CFOs are also leading the charge in the use of Electronic Funds Transfer (EFT), now the method of choice for fully half of government payments to vendors, three-quarters of Social Security and veterans' benefit payments, and at least 90% of federal salary and retirement payments. At the same time, they recognize some of the limits of new technology: the CFOC supports extended public access to EFT for individuals not served by banks, through the establishment of a network of financial institutions that will offer low-cost, Treasury-designated Electronic Transfer Accounts—bringing the benefits of this service to a wider sector of the population.

The CFOC also promotes improved management processes for federal grant programs, because greater efficiency in extending funds to state/local/tribal governments, colleges and universities, and nonprofit organizations supports greater efficiency in providing so many of the services on which the public depends. When the administrative requirements imposed on grant recipients become less burdensome, program managers can focus more of their energies on getting results. CFOC members seek to design consistent, streamlined systems and processes for grant recipients to report on program outcomes, reinforcing

accountability among all organizations that use public funds for the public good.

### **Into the Future**

The CFO Council's track record is a solid one, and there is every indication that this group will continue as a recognized leader and a valuable partner—with OMB, Treasury, the PCIE, and the CIO Council—in charting a course for the future of strategic management in government. Ed DeSeve sees the CFOC as “well positioned to move across a transition to a new Administration,” given the continuity that top career Deputy CFOs will provide. And John Koskinen remarks: “The CFO Council also has demonstrated the power that comes from having a group set its own agenda and take responsibility for initiatives it develops.... The result has been an organization that continually renews itself, focusing on issues of immediate interest and importance. The framework has been developed for ongoing accomplishments into the future.” The CFO Council combines a practical approach to government management in the here-and-now with a visionary perspective on managing the government of tomorrow. We're looking forward to all the challenges and discoveries that await us on the road ahead. 🏠

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DIANE T. DUFFY

*Legislative Attorney*

FREDERICK M. KAISER

*Specialist in American National Government,  
Congressional Research Service, Library of Congress*

# Into the Woods

## *Mapping New Directions for OIGs*



Diane T. Duffy



Frederick M. Kaiser

Mapping out new routes is not always easy. Accurate and complete ones depend upon a clear vision of the traveler's current location, the road that has already been traveled, any foreseen curves and roadblocks along the way, and, of course, the final destination. These considerations are necessary for travelers as well as for public officials and others advancing changes in governmental organizations, including offices of Inspectors General (OIG). Like directions for new routes, proposals for organizational change may come from a variety of sources and reflect the unique perspective, understanding and acumen of the proponent. With respect to examining changes to the Inspector General Act, now in its third decade, and the offices themselves, four broad questions merit attention:

- Where are the offices now? That is, what are the OIGs doing and how well is it being done? This area covers, among other matters, the priorities among inspector general (IG) functions and activities; orientation to and working relationships with management and employees; degree of independence and competency; and, accomplishments and perceived effectiveness.
- How did they get here? This inquiry asks about the authority, jurisdiction, resources, and leadership that the offices have acquired over the past two decades and whether these are sufficient to meet the IGs' basic responsibilities.
- What problems have OIGs encountered or could they encounter? This concern encompasses such possible obstacles as inadequate resources, limitations on jurisdiction and authority, management interference, and agency unresponsiveness to IG recommendations.
- Where should the OIGs be headed? This key question involves: a comparison of the desired destination with the original purposes of the Act; an IG's role as "insider" or "outsider;" the emphasis on deterrence or detection; and competition among investigations, auditing, and inspections. Some answers could come from the IGs' five-year strategic plans; annual performance plans, goals and objectives; and the estimated capacity and resources to achieve them.

This article highlights the varied (and sometimes conflicting) proposals to restructure the offices of inspector general—some of which call for only modest refinements in the

IG Act, while others signal substantial changes—based on recommendations from legislators, public policy analysts, and the IGs themselves, among others.<sup>1</sup> In advance of this is a brief overview of the Inspector General Act, which provides the basic framework for the functioning of the IGs.

## Background and Statutory Overview: What Roads Have Been Traveled?

Nineteen ninety-eight marked two milestones for OIGs: the 20th anniversary of the Inspector General Act of 1978 (the Act), as amended (codified at 5 U.S.C. Appendix 3)—the fundamental authority governing the statutory OIGs—and the 10th anniversary of the 1988 amendments, which added new reporting requirements and new entities that come within the purview of the Act. Statutory IGs now exist in nearly 60 federal establishments and designated entities, including all cabinet departments, the larger federal agencies, and many smaller agencies, boards, commissions, corporations, and foundations.

By enacting the IG statute and establishing OIGs, Congress consolidated authority and responsibility for auditing and investigating waste, fraud and abuse in the programs and operations of the federal department or agency. Established by law as permanent, independent, nonpartisan, and objective units, the OIGs are designed to detect and prevent misconduct, keep Congress and the agency head fully and currently informed, and make recommendations for change. To carry out this weighty mandate, IGs have been granted a substantial amount of independence and authority.

<sup>1</sup>For further details and citations, see two CRS reports on OIGs: *Statutory Offices of Inspector General: Establishment and Evolution*, by Frederick M. Kaiser, CRS Report 98-379 GOV (1998); and *Statutory Offices of Inspector General: A 20th Anniversary Review*, by Frederick M. Kaiser and Diane T. Duffy, CRS Report 98-141 (1998).

## Authority and Duties of the IGs

The Inspector General Act provides the statutory framework for the inspectors general and governs the relationship between these officers, the agency, and Congress. As noted, IGs are located in all cabinet departments and the larger federal agencies, as well as in other specified organizations, known collectively as the “designated federal entities.” Each IG is empowered to: conduct and supervise audits and investigations relating to the programs and operations of the establishment; provide leadership and coordination and recommend policies for activities designed (a) to promote economy, efficiency, and effectiveness in the administration of, and (b) to prevent and detect fraud and abuse in such programs and operations; and provide a means for keeping the agency head and the Congress fully and currently informed about problems and deficiencies and the necessity for corrective action.

In order to carry out the purposes of the Act, IGs have been granted broad statutory authority. In brief, the law authorizes IGs to: conduct audits and investigations and make reports relating to the administration of programs and operations of the establishment; have direct access to all records, reports, audits, reviews, documents, or other materials which relate to programs and operations with respect to which the IG has responsibilities under the Act; request assistance from other Federal, State, and local government agencies; issue subpoenas for the production of all information, documents, reports, and other data and documentary evidence necessary to perform the IG’s functions; administer to or take from any person an oath, affirmation or affidavit; have direct and prompt access to the head of the establishment; select, appoint, and employ officers and employees in order to carry out the functions, powers and duties of the office; obtain services as authorized by 5 U.S.C. Sec. 3109; and enter into contracts and other arrangements for audits, studies, and other services with public agencies and private persons and to make necessary payments to carry out the Act.



subpoenas for the production of all information, documents, reports, and other data and documentary evidence necessary to perform the IG’s functions; administer to or take from any person an oath, affirmation or affidavit; have direct and prompt access to the head of the establishment; select, appoint, and employ officers and employees in order to carry out the functions, powers and duties of the office; obtain services as authorized by 5 U.S.C. Sec. 3109; and enter into contracts and other arrangements for audits, studies, and other services with public agencies and private persons and to make necessary payments to carry out the Act.

In addition, the Act authorizes IGs to receive and investigate complaints or information from an employee concerning the possible existence of an activity constituting a violation of law, rules, regulations or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety. Other responsibilities under the Act include providing policy direction; reviewing existing and proposed legislation and regulations relating to programs and operations; recommending policies and conducting activities that promote economy and efficiency; and recommending policies for coordinating relationships between the establishment and other agencies, State and local agencies, and nongovernmental entities. Notwithstanding these broad powers and duties, the IGs are not authorized to take corrective action or institute changes themselves. Indeed, the Act expressly prohibits the transfer “of program operating responsibilities” to an IG.

### ***Appointment, Removal and Supervision***

Under the Act, for IGs in federal establishments, the President appoints the inspector general by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, financial analysis, law, or other qualifications. Each IG must report to and be under the “general supervision” of the agency head, or to the extent that this authority is delegated, to the officer next in rank below the head, and shall not report to or be subject to supervision by any other officer. The restriction on supervision is bolstered further in another important provision: With a few specified exceptions, neither the head of the establishment nor any other officer shall prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena. Regarding removal, the law provides that an IG may be removed by the President, who then must communicate the reasons for removal to both Houses of Congress.

With respect to the designated federal entities, IG appointment is performed by the agency head, and the same guiding principles and qualifications apply. Removal and transfer of the IG is also by the agency head. As with the presidentially-appointed IGs, those in the smaller entities are under only the general supervision of the agency head and interference in the performance of the IG’s duties is prohibited.

### ***Reporting Requirements and Other Communications***

Inspectors General have two basic reporting requirements to the agency head and Congress. These are via the semiannual report and seven-day letter reports dealing with particularly flagrant or serious problems. This reporting underscores the statutory mandate to keep the agency head and Congress fully and currently informed. IGs must make semiannual reports that summarize the office’s activities for the previous

six months, itemizing waste, fraud and abuse problems, and identifying corrective action. The 1988 amendments refined and enhanced several key ingredients in the semiannual report, now calling for a description of significant problems, abuses, and deficiencies; a description of recommended corrective action and their implementation; and statistical data relating to costs, funds, and other matters. Semiannual reports are sent directly to the agency head, who transmits them unaltered, but with any comments deemed appropriate, to Congress within 30 days. After another 60 days, the reports are available to the public.

The Act also requires the inspector general to report immediately to the agency head whenever the IG becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations. Such communications must be transmitted to the appropriate congressional committees within seven days. These reports are to be transmitted unaltered but allow for comments the agency head deems appropriate. A parallel provision affecting IGs in the intelligence community became law in 1998 (P.L. 105-272). It expressly authorizes intelligence community employees and contractors to submit an “urgent concern”—that is a serious or flagrant problem, abuse, violation of law or executive order, or other specified wrongdoing—based on classified information to Congress. In brief, the procedure provides that the employee first contacts the IG who must determine within 14 days whether the allegation is credible. If so, the IG contacts the agency head who transmits the complaint to the House and Senate Select Committees on Intelligence within 7 days. If the IG does not transmit the complaint, then the whistleblower may contact the committees directly, following procedures authorized in the law.

