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**COUNCIL OF INSPECTORS GENERAL ON
INTEGRITY AND EFFICIENCY**

Council of Inspectors General on Integrity and Efficiency

Members of the Council

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LETTER FROM THE EDITOR-IN-CHIEF

The importance of this issue of the *Journal of Public Inquiry* can best be illustrated by the words of Earl E. Devany, Chairman of the Recovery Accountability and Transparency Board, “Transparency is the friend of the enforcers and the enemy of the fraudster.” Inspectors general carry out the crucial mission of promoting accountability and transparency in government. This *Journal* is, in fact, an affirmation of the continuing commitment to these core values by the IG community. The article, “Transparency in Government” addresses how transparency and accountability are enhanced through public facing websites.

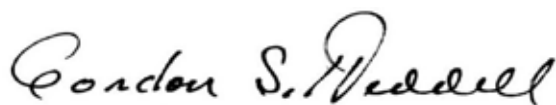
It’s not an overstatement to say that this is a time of change for those who are working to achieve efficiency in their respective departments. Inspectors general are operating during a time of limited resources while working to ensure cost-effective spending. Language that speaks of efficiency, economy, value, and fiscal responsibility is becoming even more common place. Expectations for government oversight among the public remain high. And here lies the opportunity. Yes, times are challenging – but the need for oversight remains prevalent. Offices of Inspectors General are making an impact by reducing fraud, waste, and abuse, and improving efficiencies and effectiveness. The focus must now turn to innovation and consideration to developing the right partnerships and practices that will allow OIGs to focus oversight in those areas with the greatest impact.

The opportunities for partnerships and collaboration are widespread. In addition to the range of working groups, boards, councils, and task forces in which oversight agencies participate, the *Journal of Public Inquiry* also serves as a tool for building relationships and connecting those who have an interest in government oversight. The Council of Inspectors General for Integrity and Efficiency publishes the *Journal* semiannually in order to provide a valuable resource for sharing information and lessons learned. I appreciate the opportunity provided by the CIGIE and believe in the importance of working together through a variety of mediums. That is why I have contributed an article to this issue of the *Journal*. I share the challenges I face in providing oversight of a dynamic department and how I have worked to focus on the health and safety of our men and women in uniform, provide timely and relevant reports, and take care of our people while improving communication. My goal with the article, as I have learned from the other authors in this publication, is to share my experience and knowledge in hopes that it will provide insight to those who are operating in similar environments.

This issue of the *Journal* brings together work from leaders and scholars in the IG community to address the issues essential to provide oversight of government programs and operations. The articles in this issue give me pause for positive thought – including utilizing letters to inform Congress of serious problems within a department in a timely manner, the use of a new database to evaluate contracting resources, and developing safeguards to protect federal employees. In addition, articles on how the IG community is giving back by teaching in higher education, utilizing the role of the ombudsman to strengthen internal efficiency, and cultivating the relationship between IGs and their ethics counsel encourage continuous improvement. The congressional testimony on ensuring contracting accountability through past performance, suspension, and debarments is a topic that is important to the IG community.

So, let no one say tougher times mean quieter times. Now more than ever, IGs are rising to the challenge. Governments and policies may change, but the persistent demand for efficiency in our government goes on – and rightfully so. There is a lot of oversight work that is needed, but as a community, IGs seize the opportunity to make positive change.

Thanks to the readers, the *Journal* remains a means to promote oversight, accountability, and positive change. I hope that the *Journal* serves as a major gateway between the shared experiences of IGs in putting forward a more efficient government and the public. We are grateful to the editorial board and the authors for their significant contributions.



Gordon S. Heddell
Inspector General



Journal of Public Inquiry

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Transparency in Government

By Michael F. Wood and Alice M. Siempelkamp

The signing of the American Recovery and Reinvestment Act of 2009 on February 17, 2009, ushered in a new era of government transparency and accountability. To promote transparency, the Recovery Act required recipients of the funds to publicly report on their spending. To ensure this unprecedented oversight of spending, the Recovery Act created the Recovery Accountability and Transparency Board, which is composed of inspectors general from 12 federal agencies and Chairman Earl E. Devaney. The board was directed to create and maintain a user-friendly, public-facing website that would provide easy access to information on stimulus spending and benefits available under the Recovery Act.