Other channels of communication exist between the IGs, the agency heads and the Congress. Section 4 of the IG Act requires the IG to keep the head of the establishment and Congress fully and currently informed “by means of the reports required by section 5 and otherwise.” The concept of keeping the agency head and Congress informed “otherwise”—that is, by using other means—allows for a variety of ways for the IG to communicate with Congress. These means extend to: testifying at congressional hearings; meeting with lawmakers and staff; and providing information and reports to the agency heads and Congress, its committees and subcommittees, and other offices. Clearly, the audit, investigative and inspection reports prepared by the OIG are critical features in this open communication effort.

Furthermore, the Act requires that the inspector general must report expeditiously to the Attorney General whenever the IG has reasonable grounds to believe there has been a violation of Federal criminal law.

The framework of the IG Act and the practical workings of the OIGs are predicated on key building-blocks of the statute that are designed to ensure and promote the



effectiveness and independence of the inspectors general. These central provisions govern: the appointment and removal of IGs; their reporting obligations and access to the head of the agency; the resources and fiscal security of the office; a prohibition on transferring program responsibilities to it; and limitations on outside supervision, including a directive against interference, with certain exceptions, in conducting audits and investigations and issuing subpoenas. With these provisions working together, the Act ideally provides the critical context for the inspector general to meet its legislative purposes, carry out his or her duties and functions, and keep the agency head and Congress informed in a meaningful way. This proper functioning leads to appropriate oversight and corrective action.

### Proposals Affecting OIGs: What Is on the Horizon?

Despite their 20-plus years of evolution, including substantial statutory amendments in 1988, OIGs still face a number of concerns and proposals for change. Some of these have been advanced recently in the 105<sup>th</sup> and 106<sup>th</sup> Congresses through oversight hearings, often connected with the 20<sup>th</sup> anniversary of the IG Act, as well as through legislative proposals. Two of these reached fruition in 1998, with the creation of a new Treasury IG for Tax Administration—so far, the only separate statutory office within an establishment or entity that had its own agency-wide counterpart—and enactment of intelligence community whistleblower protections.

The wide-ranging set of existing proposals for restructuring the statutory offices of inspector general can be grouped under six broad categories: (1) institutional arrangements and procedures; (2) authority; (3) effectiveness and orientation of the IGs as well as the PCIE and ECIE; (4) reporting to the agency head and to Congress; (5) personnel practices; and (6) incentive awards. Underlying some of the options for change are: differences among the IGs, based in part upon the unique needs and characteristics of the organization where the OIG is located; the possible tension between audit and investigative functions; internal and external conflicts over budgets and resources; concerns about IG leadership, independence, and effectiveness; and disputes regarding the scope of the IGs' investigative authority and jurisdiction. The following highlights the wide variety of proposals that have meaning for the IG community, other executive agencies and offices, and Congress.

#### *Institutional Arrangements and Procedures*

- Changing the removal provision for Inspectors General by requiring that any such action by the President or agency head must be “for cause,” such as neglect of duty, serious disability, or malfeasance.
- Setting a term of office for the IG (*e.g.*, 6, 8, or 10 years), to encourage longer service and greater stability in the post, particularly in the smaller designated federal entities.

- Establishing an office of Inspector General in the Executive Office of the President, with jurisdiction over the statutory organizations in it.
- Adding statutory OIGs in other entities which might now meet a criterion used in the 1988 amendments for the designated federal entities (*i.e.*, a budget of \$100 million) or by contrast, reducing the number of such offices because of their small size.
- Having one IG cover a number of smaller designated entities, with the newly created posts requiring Presidential nomination, subject to Senate confirmation.
- Placing certain OIGs now in the designated federal entities under a statutory IG in a related, major establishment. This might be considered because of the OIGs' small size, limited resources, or problems connected to its independence and effectiveness.<sup>2</sup>
- Providing for Presidential nomination and Senate confirmation for inspectors general in designated federal entities, particularly the larger ones.
- Setting up a panel of PCIE members to make recommendations to the entity heads or screen possible candidates for the IGs in the smaller entities.
- Re-examining and evaluating the 1988-created OIGs, including their performance, effectiveness, independence, and budget and personnel matters.
- Reviewing the statutory limitations on the Treasury Department Inspector General's jurisdiction and authority over law enforcement agencies within the Department, *i.e.*, Bureau of Alcohol, Tobacco, and Firearms; Customs Service; and Secret Service. In addition, evaluating the relationship between the Treasury IG and the newly established Treasury Inspector General for Tax Administration.
- Establishing separate OIGs for the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) in the Department of Justice or, alternatively, augmenting the authority and jurisdiction of the Justice IG over them. These options may be considered because of the size and importance of DEA and the FBI, sensitivity of their operations, and critical evaluations of recent conduct and performance, among other reasons. In addition, assessing the relationship between the Justice Office of Professional Responsibility and the department OIG.

<sup>2</sup>Several precedents for a dual assignment or shared jurisdiction exist. There has been only one dual IG appointment, however, *i.e.*, the IG in the State Department also served as the IG in the Arms Control and Disarmament Agency, which has since been transferred to the State Department. Presently, the State Department IG also has jurisdiction over the Broadcasting Board of Governors and the Int'l Broadcasting Bureau, while the IG in the Agency for International Development covers the Overseas Private Investment Corporation.

- Examining the role of the OIG at the Department of Health and Human Services (HHS) relative to the Food and Drug Administration and its Office of Internal Affairs. Evaluating the OIG's ability to oversee adequately the Health Care Financing Administration. Assessing the overall effectiveness of the HHS OIG in combating waste, fraud, and abuse, in light of the department's varied and massive programs, some of which are considered high-risk, vis-a-vis the office's resources.
- Examining the relationships between the inspector general and the chief financial officer in the departments and agencies where both positions exist.
- Creating in statute a separate post of Assistant Inspector General for Inspections.

### **Authority of Inspectors General**

- Reviewing and clarifying the scope and tools of IG investigative authority, to determine whether its effectiveness would be enhanced with additional powers.
- Examining and possibly expanding and standardizing law enforcement authority for criminal investigators in the OIGs. This area of inquiry could look at: whether current arrangements, particularly annual deputation by the Marshals Service, have proven effective and at what costs and benefits; whether there should be statutory law enforcement power granted across-the-board or only for specific agencies and/or to combat certain crimes, as has occurred; whether there is a need for independent law enforcement authority for OIG criminal investigators, by comparison to relying on other law enforcement entities; and what impacts various options would produce in the OIGs themselves, in their relationship to the Department of Justice, and in federal crime control efforts.
- Examining whether to authorize inspectors general to issue testimonial subpoenas.
- Examining and clarifying the powers of OIG investigators vis-a-vis the rights of employees who they interview, such as right to counsel and union representation, particularly in light of the 1999 Supreme Court determination that OIG investigators were "representatives" of their parent agency, at least in certain situations.<sup>3</sup>
- Strengthening the protection of confidentiality for whistleblowers and others who bring complaints or allegations of wrongdoing.

<sup>3</sup>In a 5-4 decision, the majority held that a NASA-OIG investigator was a "representative" of the Administration when conducting an employee examination under certain specified authority and that, as a result, the employee had a right to union representation in that situation. *National Aeronautics and Space Administration et al., v. Federal Labor Relations Authority et al.*, 119 S. Ct. 1979 (1999).

- Granting IGs authority to halt programs or operations that are plagued by serious and flagrant problems of abuse, waste or fraud and which have been reported to the agency head and Congress repeatedly. (Only the now-defunct IG for Foreign Assistance held the authority to stop a project for such reasons.) Or crafting another means by which serious problems can be brought to the agency's and Congress' attention immediately and where corrective action should be implemented quickly.
- Providing prosecutorial authority for IGs in specific areas, possibly on a trial basis, as a means of enhancing the impact of IG findings of criminal conduct. Currently, prosecutions based on IG discoveries are conducted by U.S. attorneys and the Department of Justice. Yet many of these prosecutors have large caseloads and competing priorities, thus jeopardizing DoJ action on inspector general findings.

### **Effectiveness and Orientation of the IGs, PCIE, and ECIE**

- Measuring the effectiveness and orientation of the offices of inspector general and comparing them over time. This could initially focus, for instance, on changes within and between the audit and investigative units, the growth of inspections, and the impact on combating waste, fraud, and abuse.
- Examining corrective action taken by the agency based on inspector general recommendations to determine whether appropriate change occurred and how extensive it was. A related inquiry could examine whether an agency's budget was reduced based on cost-savings for implemented corrective action. In other words, could positive corrective action have a negative impact on the agency's budget?
- Using several different bases, measures, and indicators to assess IG performance and effectiveness that recognize, for instance, the role of deterrence versus detection in stemming wrongdoing and that take into account the unique responsibilities and characteristics of the agency as well as the office itself.
- Assessing the role of the OIGs in implementation of the Government Performance and Results Act, both for themselves and for the parent agencies.
- Examining the role and responsibilities of the PCIE and the ECIE. This could examine how the two entities contribute to the effectiveness of the IGs and how the committee framework of each council enhances its facilitative and coordinative role.
- Evaluating the procedures in place that address allegations of IG misconduct.
- Discovering what happens to referrals to the Department of Justice concerning conduct that the IGs believe involves a violation of Federal criminal law. Gathering data on the referrals and eventual disposition or prosecution of the matters.

### Reporting to the Agency Head and Congress

- Standardizing information on investigations that is included in reports, similar to the standardized format for audit statistics and data mandated by the 1988 amendments.
- Improving communication surrounding major findings, conclusions and recommendations in the semi-annual reports. This could occur through regular hearings and in-person briefings at the same time the written reports are issued.
- Consolidating or coordinating semi-annual reports from IGs with the periodic reports mandated by other related statutes, such as the Chief Financial Officers Act and the Federal Managers' Financial Integrity Act.
- Issuing the summary reports on IG activities produced by the PCIE and ECIE semi-annually. The PCIE reports had been issued twice a year until FY 1988, after which these accounts, along with the ECIE reports, appear only once a year. The current annual reports result in fewer summary overviews of IG activities and less timely information for oversight purposes.
- Requiring IGs to report only annually, rather than semi-annually as they do now, to the agency head and Congress, in order to reduce the demands on their time and resources for this endeavor. This change, however, would reduce the timeliness of such IG periodic reporting.
- Increasing notification about "particularly serious or flagrant problems" through the seven-day letter reports, after determining why this authority is rarely exercised. An inquiry here might result in setting standards for such notices in the Act and/or in a consensus on criteria for issuing them.
- Requiring the IG to issue a confidential report directly to congressional committees whenever the agency head is the subject of an investigation. Currently, only the CIA IG has this authority when the investigation focuses on the Director of the CIA.