“Transparency is the friend of the enforcer and the enemy of the fraudster.”
— Earl E. Devaney, Chairman, Recovery Accountability and Transparency Board

With the two-year anniversary of the Recovery Act’s enactment now upon us, it is useful to review the progress that the board has made in promoting transparency in government, principally with its public-facing website, Recovery.gov. That website now serves as a high-profile success story for furthering openness and transparency in government. While there has always been a healthy skepticism about the federal government’s previous transparency efforts, Recovery.gov has provided the public with nonpartisan, factual information regarding the largest government expenditures to stimulate the economy since the Great Depression.

Transparency, as envisioned by the framers of the Recovery Act, is intended to allow taxpayers to be in a better position to hold their government accountable for spending their hard-earned money. From the start, the overarching imperative for Recovery.gov has been to post the spending data, provide the tools to analyze the data, and then allow individual users to make their own

judgments about how their money is spent. Indeed, the board has gone to great lengths to avoid passing judgment on any particular spending projects, so long as the law does not prohibit them.

The board employed three core principles in the creation of Recovery.gov:

- Simple but elegant design – information is displayed through interactive searchable maps; data downloads and tables, charts, and graphs; videos; tutorials; featured stories; and social networking is presented in a clear and simple format.
- Consistent vision – transparency supports accountability, and the website focuses the factual, timely and nonpartisan presentation of data and content, providing users with unvarnished information on the recovery program.
- Local focus – while presenting a national picture, the true focus of the site is on local communities. Users can find information about their own states, counties, congressional districts, and ZIP codes, as well as find stories about the projects in those areas.

Using these principles, Recovery.gov has become an award-winning website displaying in simple language what the recovery funds are spent on, the progress of respective projects, and the number of jobs funded. Today, it is used widely to obtain credible and definitive data on the Recovery Act. The site also displays a wealth of other information, such as:

- Data from federal agencies on their recovery program plans and performance measures related to those plans, and information on the agencies’ distribution of recovery funds.
- Announcements of grant competitions and solicitations for recovery contracts to be awarded.
- Accountability actions, including findings from recovery-related audits or reviews by inspectors general, the Government Accountability Office, and state and local governments.

Twin Pillars

To implement its mission of transparency and accountability, the board created two game-changing systems – Recovery.gov and FederalReporting.gov – that have reformed the standards and transformed government and transparency as well as risk assessment and accountability for federal spending. Together, the two sites form the twin pillars of the effort to fulfill the stringent levels of transparency and accountability required by the Recovery Act. Recipients of recovery funds submit reports on the status of their awards to FederalReporting.gov – the inbound system – and all that data is then displayed on public-facing Recovery.gov – the outbound system.

Like Recovery.gov, FederalReporting.gov did not exist when Congress legislated that recipients report on their awards, and the Recovery Act contained no provision for how the award data would be collected. Further, within the entire federal government, there was no data collection or reporting system in place that could contain the massive volume of information that recipients would submit every quarter.

Rather than have each federal agency that awards contracts, grants, and loans collect data from its respective recipients – the usual method – the board opted to create a single, centralized reporting system and the idea of FederalReporting.gov was born. It would be the first government-wide website to collect data on all government contracts, grants, and loans in a single system.

Early in the design of FederalReporting.gov, the board made several key decisions on the structure of the database. Usually, well-structured databases utilize a concept known as “normalization” – a design technique that reduces redundancy. The board ultimately chose to build a non-normalized database for the following reasons:

- **Simplicity** – Non-normalized data structures can be built very quickly. In the case of FederalReporting.gov, the data collected for the most part is in a single table, although other tables (for example, an index and lookups) do exist.
- **Accountability and Auditing** – The database not only collects all the data entered by recipients, but also records and timestamps every action made to a record, including changes, inactivations, reports filed after the reporting period, and if the agency reviewed the report.
- **Performance** – The non-normalized model allows data to be retrieved and presented much quicker than a normalized design.