### Personnel Practices

- Comparing personnel practices among the OIGs, which might include examining whether the IG hires his/her own staff or relies primarily on personnel rotating through different offices within the establishment. This examination could look into the hiring of legal counsel as well as the criteria and procedures used in hiring, promoting, and handling grievances for all OIG staff.
- Examining contracting out to private firms and individuals for activities and operations. Such a study could involve a review and comparison of contracting practices of OIGs; the types of activities that

rely upon it; how contracting reflects or affects budgets; and whether contracting out, if extensive, has led to "hollow government"—a loss of expertise to perform certain functions—in an OIG.

- Comparing changes over time between the audit and investigation sides of the office, along with the increase in inspections. This could help determine whether growth in one side leads to a decrease in staff and other resources on the other sides.

### Incentive Awards

- Assessing IG use of "whistleblower" incentive awards, looking at the differences in reliance among all IGs and over time looking as well at the awards' impact in cost-savings.
- Allowing inspectors general to be eligible for incentive awards or, in contrast, prohibiting them across the board. An examination might first review differences among the IGs in accepting such awards and then judge whether they should be permitted. If such awards are found acceptable, attention could then be given to the procedure for nominating or selecting IGs for them, *e.g.*, using PCIE or ECIE committees or possibly panels set up under the Federal Advisory Committee Act.

### Concluding Observations: Why Are There So Many Alternate Routes?

These proposals for restructuring the offices of inspector general are manifold and varied, ranging from modest adjustments, such as increasing the use of seven-day letter reports, to major alterations, such as reducing the number of designated entities with OIGs. None of these suggested changes, however, seeks to dismantle the Inspector General Act or abolish any bases that support IG independence, integrity, and implementation of the law's purposes. The infrastructure remains intact.

The scope and variety of the proposals, in part, reflect the differing vantage points of their supporters—sometimes revealing a vested interest inherent in the adage that "where one stands depends on where one sits." Beyond this though, the options disclose legitimate differences of opinion over substantive matters and concerns. These include: the perceived effectiveness and orientation of offices of inspector general, collectively and singly; expectations associated with them, both in combating waste, fraud and abuse and in keeping the agency head and Congress fully and currently informed; problems that the OIGs face in terms of resources, authority, jurisdiction, leadership, and agency responsiveness; and, consequently, the ways to overcome these obstacles and meet expectations. The result is a wide assortment of alternate routes mapped out to reach different destinations or, in some cases, even the same one. 🏠

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NORBERT E. VINT

*Assistant Inspector General for Investigations, Office of Inspector General,  
U.S. Office of Personnel Management*

# The Guns of August

## *Inspector General Criminal Investigator Academy*

**I**n August 1999, at their respective meetings, the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) voted to consolidate the Inspector General Criminal Investigator Academy (Academy) and the Treasury Inspector General for Tax Administration (TIGTA) Training Section. Both institutions are located at the Federal Law Enforcement Training Center (FLETC), Glynco, Georgia.

### **Past History**

In 1987, the Federal Law Enforcement Training Center established and operated the Inspector General Basic Training Program (IG Basic) with the support of the Inspector General (IG) community. The IG Basic was a two-week course that was a follow on to FLETC's basic Criminal Investigator Training Program. Over the next several years, after trying to improve the delivery of the IG Basic course, it became evident to the IG community that it needed a separate academy for its criminal investigators.

In February 1994, the PCIE and FLETC executed a Memorandum of Understanding and established the Inspector General Criminal Investigator Academy. The goal of the Academy was to meet the training needs of the entry-level IG special agents, as well as to provide in-service training. Again over the next several years, the Academy continued to evolve to try to meet the dynamic needs of the IG community.

Since 1987, the Internal Revenue Service (IRS) Inspection Services, Internal Security Training Section (subsequently named the TIGTA Training Section in January 1999) has been at the Federal Law Enforcement Training Center dedicating itself primarily to agency-specific training. The TIGTA Training Section has not only provided training to its own cadre of investigators, but also has assisted in FLETC's training programs, as well as integrating investigators from a number of IG offices in its training programs.

### **Consolidation**

In January 1999, the IRS Inspection Service became the Treasury Inspector General for Tax Administration and joined the IG community. Shortly afterwards, Patrick E. McFarland, Chair of the PCIE's Investigations Committee, requested that a working group review the operations of the Academy and the TIGTA Training Section. The purpose of this review was to determine the feasibility of consolidating the Academy and the TIGTA Training Section.

In May 1999, the working group convened, consisting of two Assistant Inspectors General for Investigation (AIGI) from the President's Council on Integrity and Efficiency,

one Executive Council of Integrity and Efficiency AIGI, two staff members from TIGTA, and the liaison to the PCIE from the Office of Inspector General, Office of Personnel Management. In addition, the former Deputy Director of the Federal Law Enforcement Training Center was hired as a consultant to the working group.

The working group was tasked with (1) if feasible, providing recommendations for the consolidation of the Academy and the TIGTA Training Section; (2) providing recommendations for any restructuring necessary to facilitate the consolidation; and (3) providing implementation with a time-line for completion.

In July 1999, the working group briefed the PCIE's Investigations Committee and the Investigations Advisory Subcommittee on the following results:

- The consolidation of the Academy and the TIGTA Training Section is feasible and would be a benefit to the IG community;
- Some restructuring would be required;
- A time-line was drafted for implementation.

The working group also proposed that the vision of the new Academy should be that it would be the recognized leader for investigative training and would serve as a major resource for the IG community. The primary emphasis in the working groups report was to improve communication between the Academy and the IG community.

The group also concluded that the PCIE's Investigations Committee should continue to serve as the Academy's Board of Directors. As such, it should set policy, approve training plans, budgets, authorize key staffing positions, and provide periodic reports to the IG community. Also, the Investigations Advisory Subcommittee, consisting of AIGI's, should continue to advise the Investigations Committee on training issues.

In addition, the group recommended that organizationally the Academy should be coordinated by an accountable Inspector General. The accountable IG should be responsible to the Investigations Committee for the overall administration and operation of the Academy. They also recommended that the accountable IG should be the Treasury Inspector General for Tax Administration. Furthermore, there should be an Executive Director of the Academy who would be located in Washington, D.C., and should serve as the primary liaison between the Academy and the IG community. The accountable IG should provide a GS-15 full time equivalent

(FTE) for the Executive Director position. The Academy position of Director should continue to function and be located at FLETC and should report directly to the Executive Director. The Director should provide the day-to-day oversight of the Academy, supervise the assigned staff, and provide general liaison between the Academy and FLETC. The Inspector General for the Department of Defense pledged a GS 14/15 FTE for the position of Academy Director.

The Academy and TIGTA Training Section cadre of instructional staff and administrative support personnel should be merged and additional FTE positions could be added to the staff as detailees from the IG offices.

In July 1999, during separate meetings, the working group briefed the members of the PCIE and ECIE on its recommendations. Both the PCIE and ECIE members endorsed the recommendations to consolidate the Academy with the TIGTA Training Section, as well as the recommended organizational changes. Both bodies agreed that the consolidated effort would be reviewed at the end of a two-year trial period.

Currently, TIGTA Inspector General David Williams is working closely with the Director of the Federal Law Enforcement Training Center and his staff, the Acting Director of the Academy, and the staff of the TIGTA Training Section to implement the consolidation.

In September 1999, the Assistant Inspectors General for Investigations and their training officers, and other representatives from the PCIE and ECIE will convene to review the current curricula being conducted at FLETC's Criminal Investigator Training Program, the Academy, and the TIGTA Training Section. This effort will identify duplicated courses, suggest new curricula, and ensure that the final courses being offered by the Academy address the needs of the IG community.

It is anticipated that the new Academy curriculum will be implemented in January 2000. There will certainly be growing pains and modifications and additions to the curriculum. However, it is expected that the new Academy will meet its goals because of organizational realignment, stronger emphasis on accountability to the IG community, and the clear lines of communication and support. 📄

*I wish to acknowledge the assistance of Gary Day, Acting Director of the Academy, Terry Freedy, Assistant Special Agent in Charge—Operations Division (Training), TIGTA, and Gary Acker, PCIE Liaison for the OIG, Office of Personnel Management in the preparation of this article.*



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Commentary by JEFF NELLIGAN

*Communications Director, Office of Inspector General,  
U.S. Department of Transportation*

# Eyes on the Prize

## *The Importance of Oversight*

Oversight of how effectively the Executive Branch is carrying out congressional mandates is an enormously important function of Congress. It is at the very core of good government. Congress must do more than write the laws; it must make sure that the Administration is carrying out those laws the way Congress intended. The purpose of oversight is to determine what happens after a law is passed. As more power is delegated to the executive and as more laws are passed, the need for oversight grows.

I have been particularly concerned about the weakening of congressional oversight in recent years. Congress has given too much focus to personal investigations and possible scandals that will interest the media, rather than programmatic review and a comprehensive assessment of which federal programs work and which don't. I strongly support the efforts of Speaker Hastert to have the House return to its more traditional oversight functions.

*At the request of Congressman David Dreier (R-California), Chairman of the Committee on Rules, U.S. House of Representatives, the Congressional Research Service was directed to conduct bipartisan oversight training for Members and congressional staff. At the first oversight workshop, Lee Hamilton, former Democratic Chairman of the House Foreign Affairs Committee and the Iran-Contra Committee, shared his thoughts and insights with the attendees and authored "Oversight: A Key Congressional Function." The following is not a full of text of the Hon. Hamilton's remarks; it was edited by Jeff Nelligan, Communications Director, Office of Inspector General, U.S. Department of Transportation.*

### **Nature of Congressional Oversight**

Oversight has many purposes: to evaluate program administration and performance; to make sure programs conform to congressional intent; to ferret out (in the oft-heard phrase) "waste, fraud, and abuse"; to see whether programs may have outlived their usefulness; to compel an explanation or justification of policy; and to ensure that programs and agencies are administered in a cost effective, efficient manner.

Oversight is designed to throw light on the activities of government. It can protect the country from the imperial presidency and from bureaucratic arrogance. It can expose and prevent misconduct, and maintain a degree of constituency in an administration. Oversight is designed to look at everything the government does, expose it, and put the light of publicity to it.

Congress can use several tools to make federal agencies accountable, including periodic reauthorization, personal visits by members of staff, review by the General Accounting Office or inspectors general, subpoenas, and reports from the Executive Branch to Congress. Several types of committees—authorization, appropriations, governmental affairs, and special ad hoc committees—can all play important roles in oversight.

The various methods have their own strengths and weaknesses. Oversight hearings, for example, cannot be called every day, so committees may turn to reports or onsite visits to agencies.

In many ways Congress underestimates and undervalues its power in oversight. Agencies start to get a little nervous whenever someone from Congress starts poking around, and that is probably to the good overall.

## History of Oversight

Oversight has been a key function of Congress since its very beginning. It is an implied power, not an enumerated power in the Constitution. It is based on the constitutional powers given to Congress to pass laws that create agencies and programs, to provide funding for these agencies and programs, and to investigate the Executive Branch. The first congressional oversight investigation took place in 1792, an inquiry into the conduct of the government in the wars against the Indians.

Congress overhauled its oversight responsibilities with the passage of the Legislative Reorganization Act of 1946. It reinforced the need for “continuous watchfulness” by Congress of the Executive Branch, and placed most of that responsibility in the standing committees rather than in specially created investigatory committees. The extent of congressional oversight has fluctuated in recent decades, with some Congresses taking it much more seriously than others. In the 96th Congress, for example, Speaker Tip O’Neill gave it very high priority and called the 96th the “oversight Congress”. More recently, Speaker Gingrich shifted the emphasis of oversight, seeing it not just as a way to oversee but to shrink the size and reach of the federal government. He also used it to aggressively investigate the White House. Speaker Hastert, as I noted earlier, is encouraging the committees to move away from oversight as political micro-management to oversight as congressional review of agency performance and effectiveness.

## Importance of Policy Oversight

Congressional oversight is critical to good policy. Most important issues are complex, and Congress is seldom able to specify fully all the details of a governmental program in the original legislation. The Clean Water Act, for instance, sets the goals and general procedures for improving the quality of the nation’s water resources, but the specific rules and regulations for achieving these aims are left to Executive Branch officials. Congress needs to carefully monitor how its broad intentions are translated into actual programs.

First, tough monitoring by Congress can encourage cost-effective implementation of a legislative program. Every year the President sends Congress specific funding requests for thousands of federal programs. These requests can often be cut back, as Members seek to identify minimum funding levels for a program to be effective.

Second, Congress must assure that the program, as implemented, reflects the intent of Congress. In complex issue areas such as environmental policy or health care, agency officials may simply misinterpret a piece of legislation or they may use the discretion they have been given in the law to shift policy toward their views, the Pres-

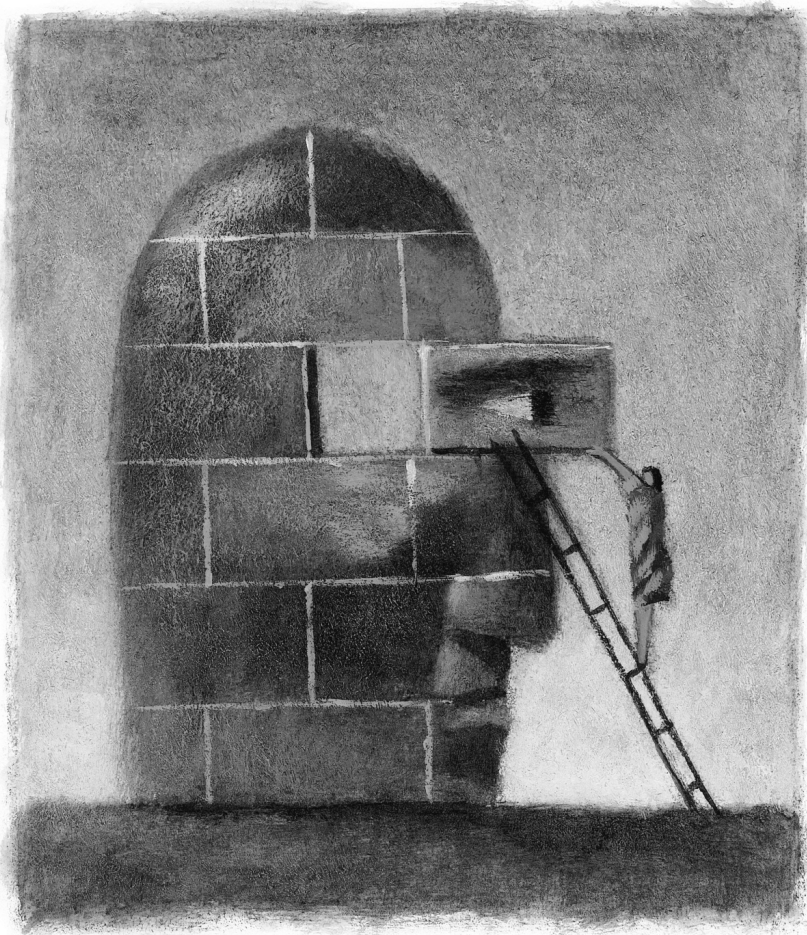
ident’s views, or the views of special interest groups.

Third, Congress must continue to monitor programs to determine whether unintended consequences or changing circumstances have altered the need for the program.

## Decline in Oversight

In recent years, the traditional oversight activities of Congress have generally declined.

The shorter congressional workweek means that committees do not meet as often as they used to, reducing time





for oversight. Also, the power of the authorizing committees—where most of the oversight has been done has declined over the years.

Monitoring myriad federal programs is tedious, takes time and preparation, and is often quite technical. It is typically unglamorous work, and most Members see little political benefit from it. Members do not rank oversight at the top of their responsibilities. For most Members, constituent service is number one, legislation is number two, and oversight is number three.

Moreover, the media do not pay much attention to traditional oversight work. They usually like to focus on scandals. And constituents rarely contact their members asking them to engage in systematic program review.

But another factor has been that the oversight priorities of Congress have shifted away from the careful review of programs to highly adversarial attempts at discrediting individual public officials looking at great length at, for example, Hillary Clinton's commodity transactions or charges of money laundering and drug trafficking at an Arkansas airport when Bill Clinton was Governor. Congress has certainly investigated federal officials throughout congressional history from its earliest investigation of the Indian wars to the Teapot Dome scandal of 1923 to Watergate and the Iran contra hearings (which I co-chaired). The authority of Congress to conduct investigations can be a crucial check on executive powers.

But recently there has been too much personalization and not enough policy in congressional oversight. Certainly for many years a lot of congressional oversight has been done for partisan purposes, and that doesn't necessarily make it bad. But spending too much time on personal investigations weakens the oversight function of Congress. It consumes Executive Branch time and resources and, more importantly, diverts congressional time and resources from the more constructive work of policy oversight. That's why Speaker Hastert's attempt to redirect congressional oversight is a good sign, and I am hopeful that it will be successful.

### Good Oversight: Examples from Committee Work

Much of my oversight work in Congress was done on the Foreign Affairs/International Relations committee. We oversaw all foreign policy activities and agencies. Let me share some methods that I found particularly helpful.

**Regular hearings:** Congressional hearings can be unproductive when Members simply read prepared questions and aren't ready to ask the tough followup questions. So I gave particular attention to regular hearings on United States policy. I found them particularly helpful in forcing Executive Branch officials to articulate policy and explain the rationale behind it something they do not like to do.

**Closed briefings:** Regular closed briefings were essential to educating ourselves on complex issues. I instituted a

monthly series of "hotspot" classified briefings for Members done by the CIA on particularly volatile areas including Bosnia, the situation in Russia, North Korea, and other issues that most Members do not routinely pay attention to.

**Letters for the Record:** One technique I developed was to press the Administration for written explanations and clarifications of various aspects of U.S. foreign policy, which I would then insert into the Congressional Record. I did this, for example, to help pin the administration down on its position on arms sales to Taiwan, on the Nuclear Agreed Framework with North Korea, on the "train and equip" program for Bosnia, and on U.S. policy vis-a-vis Turkey.

**Staff travel:** I required staff to make periodic trips with focused objectives to the areas of the world they covered. For example, Committee staff made repeated trips over several years to Bosnia, to look into the Dayton peace process, including how U.S. assistance was being spent and the role of U.S. peacekeeping troops in the region. This travel, in combination with the travel of staff from other committees, demonstrated to the Administration and local officials in Bosnia that Congress was paying close attention. Staff members wrote extensive reports on the main findings and accomplishments of their travel.

**Informal contacts:** I made sure staff had informal and frequent contacts with Executive Branch officials. If you get to know people before a crisis, you are in much better shape when there is one. Staff has close contact with officials at the State Department, DOD, and the NSC on all aspects on the Middle East crisis, and Bosnia, as well as U.S. relations with Russia and the NIS.

**Reports to Congress:** Although Congress has in many ways gone overboard in the reports that it requires of the Administration, sometimes these are very useful tools. For example, I had the State Department make reports on the economies of major recipients of foreign aid. We need to know what effect our assistance is having in key countries.

**GAO investigations:** GAO has enormous resources, and probably does more detailed oversight work than congressional committees can. I found GAO particularly helpful on foreign assistance programs.

### General Observations on Successful Oversight

Some thoughts and observations about what makes oversight successful:

First, oversight works best when it is done in as bipartisan a way as possible. Certainly there will be times when the committee chairman and the ranking minority member will disagree, but they should be able to sit down at the beginning of a new Congress and agree on the bulk of the committee's oversight agenda.

Second, policy oversight is aided when there is a constructive relationship between Congress and the implementing agency. Much oversight by its very nature is adversar-

ial, and that is particularly appropriate when an agency has engaged in egregious behavior. But excessive antagonism between the branches can be counterproductive and do little to improve program performance. Oversight should put aside petty political motives, and it should act constructively not destructively.

Third, oversight should be done in a regular, systematic way. Congress lacks a continuous, systematic oversight process, and it oversees in an episodic, erratic manner. On the Joint Committee on the Organization of Congress we recommended, for example, that each committee do a systematic review of all of the significant laws, agencies, and programs under its jurisdiction at least every 10 years. My sense is that there are activities of government that have gone on for a long time without fullscale review.

Fourth, oversight must be comprehensive. There are a vast number of activities of the federal government that never get into the newspaper headlines, yet it is still the task of Congress to look into them. When I was on the Foreign Affairs Committee, for example, we held oversight hearings on everything from Yemen to the future of NATO. Oversight driven by whether we can get cameras into the hearing room is not enough to get the job done. I am impressed by how decisions about oversight are made on the basis on how much media attention can be attracted. The relationship between the decline of oversight by Congress and the decline of investigative journalism bears further examination. Being comprehensive in oversight also means casting the net widely to look at the variety of federal agencies involved in a particular area, not just the main one (for example, not just looking at foreign policy actions of the State Department, but also of Commerce, Defense, Agriculture, CIA, etc).