A preliminary, basic version of Recovery.gov went live on February 17, 2009, with only the required agency and inspector general information displayed. Shortly thereafter, the Office of Management and Budget announced that recipients would begin reporting on October 1 of that year.

The board built and deployed FederalReporting.gov in the summer of 2009. In late September 2009, a robustly revamped and enhanced Recovery.gov went live and promptly shattered the mold for federal websites by providing detailed data and comprehensive search capabilities. *Newsweek* declared it to be “perhaps the clearest, richest interactive database ever produced by the American bureaucracy.”

From October 1 through October 10, 2009, for the first time in the history of government, recipients of federal awards publicly reported on the money they received. FederalReporting.gov performed flawlessly during the first reporting period; and on October 30, 2009, the entire recipient data was displayed on Recovery.gov for the American public to review.

On January 30, 2011, 30 days after the start of the reporting cycle on January 1, 2011, the board successfully collected recipient reports and posted them for the sixth time since the recovery program began – an accomplishment many doubted was possible.

Firsts In Transparency

The implementation of Recovery.gov and FederalReporting.gov transformed the way the federal government operates, based on the board’s rapid system development and deployment; the use of innovations, such as advanced geospatial software; and the ability to successfully collect and display recovery spending every 90 days. With its innovative approaches, the board has become a leader and trendsetter in transparency, with many of its efforts now adopted more broadly by other federal programs.

For example, although sub-recipient reporting had been required under a previous law – the Federal Funding Accountability and Transparency Act – no mechanism was ever developed by the federal government to collect the sub-recipient data. The board had convinced OMB to include sub-recipients in recovery reporting and to require sub-recipients to provide information that shows what work they are doing in connection with their prime recipients. The board developed the methodology to collect this data through FederalReporting.gov and display it on Recovery.gov. The board’s success in collecting and displaying sub-recipient data quickly

led OMB to expand FFATA efforts to collect and display sub-recipient data for other federal spending.

Perhaps even more significant than the collection of sub-recipient data is the fact that the board now gathers data directly from recipients of contracts, grants, and loans through FederalReporting.gov rather than through a variety of intermediary systems managed by multiple funding agencies. After assessing the “tower of Babel” that exists in federal financial systems, the board selected a green-fields approach to the implementation of FederalReporting.gov. One result of this approach is that the data is of higher quality because it comes directly from recipients who are spending funds and managing projects at the local level. The other result is that the systems the board put in place are capable of collecting and displaying the recipient data every 90 days. The rapid collection and display of high-quality data from recipients of federal funds is previously unknown in the federal arena.

The board has achieved other transparency firsts that will have a long-term impact on the operation of federal programs. For example, data is being collected and displayed on:

- Jobs funded under recovery programs, by quarter.
- Expenditures associated with recovery contracts, grants, and loans, providing insights into where and how the money is spent.
- Recipients who should have reported but did not.
- Recipients’ places of performance, allowing geospatial mapping of each award to show the public exactly what projects are in their local areas.

As Inspector General J. Russell George, Treasury Inspector General for Tax Administration and chair of the board’s Recovery.gov committee notes:

“Recovery.gov is providing the American people the greatest transparency in the use of federal funds for any program in the history of our nation. The Recovery Act required a site that would give taxpayers user-friendly tools to track recovery funds down to state, county, or other appropriate geographical unit. We have worked to provide a transformational website that uses a combination of charts, graphs, and interactive maps that allow the public to access agency financial reports and recipient expenditure reporting on Recovery Act contracts, grants, and loans. Through user feedback, we are continually striving to provide greater data in a more timely manner.”



Finally, by moving Recovery.gov to cloud computing, the board became the first government entity to prove that a government-wide system can successfully operate in such an environment. Vivek Kundra, the government’s CIO, noted that the “Recovery Board’s move to the cloud will serve as a model for making government’s use of technology smarter, better, and faster.”