Fifth, the oversight agenda of Congress should be coordinated to eliminate duplication. The administration often complains, with some justification, about the burden of redundant oversight and duplicative testimony. Different committees shouldn't cover the same ground over and over, while other important areas and programs fall through the cracks. Committees currently do prepare their oversight plans, but I sense no one is in charge of coordination.

Sixth, continuity and expertise are critical to successful oversight. Excessive staff turnover and turnover of Chairmen harm the institutional continuity and expertise so essential to the job of oversight. This is also why I generally favor having standing committees do oversight rather than special, ad hoc committees.

Seventh, there is such a thing as too much oversight. Good oversight draws the line between careful scrutiny and intervention or micromanagement. Congress should examine broad public policies, but it should not meddle and it should avoid a media show. It should certainly expose corrupt and incompetent officials, but it should avoid attacking competent, dedicated officials.

Eighth, good oversight involves documentation. The more you can get things in writing, the better off you are.

Ninth, followthrough is also important. It is one thing to ask agencies to improve their performance, but it requires the work of Members, committees, and staff aides to make sure that the changes have taken place.

Tenth, Member involvement in oversight is important. Certainly much of the work needs to be done by staff. Yet I found that Members often left too much of the responsibility with staff. Having Members involved brings additional leverage to any oversight inquiry.

Eleventh, good oversight takes clear signals from the leadership. Structural reforms and individual efforts by Members can be helpful, but for oversight to really work it takes a clear message from the congressional leadership that oversight is a priority and that it will be done in a bipartisan, systematic, coordinated way. The key role of the House Speaker and the Senate Majority Leader in successful oversight cannot be overstated.

And finally, there needs to be greater public accountability to congressional oversight. The general public can be a very important driving force behind good oversight. Congress needs to provide clear reports from each committee outlining the main programs under its jurisdiction and explaining how the committee reviewed them. As citizens understand how important congressional oversight is to achieving the kind of government they want—government that works better and costs less—they will demand more emphasis on the quality of oversight by Congress, and they will be less tolerant of highly personalized investigations that primarily serve to divert Members' attention from this critical congressional function.

## Conclusion

My personal belief is that conducting oversight is every bit as important as passing legislation. President Wilson thought that "the informing function of Congress should be preferred even to its legislating function." Our founding fathers very clearly recognized that "eternal vigilance is the price of liberty."

A strong record of congressional oversight—of "continuous watchfulness"—will do a lot to restore public confidence in the institution. It will show that Congress is taking its responsibilities seriously and is able to work together.

I'm not Pollyannaish about all of this. Certainly there will be roadblocks and obstacles in the effort to strengthen and improve oversight. The work is not particularly easy under the best of circumstances, and we can't expect all of the hard feelings and distrust about the direction of oversight in recent years to dissipate overnight. But it is my firm belief that this is an area in which Congress simply must do better, and will do better. 🏠

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ROSS E. SIMMS, JR.

*Deputy Assistant Inspector General, Federal Deposit Insurance Corporation,  
Office of Inspector General*

JEANETTE MEIXNER FRANZEL

*Assistant Director, Corporate Audits and Standards, U.S. General Accounting Office*

# The Buck Stops Here

## *A Unique Partnership in Federal Financial Auditing*

**W**hen the Federal Deposit Insurance Corporation's (FDIC) Office of Inspector General (OIG) and the General Accounting Office (GAO) embarked upon a collaborative effort in 1996, they developed an innovative model for forming partnerships in the federal government. GAO is responsible for auditing the financial statements of the FDIC based on provisions of the Federal Deposit Insurance Act, as amended, and the FDIC OIG performs audits, reviews, and evaluations of FDIC activities in order to meet its responsibilities under the Inspector General Act.

The FDIC OIG and GAO formed a strategic partnership to conduct the financial statement audits for their common client—the Federal Deposit Insurance Corporation. The desire for continuous improvement and the demands of an ever-changing environment created the forces to produce this innovative approach. Managers and staff at the FDIC OIG and GAO had to rethink how to approach their jobs and stepped beyond the borders of their own organizations. This collaborative effort has been a success story benefiting both the GAO and OIG, and can serve as a model for other partnerships across the federal government.

### **1996—Laying the Groundwork for Success**

In 1996, the FDIC Inspector General and GAO management formed a partnership. The primary goal of the partnership was to train the OIG staff in performing and assuming responsibility for the financial statement audits at FDIC. Management of both organizations understood that this would be a multi-year project, and granted flexibility and leeway to the project managers. In addition, the heart of the project's challenge and potential success would lie in creating an effective audit team while merging staff from different organizations, different organizational cultures, different personnel and administrative systems, and different professional disciplines. While the GAO staff members were highly-skilled in financial statement auditing, the OIG staff were highly-skilled in performance auditing. Realizing this, both organizations selected highly skilled, senior project managers with leadership abilities and experience.

In addition to the challenges presented in managing the newly formed team, the audit client—the FDIC—presented the team with additional challenges. FDIC is a large, complex organization with substantial assets, and was recovering from the crises in the banking and savings and loan industries. Although FDIC had traditionally received “clean” opinions on its financial statements, reportable internal control weaknesses still existed relating to issues with failed banks and thrifts. In addition, the FDIC was undergoing a significant reorganization and downsizing, which impacted FDIC’s control environment. Consequently, the GAO/OIG project team and management had to remain highly sensitive to FDIC’s risks, and maintain an effective and productive working relationship with FDIC management.

These major hurdles were addressed throughout the multi-year project. During 1996, the GAO team integrated senior-level OIG staff members into its existing team. These senior level OIG auditors were effectively working at a beginning financial auditor level during a one-year training period. Recognizing that such a role change can be a difficult adjustment, the senior-level OIG staff were provided assurances from OIG and GAO management that their responsibilities would increase as they gained financial auditing experience. At the same time, the GAO auditors had the additional challenge of training the OIG auditors in GAO’s Financial Audit Methodology. The staff composition during the 1996 audits was 68% GAO and 32% OIG.

### **1997—Learning, Progress, and New Challenges**

The 1997 audits brought significant progress in the partnership as the GAO reduced its staffing levels and the OIG added staff. In addition, many of the returning OIG auditors were assigned auditor-in-charge roles for designated segments of the audits. The OIG auditors-in-charge continued to work closely with GAO managers and staff and continued to gain experience. The OIG auditors were provided

with a combination of on-the-job training, and formal classroom training in financial audit techniques and theory.

During the 1997 audit, the OIG took responsibility for the EDP general controls review conducted as part of the financial statement audits. One of the OIG senior-level auditors assigned in 1996 was an EDP specialist, who began managing the EDP controls segment of the 1997 audits. In addition, the OIG EDP specialist provided the GAO project managers with a great deal of guidance regarding the EDP general controls review, thereby reducing the involvement of GAO EDP specialists on the job.

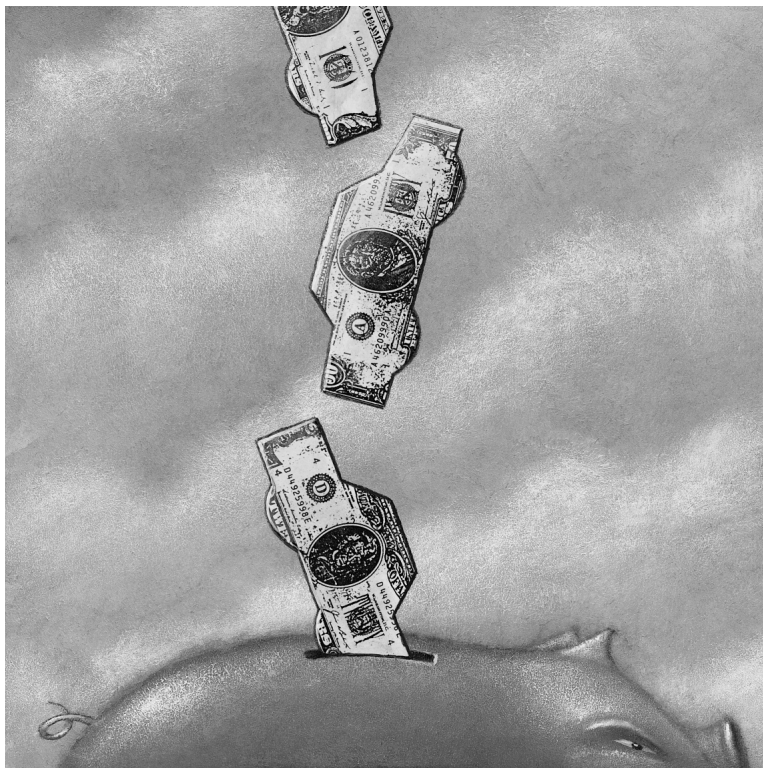
During the 1997 audits, personnel and other team issues arose as staff from both organizations adjusted to the new team composition and the partnership philosophy was

fully implemented throughout the job. In order to keep the effort on track, project managers from both the OIG and GAO had to confront the matters and work toward resolutions suitable for both organizations. This was a critical time for the project. As the necessary human issues were addressed, the combined OIG/GAO team continued operating effectively.

OIG and GAO managers also dedicated time to explain and promote the joint partnership effort to their common client—FDIC management. Because both organizations separately maintained relationships

with FDIC management, it was critical to keep the client informed of the joint effort, and provide any necessary assurances regarding the project and the growing role of the OIG in the financial audits. Periodic meetings were held with GAO, FDIC, and OIG management to discuss the progress of the audits, and any related issues or concerns. In addition, OIG discussed the collaborative effort in its semiannual reports to Congress to keep other interested parties current on developments.

Also during that time, the FDIC continued to work with the auditors to find solutions to previously reported internal control issues. During the 1997 audit, FDIC management successfully resolved one of the internal control weaknesses reported during the 1996 audits. FDIC also



continued to receive clean opinions on its financial statements. By the end of the 1997 audit, the staff composition had changed to 41% GAO and 59% OIG.

To celebrate the progress made during a challenging and critical year for the project, GAO hosted a ceremony and reception for all audit team members involved in the joint project. Top management from GAO and OIG attended and recognized the team and project managers with certificates of appreciation. Management also acknowledged the challenges that were successfully met by the staff during the year. The celebration provided the stepping stones of encouragement needed for going forward.

### **1998—Applying Progress: GAO Relying on OIG**

The 1998 audits offered a great test for the OIG staff to assume responsibility for certain audit segments and apply newly acquired financial audit skills. Using professional standards for relying on the work of others, GAO began to rely on the OIG's work for designated audit segments. In fact, all of the regional work and selected headquarters segments were conducted under OIG leadership. Using professional standards, GAO maintained full responsibility for the audits. GAO continued to approve key planning documents, work programs, time frames, and final work products for the OIG designated areas. However, the OIG was responsible for implementing and conducting the work. Also, OIG staff continued to receive training from GAO staff and managers.

During the 1998 audits, the OIG assigned a second EDP specialist to the job to assist the team in testing and analyzing automated data, and to develop and utilize computer assisted audit techniques. The OIG EDP specialist worked with all staff across the job, and often provided consulting to the GAO project managers in the planning phases of the audits to develop efficient audit approaches and techniques.

As a result of specific knowledge gained while performing the financial audits, the OIG staff assigned to the job were able to communicate additional input and information to other groups within the OIG regarding work performed by the other OIG audit groups. The result was improved coordination and communication between the financial audits and other work performed by the OIG, as well as helpful input to ongoing OIG jobs.

GAO and OIG management continued communications with FDIC regarding the status of the audits and the progress in the GAO/OIG partnership. GAO also emphasized to FDIC management that despite the changing responsibilities within the team, the audit would continue to be conducted in accordance with GAO's quality control and review standards.

During the year, the OIG staff and project managers gained additional experience in managing financial audits and in working with the client to resolve internal control

issues. During the 1998 audit, the FDIC resolved the one remaining previously reported internal control weakness and continues to receive clean opinions on its financial statements. The staff composition at the end of the 1998 audits was 34% GAO and 66% OIG.

### **1999—Reinforcing: Raising the Bar with Additional Challenges**

At the beginning of the 1999 audits, the GAO raised its expectations for the OIG staff. The OIG was given responsibility for two additional areas. GAO's expectations also include development of OIG quality control standards on the project that meet GAO's standards. The GAO project managers hope to reduce their level of input and involvement in the OIG designated audit areas. This would require the OIG to step up to the challenge and independently resolve OIG team issues and audit issues. GAO will continue to review the results of the OIG work, following professional auditing standards for relying on the work of others while maintaining full responsibility for the audits. Currently, the staff composition is 28% GAO and 72% OIG. The regional audit team, located in Dallas, is comprised completely of OIG staff and project managers.

### **Anticipating: Vision for the Future**

The upcoming audits pose many challenges. FDIC is a sophisticated organization that must constantly evolve to respond to new innovations and risks in the banking and thrift industries. FDIC continuously employs new systems, procedures, and thought processes to meet its mission. These changes have the potential to affect FDIC's control environment, the financial statements, and audit techniques. OIG staff will need to stay abreast of current issues and adjust audit approaches accordingly. Also, the auditing skills acquired over the past three years need to be applied in an ever-changing environment. Constant attention must also be given to the relationship with FDIC management.

Because the financial audits at FDIC have such a broad coverage of FDIC operations, the OIG staffs assigned to the job are gaining a "big picture" view of their client's operations. The OIG will face the challenge of integrating this new learning with its other audit operations in the future, so that the OIG as a whole can benefit from the new skills and perspectives gained by the staff assigned to the financial audits.

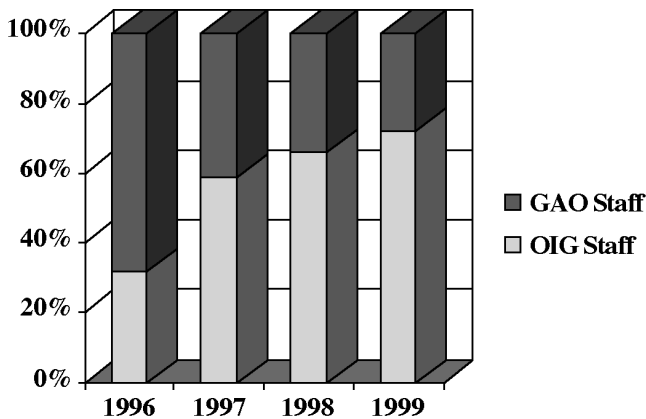
### **Concluding Thoughts**

The OIG/GAO partnership is a positive model of success due to the efforts of all involved, both individuals and groups. The two audit organizations and the client were all willing to try new approaches in government financial auditing. The combined audit team was developed over a

multi-year period, with various human issues being dealt with along the way.

Currently the team is tackling the 1999 financial audits with the tenacity expected of a good audit team. Individual team members' organizational affiliation barely matters. It's the job that counts.

**Graph Showing Staff Composition 1996–1999**



## Missions

### *Federal Deposit Insurance Corporation (FDIC)*

The FDIC was created to restore and maintain public confidence in the nation's banking system. The FDIC serves as administrator for the Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF). These insurance funds are responsible for protecting insured depositors in

operating banks and thrift institutions from loss due to institution failures. Also, FDIC is the administrator for the FSLIC Resolution Fund (FRF). The FRF is responsible for winding up the affairs of the former Federal Savings and Loan Insurance Corporation (FSLIC), and liquidating the assets and liabilities transferred from the former Resolution Trust Corporation.

Other information regarding the FDIC may be found at FDIC's website located at [WWW.FDIC.GOV](http://WWW.FDIC.GOV).

### *Office of Inspector General*

The FDIC Office of Inspector General (OIG) promotes the economy, efficiency, and effectiveness of FDIC programs and operations, and protects against fraud, waste, and abuse, to assist and augment the FDIC's contribution to the stability of, and public confidence in the nation's financial system.

### *General Accounting Office*

The General Accounting Office (GAO) is the investigative arm of the Congress. GAO helps the Congress oversee federal programs and operations to assure accountability to the American people. GAO's multidisciplinary professionals seek to enhance the economy, efficiency, effectiveness, and credibility of the federal government both in fact and in the eyes of the American people. GAO accomplishes its mission through a variety of activities that include financial audits, program reviews, investigations, legal support, and policy/program analyses.

Other information regarding the GAO may be found at the GAO website located at [WWW.GAO.GOV](http://WWW.GAO.GOV). 📄

# The Hounds of Cyberville

## *The Treasury Inspector General for Tax Administration's Computer Security Program*

It's probably not much of a surprise to learn that the Internal Revenue Service (IRS) has one of the largest computing environments in the world. With over 75,000 users accessing a variety of systems, all of which contain sensitive taxpayer information, the number of audit trail entries alone runs into the hundreds of millions. Accordingly, our ability to maintain the integrity of our systems becomes dependent on what we put into our computer security program.

The Treasury Inspector General for Tax Administration (TIGTA) has the task of auditing IRS systems and investigating misuse of them. The IRS is responsible for ensuring that IRS data remains secure and users restrict their access to information needed to perform their duties. To meet both of these tasks, TIGTA has developed a unique computer security program consisting of two groups.

The first group, the System Intrusion and Network Attack Response Team (SINART), is responsible for developing and maintaining an aggressive program for the prevention, detection and investigation of any attempts to interfere with the operation and security of any Treasury owned network. The second group, the Strategic Enforcement Division (SED), is responsible for identifying and investigating unauthorized electronic accesses to any Federal taxpayer record by a Federal or state employee or contractor without an official business reason.

### **System Intrusion and Network Attack**

The SINART program began approximately three years ago as an off-shoot of our Computer Investigative Specialist Program (CIS). During its infancy, the primary functions of the group were to investigate threats and impersonations propagated through the Internet. Treasury's increased use of and reliance upon the Internet, combined with a very large communications infrastructure, quickly transformed the mission to include intrusion and denial of service attacks as well as performing proactive security reviews.

Today's SINART program includes the monitoring and configuration management of Internet firewalls, deployment of virtual private networks, maintenance and management of Internet domain name servers, providing specialized communications resources to criminal investigators, providing technical assistance to Internet-related projects and con-

*... "Our system of taxation relies heavily on taxpayers' voluntary compliance with their tax reporting obligations. Maintaining the confidentiality of the information submitted by taxpayers is critical to the operation of the system...It is my administration's clear policy that unauthorized inspection of tax information will not be tolerated. This is a bipartisan issue on which everyone can agree . . . and we all condemn it"*

President Bill Clinton



ducting investigations related to computer network attacks and intrusions.

Many of our cases begin when a systems administrator discovers and reports some kind of system-related anomaly such as an unexplained entry into a system log file, abnormal network activity, unexplained loss of network connectivity, high incidence of mail problems, or suspicious user activity. Our first objective is to interview the systems administrator to identify any and all existing log files that might be available on the system that might help us explain what's really happening.

Criminal investigations involve gathering evidence that proves a crime was committed and identifies the person or persons responsible for the crime. In that respect, our investigations are like all others. What makes our job unique are the tools we use—port scanners, network monitors, packet sniffers, and intrusion detection programs. When properly deployed, our tools not only enable us to provide evidence that a crime occurred but also who did it and how. The how portion is, by far, the most complicated area in the investigation.

All too often, traditional computer security types lack the technical expertise to understand new technology and immediately become fearful of it. What makes the SINART program unique among other computer security programs is that its non-investigatory function has been to facilitate new technologies in a controlled and safe manner rather than act as an inhibitor by preventing the introduction of new technology under the guise of it being a "security risk." To date, SINART has been instrumental in establishing Treasury's implementation standards for domain name servers, Internet connected firewalls and secure virtual private networks.

### Unauthorized Access to Tax Information

While SINART is primarily concerned with outsiders trying to gain access to Treasury networks and IRS computers, the Strategic Enforcement Division complements that mission

by focusing its investigative resources on the activity of *authorized users*. SED was formed in 1997 after Congress created the Taxpayer Browsing Protection Act of 1997. Its primary mission is to identify IRS employees and contractors that improperly and illegally browse taxpayer information.

All user activity on IRS tax processing mainframes is audited and logged. Over the years, IRS has developed a number of integrity programs designed to examine and analyze accesses on the system for potential integrity issues. Suspicious activity was referred to TIGTA for follow-up. Statistics later showed that less than 6% of those leads

resulted in a criminal investigation.

Since passage of the Browsing Act, TIGTA undertook a research project whereby former criminal cases involving browsing and disclosure issues were analyzed for what we refer to as "key fraud indicators," or KFI's for short. KFI's are used to identify suspicious activity on the part of a user in much the same way "profiling" is used to solve serial murders. The actions of known violators were quantified and programs were developed that looked for similar patterns among the 100 million audit trail entries received every month.

SED further enhanced this process by using data mining and forensic database analysis techniques to compare other data with that of the audit trails. The results have been impressive—approximately 41% of the leads now generated by SED's automated processes

are referred for investigations; a significant increase from the 6% rate found before.