Providing Data To The Public

Transparency is easier to talk about than to actually practice. Simply throwing reams of spending data on a website will not meet the definition of transparency. Instead, spending data must be viewed in context, preferably in a way that informs rather than overwhelms the public. In fact, if the data confuses the public, the cause of transparency will be hurt, not enhanced. Particularly with respect to spending transparency, the data needs to be timely, accurate, and reliable.

The recipient-reported and agency data on Recovery.gov is available to the public in many different ways. The site provides an easy-to-use Advanced Search function, and the Advanced Recipient Data Search Widget, which returns search results as a table or a feed, can be embedded on a citizen’s or state’s website. In addition, a visitor to Recovery.gov can use the State Data Summary Widget to find data by state, county, congressional district, or ZIP code. Once embedded on a website, the widget updates automatically when Recovery.gov is updated quarterly.

All recipient data can be downloaded from the Cumulative National file or by quarter in the National and State Summaries. Texans, South Dakotans, or Missourians have the ability to see all the recovery awards in their own states – who received money, how those funds are spent, and how many jobs were funded.

For more advanced users, the application programming interface has been exposed so that all of the data can be taken by the developers to create applications for

the Web, desktop, and mobile devices using all of the recipient data.

Mapping to Transparency

Mapping plays a central role in promoting transparency because presenting data on maps is one of the clearest ways to show the public how and where federal money is spent. Every contract, grant, and loan award reported by recipients is geocoded on a map so the American public can see, understand, and evaluate the intended outcomes of investments in local communities. Mapping enables people to give feedback about government decisions and ongoing projects, and serves as a performance measurement tool for expenditures.

Mapping can further promote transparency in government because the maps can show not only where the funds have gone, but also whether the money went to areas where the need was greatest. For instance, through a map-comparison tool on Recovery.gov, the public can see if the recovery awards for bridges went to the states that have the most bridges in need of repair, or if awards for broadband expansion and development went to counties with the most households without high-speed Internet access. The public can select from numerous maps and have them appear side-by-side for comparison.

Chairman Devaney has stated that Recovery.gov's maps are "the biggest piece of meeting the challenge of displaying data to the public in a visually pleasing, easy-to-understand, and interactive way."

Benefits Of Transparency

The board continues to improve and fine-tune Recovery.gov and FederalReporting.gov to provide greater transparency of recovery expenditures to the American taxpayer. Benefits to the public of this transparency are myriad:

- The public can see what the government is doing with their tax dollars through a simple chart containing detailed narrative descriptions about tax benefits.
- When citizens know how their money is spent, they can interact with government officials to influence decisions in a collaborative manner.
- Descriptions of each award are displayed on Recovery.gov's maps, giving the press and public relevant information to question Congress, the administration, and state and local governments regarding the value of recovery efforts.

- With information on projects and awards, the public can track the progress on the ground where funds are spent – the awards in each local community can be identified using a ZIP code search.
- Compliance rises because all reports filed by those receiving funds are publicly displayed, and those who fail to report are named. In considering the relatively small number of recipients who have not reported, the board has reached the inevitable conclusion that the public nature of reporting and the open availability of the data do indeed foster compliance and self-correcting behavior.

Transparency Enables Accountability

The level of transparency achieved through FederalReporting.gov and Recovery.gov enables the board to provide accountability that is more thorough. The ability to collect so much data in one central database allows for the optimal use of the board's accountability software and human analytical skills. Every contract, grant, and loan funded by recovery dollars can then be run through a very sophisticated process to identify anomalies or other indicators of fraud or waste. Data reports from recipients provide a wealth of information that analysts can then study to track down potential fraud, waste, or abuse of recovery funds.

Moreover, the recipient information can be combined with data from other private and public sources to measure risk factors, such as fraudulent business addresses, past criminal behavior, financial history, tax debt status, and whether a recipient has previously been suspended or debarred from government work. Non-reporting recipients can be targeted for investigation.