SED's mission continues to evolve. In addition to audit trail analysis, SED provides support to TIGTA's national and field office components by providing database analysis for other types of ongoing investigations and audits. SED is in the process of identifying and evaluating other IRS systems for control weaknesses, forwarding such results to our Audit staff as auditing leads. They also provide testimony and evidentiary guidance during criminal and administrative proceedings.



## Conclusion

TIGTA has developed one of the most innovative and comprehensive computer security programs of its kind. The diversity of its mission is reflected in the makeup of its members, which include criminal investigators, auditors, and computer specialists.

We've found that developing a computer security program is a three-part process. The first step involves identifying the specific requirements that a program must meet. Government agencies vary widely in their reliance upon computers, networks and the sensitivity of data contained on their systems. What works well for one agency may be totally inappropriate for another.

The second step is the most challenging, particular for the government—obtaining the necessary talent to build the program. Right now, good computer security experts are in big demand; those that begin their careers in government often leave for private industry. Recent studies have warned that the government will face a critical shortfall of computer security expertise in the near future.

The final step is to obtain the necessary resources needed to carry out a computer security function. Primary

costs involve staff. Depending on program requirements, communications expenses, software and outside contract support can raise the price tag substantially.

Once your program is up and running, you'll devote a great deal of time and energy to constantly re-evaluate what you're doing and how you're doing it. It basically becomes a never ending learning process. 📖

- For additional information regarding System Intrusion and Network Attack, contact:  
Andrew Fried, ASAC  
Forensic & Technical Services Division  
Treasury Inspector General for Tax Administration  
Phone (202) 622-3535
  
- For additional information regarding Unauthorized Access Detection, contact:  
Edwin Bosaw, ASAC  
Strategic Enforcement Division  
Treasury Inspector General for Tax Administration  
Phone (513) 684-2562



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GINGER MOENCH

*Policy Analyst, Office of Management and Budget*

# Into the Future

## *OMB on the U.S. Five-Year Plan*

OMB recently issued the *1999 Federal Financial Management Status Report and Five Year Plan*. The Chief Financial Officers Act of 1990 (CFOs Act) requires that the Director of the Office of Management and Budget (OMB) annually submit this document to the Congress. The 1999 Plan is the eighth such plan and the fifth time it has been prepared jointly with the Chief Financial Officer (CFO) Council.

In April 1999, the CFO Council reviewed governmentwide progress in each of the Council's priority areas listed in the *1998 Federal Financial Management Status Report and Five-Year Plan* to determine any needed mid-course adjustments. The 1999 Plan reflects the results of those discussions.

The complete 1999 Plan can be found at <http://www.whitehouse.gov/OMB/financial>. The Executive Summary to the 1999 Plan follows:

### **1999 Federal Financial Management Status Report and Five Year Plan**

The Federal Financial Management Status Report and Five-Year Plan describes the Administration's accomplishments and plans for strengthening Federal financial management as required by the CFO Act of 1990, as amended. The CFO Council, OMB, and the Department of the Treasury (Treasury) are working aggressively on the priority initiatives described in this report. These priorities are to:

- improve financial accountability;
- improve financial management systems;
- develop human resources and CFO organizations;
- improve management of receivables;
- use electronic commerce to improve financial management; and
- improve administration of Federal grant programs.

Working collaboratively since the passage of the CFOs Act of 1990, the CFO Council, OMB, Treasury, and the General Accounting Office (GAO) have made substantial improvements in Federal financial management. A comprehensive set of basic Federal accounting standards is now in place. These standards have led to significant advances in financial reporting. For the second year in a row, Treasury has issued consolidated financial statements for the Federal Government. In addition, 13 of the 24 CFO Act agencies received or are expected to receive unqualified opinions on their 1998 departmentwide audited financial statements, compared with 11 agencies in 1997.

Reliable financial information is needed to enable Congress and the executive branch to effectively evaluate the cost and performance of Federal programs and activities. For example, better financial information at the Health Care Financing Administration (HCFA) led to reductions in improper payments. The Department of Health and Human Services (HHS) Inspector General (IG), while auditing the financial statements of HCFA for 1996, 1997, and 1998, performed an extensive analysis of the extent and causes of improper payments in the Medicare program. As a result, HCFA reported estimated improper payments of \$12.6 billion (7.1 percent) for 1998, down from about \$20.3 billion (11 percent) for 1997, and \$23.2 billion (14 percent) for 1996. HCFA program staff continue to work with the IG to reduce improper payments.

It is the Administration's goal to achieve an unqualified opinion on the 1999 consolidated financial statements of the Federal Government. Toward this end, the President issued a memorandum to agency heads on May 26, 1998, directing them to take additional steps to improve financial management. Selected agencies have submitted plans with milestones for resolving financial reporting deficiencies. These agencies provide quarterly reports to OMB. OMB monitors agency progress towards an unqualified audit opinion on the 1999 consolidated Federal Government financial statements and provides periodic reports to the Vice President.

In a 1999 report, the Director of OMB recognized that an unqualified opinion on the 1999 consolidated financial statements of the Federal Government was a "daunting" goal, considering the magnitude of obstacles at the Department of Defense (DOD) and the complexity of eliminating intra-governmental transactions. DOD now targets a departmentwide unqualified opinion for 2003. Agencies have difficulty properly identifying and eliminating transactions between Federal Government entities because financial processing systems were not designed with a consolidated statement in mind and do not easily provide for such eliminations.

The development of financial management systems that support Federal accounting standards and concepts will, over the long term, improve Federal financial management. This is recognized in the Federal Financial Management Improvement Act (FFMIA). The Federal Government now has a comprehensive set of accounting concepts and standards. Fiscal control will be improved as agencies implement these standards. Also, complete, consistent, reliable, and timely information on the cost of programs becomes available to program managers.

OMB and the Joint Financial Management Improvement Program (JFMIP) are working to provide agencies with governmentwide financial systems' requirements and to make financial systems that meet these requirements more available. The JFMIP Program Management Office (PMO) was established in 1998 and funded by the 24 CFO Act agencies

through a share of Federal charge card rebates. This joint investment illustrates the governmentwide commitment to improve Federal financial systems. Such pooled investment will support the development of common tools and information sharing. The PMO will develop financial management systems requirements, address systems integration issues, interpret requirements in the context of off-the-shelf software, develop comprehensive testing vehicles, serve as an information clearinghouse for Federal financial systems, and facilitate communication with the private sector. In the 2000 Budget, the Administration has proposed the enactment of language to facilitate this and other similar improvements that cut across the boundaries of individual departments and agencies.

Over the next several months, CFO Act agencies will continue to ensure that financial management systems critical to their missions are capable of meeting the requirements of the Year 2000. As of June 1999, the CFO Act agencies reported that 85 percent of their critical financial management applications were Year 2000 compliant.

The CFO Council is also striving through educational and outreach activities to improve the overall quality of the financial management work force. Over the past year, the Human Resources Committee (HRC) established training standards for Federal financial management personnel, improved recruitment strategies, and strengthened qualification standards. The HRC will continue to strengthen recruitment and retention of financial management personnel in the coming year.

Improvements are continually being made to the government's management of debt collection and payment. The Debt Collection Improvement Act of 1996 (DCIA) created incentives and provided tools for Treasury and other debt collection agencies to reduce debt losses and increase collections. For example, HHS' Child Support Enforcement Program collected \$14.4 billion in 1998, an increase of more than seven percent over 1997. In the coming years, Treasury and the CFO Act agencies will continue to improve debt collection for major receivable accounts using DCIA incentives and tools.

DCIA also mandated that Federal agencies process payments electronically and modernize the business operations of the Federal Government via electronic commerce. The CFO Act agencies, such as the Department of Veterans Affairs (VA), are enhancing electronic commerce tools and techniques. VA's electronic vendor payments increased from \$2.9 billion in 1997 to \$3.3 billion in 1998. This resulted in interest penalties decreasing by four percent and rebates increasing to \$7.4 million. VA has also implemented a totally electronic and paperless payment system, the Prime Vendor Payment System, which automates pharmaceutical company payments totaling more than \$825 million. Collaborating with the Electronic Processes Initiatives Committee, the CFO Council agencies will continue to implement the electronic commerce strategic plans in the coming years.

The CFO Council's Grants Accounting Committee and OMB have been very active over this past year. The Committee adopted a plan to reduce the number of grants payment systems used by the Federal Government and provided assistance to OMB in the development of new grants management policies. OMB revised Circulars A-21, "Cost Principles for Educational Institutions," and A-122, "Cost Principles for Non-Profit Organizations." Revising these standards was one of several steps undertaken to standardize the methods for determining the percentage of a Federal grant that may be used to cover facilities and administrative costs. This percentage is commonly called the indirect cost rate. OMB, with assistance from other Federal agencies, also developed a draft standard format for educational institutions to use in submitting their indirect cost rate proposals. The format will be issued as a proposal in the summer of 1999. OMB and agencies will continue to study ways to streamline various

grant procedures, e.g., design common forms for grant application and financial reporting, review the General Terms and Conditions for grants and contracts, and study the feasibility of creating a single grants-management circular.

Improving Federal financial management is necessary to achieve the Federal Government's program performance goals. The CFO Council and the central agencies—OMB, General Services Administration (GSA), Office of Personnel Management (OPM), and Treasury—played important roles in setting standards, developing policies, and removing obstacles to reforming the way agencies do their work. CFOs are working within their agencies and through the CFO Council to achieve the critical objectives described in this plan. They will continue to pursue high standards of fiscal discipline to make significant contributions to the improved management of their agencies and the Federal Government. 🏛️





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RICHARD S. WERKSMAN

*Designated Agency Ethics Official, Assistant General Counsel,  
United States Information Agency*

# Ahem!

## *The Ethics Officers*

The following article describes the position of Designated Agency Ethics Official in the Executive Branch of the Federal Government and the role it plays in the ethics program that began with the passage of the Ethics in Government Act of 1978. As set forth below, the arrival of the new millennium and the appointment of a new Director of the Office of Government Ethics provide an important opportunity to make a significant adjustment in the direction and focus of the Office. Observations about the challenges of the new millennium to that position and to that program are also provided. The views expressed herein are those of the author and not necessarily those of the United States Information Agency or the United States Government.