Perhaps more important, Recovery.gov was built in hopes that citizens would come back to the site routinely, act as the eyes and ears for the inspectors general, and catch anomalies that the IGs would normally have to stumble across. On every page of Recovery.gov, there is an icon visitors can click to report suspected fraud, waste, or abuse involving recovery funding.

The IG community has never been in this advantageous position before, and it will continue to benefit from operating in this manner for years to come. "Transparency is the key to the Recovery Funds Working Group's projects and the overall success of the recovery effort," notes Inspector General Calvin L. Scovel, Department of Transportation. "More importantly, it makes information readily available to our most vigilant watchdog – the American taxpayer."

Simply put, FederalReporting.gov and Recovery.gov have raised the standard for accountability and transparency in the federal government. In particular, Recovery.gov is an unprecedented effort by the federal government that will influence accountability and transparency standards for the government long after the recovery spending is complete. Ultimately, transparency empowers citizens to interact with their government, which in turn allows them to participate in decision-making and hold government officials accountable.

The Way Forward

What does the future hold for open government and transparency? Recovery.gov has set a new high-water mark for transparency with its emphasis on openness and the disclosure of data without regard for political ramifications or fallout. As Chairman Devaney noted, "Transparency is not for the faint of heart." It requires making information available without undue consideration of who will be happy or harmed. At a very uncertain time in American history, with financial and political winds swirling, the board essentially squeezed



Michael F. Wood

Michael Wood is the executive director of the Recovery Accountability and Transparency Board. He coordinates the board's activities working with OMB, Congress, federal agencies, the states, award recipients, and the public to ensure the board carries out its transparency

and accountability missions in overseeing the \$840 billion dollar recovery program.

Prior to this, he served as director of Recovery.gov for two years. In that role he provided executive leadership for development and implementation of the board's award winning web systems, FederalReporting.gov and Recovery.gov.

Among the many firsts for these systems was successful collection of sub-recipient information and the first government wide system migrated to a cloud environment. Mr. Wood has 34 years of experience with the federal government and has served as a senior executive in three agencies. He holds masters degrees in technology management and environmental biology.

the transparency toothpaste out of the tube – and it cannot be put back in. Consequently, transparency will and should continue regardless of the board's scheduled expiration in 2013.

The board is currently looking at ways to ensure that its lessons learned – including the specific technology platforms used to provide transparency – are preserved for future use and possible extension. Already, the efforts of the board have expanded to include the website EducationJobsFund.gov, created by the board in 2010 to provide transparency and accountability of education funding pursuant to the requirements of Public Law 111-226.

The board is proud of its transparency efforts, which provides all citizens with data on recovery spending. To thrive, the American democracy requires facts, public participation, and open debate. The board has used technology to make Abraham Lincoln's vision of American government "of the people, by the people, for the people" a continuing reality in the current financial uncertainty of the nation's third century. ☛



Alice M. Siempelkamp

Alice Siempelkamp is the assistant director of content for Recovery.gov, the website managed by the Recovery Accountability and Transparency Board to track the \$787 billion in stimulus spending. She also oversees FederalTransparency.gov and EducationJobsFund.gov.

Prior to joining the board in May 2009, she was the managing editor for major national magazines. She was one of the editors who launched *Mirabella Magazine* in 1990, and in 1995, re-launched *House & Garden* magazine. At *House & Garden*, she also produced five coffee table books on interior design and gardening.

More recently, she was managing editor for *American Express Custom Publishing*, overseeing corporate publications for companies such as Disney and the Ritz Carlton. She was also an editorial consultant for *Tango Media*.

Currently, she continues to work as a freelance book editor and consultant, most recently for *Lead Like Ike*, by Geoffrey Loftus.

Ms. Siempelkamp received her bachelors' degrees in English literature and French from *Drury University* in Springfield, Mo., and her teaching certificate from *California Lutheran University* in Thousand Oaks, Calif.



First Things First

Focusing Oversight on a Dynamic Department

By Inspector General Gordon S. Heddell

I still remember that morning on July 23, 2008, as I was preparing to testify before the Senate Appropriations Committee on the effectiveness of U.S. efforts to combat corruption, waste, fraud, and abuse in Iraq. Seated at the same table was then-Deputy Secretary of Defense Gordon England.