### **As the New Millennium Approaches**

There can be no question that since 1978, the ethics program and the Designated Agency Ethics Official (DAEO) activities have consumed untold resources of the executive branch in an area where measurement of success is practically impossible. The Office of Government Ethics (OGE) audits, do of course, reflect to a certain degree how well the DAEO is fulfilling certain measurable tasks, like conducting training programs and collecting and reviewing financial disclosure reports. As a result of an OGE Summary of a 1998 Questionnaire Report, some 15,000 Federal employees worked full or part time in the ethics program in 1998, while 87 of 120 DAEO's were lawyers. Whatever success can be attributed to the program, in the absence of any surveys, for example, of employee satisfaction or public awareness of the program, it must be recognized that the new statutes and regulations that emerged from the 1978 era really added no new or startling requirements on Federal employees. Perhaps the most innovative was the requirement for public financial disclosure reports and it is not likely that the requirement caused much of a problem except for the rare instance in which a candidate for an office that required such a report decided to serve his or her country in some other fashion. For the most part, however, the requirements reflected common sense and recapitulated a series of non-burdensome requirements that were part of the ethic of most public servants at that time.

However as we enter the new millennium, it is reasonable to ask several basic questions about the future of the federal ethics program. First, will the profile of the average federal employee be so different in 2015 or will the same Standards and requirements that were so readily accepted in 1978 can be expected to be obeyed as readily 50 years later? Second, should the legalistic approach that the OGE has taken to ethics and

ethical standards continue to prevail? And third, should we continue to look to lawyers to be the most effective DAEO's?

On the first question, a new generation of Federal employee has entered the Federal work force, an even newer one is coming, in and the old one is leaving. The generations of native born Americans that viewed public service as an honor and saw the Federal government as the solution to the problems of the Depression and as the winner of World War II and not the cause of the nation's problems will no longer make up the bulk of the federal work force. Will the generations that replace them take for granted the principles of public office as a public trust that the present work force learned in civic education classes that no longer exist? If the answer is no, or only maybe, then perhaps a new approach to Federal ethics programs and to ethics training will be necessary.

Second, this new requirement may mean a new approach at OGE, starting at the top where white, male lawyers have always served as the Director, with one non-lawyer exception since the inception of the agency. Most of the statutes and regulations supporting the program have now been interpreted and explained to maximal degree. Perhaps it is time for a sociologist or an economist or educator to exercise the leadership of OGE with the primary goal of ethical inculcation and enhancement of public confidence in the Federal workforce. Since Stephen Potts has announced that this will be his last stint as the Majority Representative, his departure next year offers the President the opportunity to appoint a new leader with a new agenda. The ethics program to date has been based mostly on avoiding financial conflict of interest and not in enhancing human values and human relationships as a means of better human conduct in public service. One searches in vain in the Standards of Conduct for anything more about ethical treatment of our fellow human beings than the principle of equal employment opportunity already on the books.

And finally, in dealing with individual agency ethics programs, is it still necessary for the most effective program to continue to have lawyers as the overwhelming majority of DAEO's? Surely there will have to be lawyers to do the necessary interpreting of new, and some old, conflict of interest laws and other similar statutes and regulations but the challenge of the new millennium will be in the area of human relations and unifying an increasingly diverse nation. The federal ethics program and the DAEOs should be in the forefront that calls for skills in addition to legal interpretation.

### **The Modern Era of Ethics in the Federal Government**

The modern era of ethics in the Federal Government began in the late 1970's in the aftermath of the Watergate scandal. Congress enacted three major pieces of legislation—

The Foreign Corrupt Practices Act of 1977 (FCPA), the Ethics in Government Act of 1978 (EGA), and the Inspector General Act of 1978. While the FCPA bears only indirectly on the subject of this article, it sets a tone for the private sector by criminalizing the bribery by United States individual and corporate residents of foreign public officials that the two other statutes set for the Executive Branch, and for the private sector as well in its dealings with the Executive Branch. The duties and responsibilities of one of the essential positions created by the Ethics in Government Act, namely the (DAEO including the relationship of the DAEO to the Office of Inspector General (OIG) in the federal agencies they serve.

While it is reasonable to refer to the passage of these statutes as the beginning of a new era, essentially because of the unprecedented programs and bureaucracies they created under the OIG's and the new OGE, it should be recognized that they were appended to a long established system of laws, regulations and agencies of the Federal government. A major concern of the Congress, the Federal courts and the executive branch for many years had been the enactment of laws, judicial opinions and investigative activities to deal with corruption and unethical conduct in the federal government and in the private sector's dealings with it. Although the newly appointed DAEO's would shortly find themselves dealing with new rules and regulations emanating from the OGE, they would also be dealing with conflict of interest laws and other statutes that had been in effect for decades.

### **Defining the DAEO's and Their Duties**

The first reference to DAEO is found in Section 109(3) of Title II of the EGA, which contains the following definition: "designated agency ethics official means an officer or employee who is designated to administer the provisions of this title within an agency." Then this definition of DAEO is expanded at 5 CFR 2638.104, as follows:

Designated agency ethics official means an officer or employee who is designated by the head of [each executive] agency to coordinate and manage the agency's ethics program in accordance with the provisions of [Section] 2638.203 of this part.

Section 202 of the same regulation makes the head of each Executive Branch agency, including the Postal Service and the Postal Rate Commission, personally responsible for the leadership in establishing, maintaining and carrying out the agency's ethics program, and for selecting the DAEO. While all DAEO's are responsible for the same duties that are spelled out in detail below, their experience differs considerably with how personally and how seriously the head of the agency has taken his or her responsibilities for the ethics program of their agency. It is probably fair to say that unless the OGE has brought to an agency head's attention

the OGE's dissatisfaction with the result of the periodical OGE audit of the agency's program, the agency head is unlikely to be familiar with the program or the DAEO. The bigger the agency, the more likely it is that the DAEO will have a number of Deputies to cover the major units in it. In some agencies, the DAEO may be the General Counsel who has delegated the day-to-day responsibilities to a subordinate who performs most or all of the DAEO duties.

Section 203 sets forth first the general elements of the program and then the specific duties of the DAEO to implement it. First, the program must consist of (1) liaison with the OGE; (2) review of financial disclosure reports; (3) initiation and maintenance of ethics education and training programs; and (4) monitoring administrative actions and sanctions. Second, the regulations mandate 14 specific duties for the DAEO to perform to ensure that the program is carried out effectively. For the complete set of DAEO duties please refer to the Code of Federal Regulations, 5 CFR 2638.201-203. As noted above, the OGE audits each agency periodically to ensure that these duties are being performed. As indicated below, the DAEO may not personally perform all these duties, in particular the training or financial disclosure review, but is responsible for seeing to it that they are done.

Some discussion of several major DAEO duties will shed light on some of the more interesting challenges that DAEO's and their own staffs or other agency support offices face throughout the executive branch. Liaison with OGE provides the DAEO not just the audit, but with countless communications that enable the DAEO to be equipped to assure that the other tasks get done. Every DAEO is beholden to OGE for materials that facilitate training, counseling, review of financial disclosure reports and the other duties assigned. Over the years the development of electronic and audio-visual materials produced or inspired by OGE has enhanced immeasurably the mandatory and optional ethics training and educational programs. Periodic and annual conferences sponsored by OGE have enabled DAEO's and their instructors stay abreast of the comprehensive and dynamic panoply of ethics rules, regulations and interpretations that the OGE, the courts and the Congress have developed, with no end in sight. DAEO's also have access to several commercial publications that have sprung up since the early eighties to serve both the government and the private sector companies who are directly affected by Federal ethics rules, in such areas as gifts to federal employees and how they can legally recruit federal employees.

The requirements for establishing "an effective system and procedure for the collection, filing, review, and when applicable, public inspection of the financial disclosure reports as required by title II" of the EGA surely pose one of the biggest and time consuming burdens for the ethics program of any agency and for the DAEO if there is not separate staff to handle them. While the requirements

enable the DAEO to meet personally with the agency head and top staff, they also involve the detailed review of hundreds, if not thousands, of employees who find the mandate for filing these reports to be a burdensome and often meaningless task, since many of them do not get involved in matters where conflict of interest is a real possibility, but they are required to file because of their salary level. One of the principal purposes of the OGE audit referred to above is to ensure that there has been sufficient review of these forms, both public and confidential, which means being sure that the right boxes have been checked, with no assurance that the form has been prepared accurately. In other words, the DAEO is responsible for assuring that the form has been filled out completely, without having any idea whether the reporting employee has reported all the assets that need to be reported or that the correct value has been reported. Only if the employee is the subject of an OIG investigation, in which the SF 278 Public Financial Disclosure Report or the SF 450 Confidential Financial Disclosure Report is matched with the employee's income tax form will the veracity of the former be tested. Still, the opportunity to discuss possible conflicts of interest with filers provides the DAEO with a significant opportunity to interact with employees on a one-on-one basis and to impress them with the scope and reach of the ethics program.

Equally important and time-consuming are the requirements on the DAEO that each agency conduct extensive ethics training and education programs for a wide range of agency employees. The degree of involvement of the agency head and top agency officials in these programs varies considerably from one agency to another, but there are probably more DAEO's who wish that those officials were more involved than there are DAEO who don't. These training and education programs are primarily aimed at ensuring that employees know what are contained in the specific Standards of Ethical Conduct for Employees of the Executive Branch. Few DAEO's if any are under the impression that they are inculcating the first code of ethics or conduct in the employees who are in the audience. On the contrary, the reality in most cases is that as adults all federal employees, new and old, have developed their own personal codes of conduct and that what the ethics training does for them to make sure they understand that if they disobey these Standards, or the countless statutes that are listed as the end of the printed Standards, they can be fired or disciplined less severely. One of the dilemmas faced by many DAEO's arises when an employee comes to them to complain about unethical conduct of a co-worker or a supervisor, such as intemperate or derisive remarks, and the DAEO must declare that such conduct may be unethical but it is not in violation of any specific Standard or statute. The reference to the Inspectors General and their authority to investigate allegations of employee misconduct adds an important element of enforcement to the ethics training, although the zeal of the OIG to investigate alleged criminal

*Ahem!*

activity and reluctance to investigate petty dereliction, such as routine time and attendance violations, reflects a disparity that cannot be of comfort to the DAEO or co-workers of the time and attendance cheater.

Also of preventive importance are the duties of the DAEO to counsel employees who seek advice about moonlighting or other activities that might violate the Standards or other applicable laws that may not even be in the

purview of the OGE. For example, in an election year, the DAEO can expect inquiries about the Hatch Act and political activities of Federal employees, even though the Office of Special Counsel (OSC), and not OGE, is responsible for ensuring compliance with those limitations on federal employees. Whistleblower protection is also an aspect of ethical conduct that the DAEO is expected to advise on which is the purview of OSC. 📌

## ***Notes***

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