I had just introduced myself to the presiding chairman, Robert Byrd of West Virginia, and watched as other senators prepared with their staffs, waiting for the hearing to begin. I was suddenly about to testify on major issues of national importance based on “extensive experience” that consisted of exactly one week as the acting inspector general of the Department of Defense.



Of all the questions that I was prepared to answer, the one for which I had no logical response was the one that kept going through my mind, “How did I ever let myself get into this situation?”

What seemed to me to be even more unbelievable was the fact that I had already testified at a congressional hearing, which took place just two days before, and I was also in the process of getting ready to testify one week later on electrical safety issues in Iraq. Count them up – three congressional hearings in my first two weeks on the job. In fact, during my first few months as the acting inspector general at DoD, I testified more times than I had in seven years as the inspector general of the Department of Labor.

And during the seven years that I was at the Department of Labor – four people, including two Senate-confirmed IGs and two acting IGs, held the position of inspector general at the Department of Defense. Whatever this job had going for it, it certainly was not longevity. With seven years of experience as the inspector general for the Department of Labor, where one of the top investigative priorities was the pursuit of labor racketeering and organized crime, I was certainly not a newcomer to this profession. However, nothing could have adequately prepared me for the enormity of the mission at the Department of Defense.

Whoever holds this job has a staff of over 1,600 people that must provide oversight to a massive organization with multiple missions and presence in over 150 countries. DoD has an annual budget of over \$600 billion, has over 1.4 million men and women on active duty, and employs over 718,000 civilian personnel. Another 1.1 million men and women serve in the National Guard and reserve forces, and more than two million retirees and families receive benefits from the Department.

I knew from the beginning of what I thought would be a temporary assignment, that even in the short run, this was not going to be an easy job. I had every intention of returning to the Department of Labor. However, after six months passed, I found myself agreeing to make this temporary job permanent. If I had to explain my reasons, I would have to say that despite the many challenges this position carries, it has an incredible capacity to do a lot of good for our nation, our warfighters, and the American taxpayer.

For instance, the Defense Criminal Investigative Service, the investigative arm of DoD IG, is typically involved in approximately 1,750 criminal investigations. We conduct approximately 120 audits, 200 senior official investigations, and open around 4,000 Defense Hotline cases each year. On top of that, we also conduct investigations involving whistleblower reprisal allegations and

numerous complex assessments of contingency operations in Southwest Asia.

On occasion, however, I do find a moment to pause and reflect at my desk while looking out the window at the Pentagon across the street. Behind the Pentagon are rows and rows of white headstones in Arlington National Cemetery. The sheer number of grave markers says far more than any of the numbers cited above. We are charged to identify areas where DoD must take action to improve and correct weaknesses and deficiencies that ultimately affect the safety and welfare of our troops.

Due to the importance of the mission and sheer size of the Department, I identified three critical focus areas to pursue as inspector general. These focus areas, I believe can help us build a model oversight organization. Those areas are:

- Health, safety, and welfare of our men and women in uniform.
- Issuing timely and relevant audit and oversight reports that identify fraud, waste, and abuse.
- Taking care of people and communicating effectively.

I hope that by sharing my experience in addressing these critical areas that others in the inspector general community will benefit. We provide oversight in order to improve our respective departments, but we do so by helping each other and sharing best practices, moving forward and constantly improving.



Health, Safety and Welfare of U.S. Troops

We know that our responsibility for oversight is about more than just dollars – it is about the well-being of the people who serve and defend our country. We have to make sure they get the best equipment – the best leadership – the best oversight possible. We are concerned by any issue affecting the health and safety of U.S. troops and obstructing the Department from effectively accomplishing its mission. Nowhere is that mission more apparent than in the treatment of our wounded warriors.

To that end, on March 17, 2011, we issued a report addressing the warrior care and transition program administered by the U.S. Army at Fort Sam Houston, Texas. The report is a first in a series to discuss our assessment of the care, management, and transition of recovering service members at warrior units. We reviewed the procedures to assist warriors with their return to active duty status or transition to civilian life as well as the DoD programs for warriors affected with traumatic brain injury and posttraumatic stress disorder.

We released another report on March 31, 2011, titled “Allegations Concerning Traumatic Brain Injury Research Integrity in Iraq.” We found that a clinical trial had been conducted in Iraq in which non-prescription, over-the-counter supplements were used in place of recommended treatments to determine if it was effective in the use of mild traumatic brain injury. The report raised serious questions about how the project was approved and whether or not injured service personnel had suffered any ill effects from the lack of recommended treatment.

The health and safety of our men and women in uniform - whether it is the body armor they wear, the design of vehicles to protect against improvised explosive devices, or the medical care they depend on – is a critical DoD priority that requires the utmost attention and support. That point is highlighted in a report we issued on body armor. Our audit found that since the Army was not testing the body armor in accordance to its own contract requirements, the Army could not reasonably ensure that vest components provide an appropriate level of protection for the warfighter.

The work of DoD IG includes providing necessary oversight on a variety of other potential hazards, including those not directly related to warfare, such as general health and safety issues at installations housing service personnel.

The death of Staff Sergeant Ryan D. Maseth, U.S. Army, is a case in point. On January 2, 2008, Staff Sgt. Maseth stepped into a shower at his private quarters in the Radwaniyah Palace Complex in Baghdad, Iraq, and was electrocuted upon touching a metal shower hose that was attached to an ungrounded water pump.

The U.S. Army Criminal Investigation Command investigated the death and determined the death was accidental. However, the family of Staff Sgt. Maseth was not satisfied with the answers they received from the investigation. The family contacted their congressional representative, who sent a letter in February 2008 to then-Secretary of Defense Robert Gates requesting fur-

ther investigation and that steps should be taken to prevent future incidents.

I travelled to Iraq to assess the situation and initiated other reports to determine whether there was a pattern to the electrocution deaths in Iraq and to assess electrical hazards in Afghanistan. We issued a series of three reports.

The first report reviewed the death of Staff Sgt. Maseth and found that his death was the catastrophic result of the failure of multiple systems and organizations that left Staff Sgt. Maseth and other U.S. service members exposed to unacceptable risk of injury or death. The second report reviewed the pattern of other electrocution deaths in Iraq.

The third report examined electrical safety in Afghanistan and found that the U.S. Central Command, U.S. Forces-Afghanistan and the Combined Joint Task Force were aware of the risks associated with the electrical infrastructure in Afghanistan. DoD IG put forth recommendations and the U.S. Central Command and the Combined Joint Task Force took steps to address those issues.

The death of Staff Sgt. Maseth touched off a series of inquiries resulting in not only corrective action taken in Iraq, but also in Afghanistan to ensure that potential electrical hazards were identified and addressed. What began as a “back end” report about an incident that occurred in Iraq resulted in a “front end” review that focused on preventing similar incidents in Afghanistan.

Although there is a discussion in the IG community of whether we should focus on “front end” audits to reduce future problems or on “back end” audits that can identify responsibility for malfeasance and result in prosecutions; clearly both are important.

Our criminal investigators also focus on protecting lives. Investigations that reveal potentially life-threatening circumstances are deemed top priorities. Accordingly, DCIS routinely investigates the introduction of failure-prone substandard products into the DoD procurement system; health care fraud involving providers that render inadequate or unnecessary care to service members; and the illegal diversion of sensitive DoD weapons and technologies to dangerous criminal or terrorist enterprises. For example, DCIS worked jointly with the Bureau of Alcohol, Tobacco and Firearms and the U.S. Drug Enforcement Administration on an undercover operation known as “White Gun.” The operation identified three foreign nationals who attempted to purchase military grade weapons – including a stinger anti-aircraft missile – for use by drug cartels. The indi-

viduals also sought to obtain anti-tank weapons, grenade launchers, and high-caliber machine guns. The foreign nationals were arrested; two pled guilty in May 2011; and another was convicted on charges in connection with the undercover operation. Had investigators failed to intercede, it is likely sensitive military-grade weapons would have fallen into the hands of nefarious criminal elements.

Issuing Timely and Relevant Reports

There is an old military saying, “a good operational plan delivered before the battle is far better than a superior plan delivered after it’s over.” Within the IG community, conversation about timeliness and relevance is frequent and recognized as a major challenge. Oversight organizations, of course, want to do a good job and exhaust every possible avenue to get all the facts. However, if a report is issued after it is really needed, there is no value in terms of relevance.

We learned a hard lesson a few years ago about the difficulty of conducting oversight over two wars without an adequate permanent presence in-theater. We realized after attempting to provide oversight mostly in the continental United States that we must have personnel on the ground to be effective. We needed to be in country to maintain situational awareness; to talk with the commanders; to comprehend the challenges our troops face; and to be familiar with the difficulties of getting goods and services in theater. To support the Department, we have tripled the number of auditors, inspectors, and special agents on the ground in Southwest Asia. On any given day, there are between 50 and 60 personnel stationed in-theater performing a variety of oversight duties. In addition, there are also teams of DoD IG auditors, agents, inspectors, and engineers entering and exiting the region on temporary duty assignments to work on critical issues.

Additionally, I established a senior executive service-level special deputy inspector general for Southwest Asia, headquartered at Camp Arifjan, Kuwait, to interact directly with military commanders in theater in order to ensure oversight is relevant and feedback is timely. That executive serves as the single point of contact for all matters relating to oversight activity in Afghanistan, Iraq, Kuwait and other countries in the region. The special deputy also serves as the chairperson of the Southwest Asia Planning Group, which includes the inspectors general of the various military and civilian organizations serving in the region. In addition, the special deputy is in charge of coordinating the development of the Com-

prehensive Oversight Plan for Southwest Asia and Surrounding Areas. The plan addresses oversight work for Iraq and Afghanistan, and the rest of the U.S. Central Command area of responsibility.

Like most IGs, we receive many requests from Congress and the Department to conduct audits, investigations, and a broad range of assessments. Whether it is an assessment pertaining to a critical piece of warfighter equipment, the status of an allegation of senior official misconduct, or an evaluation of our train and equip mission in Afghanistan, the president, the secretary, and the Congress rely on our work to make critical decisions involving some of the most sensitive and complex matters facing our national security. If we aren't timely, we aren't relevant.



Occasionally, DoD senior leadership must immediately be made aware of critical issues that we identify during the course of our oversight work. In response to this requirement, we developed a tool to allow communication of crucial findings in an expedited manner. These “quick reaction memorandums” allow senior leaders to take immediate action rather than wait for a final report. For example, during a review of body armor, we issued a quick reaction memorandum to U.S. Air Forces Central, which took immediate action to ensure that all airmen have body armor that meets the required level of protection.

Although our goal is to ensure timeliness, some oversight projects will continue to require a significant investment of time given the complex nature of the subject matter. For example, a report issued in May 2011 subsequent to a prolonged audit identified millions of dollars in spare parts inventory that were not being used while new and identical parts were being purchased at a higher cost. We found \$339.7 million in existing DoD inventory that was not effectively used before procuring the same parts from Boeing, and over \$242.8 million in excess inventory that could have been used to satisfy

those requirements. What drew the most attention in this report were two examples of cost overcharging. Boeing charged the government \$644.75 for a “spur gear” that could have been obtained for \$12.51. After DoD IG auditors identified that discrepancy, Boeing refunded \$556,006. That same year, Boeing charged the government \$1,678.61 for a “roller assembly” slightly larger than a dime that could have been purchased through the Defense Logistics Agency for \$7.71. After auditors identified that discrepancy, Boeing refunded \$76,849.

To address timeliness and relevance, I also created an engagement board consisting of our top executives. Every proposed audit, assessment, evaluation, or inspection comes before the board for consideration. In each case, the board identifies the specific constituent associated with the issue, determines what is expected, and how soon the product or service is needed if our information is to be relevant on delivery. The board assesses the overall criticality of the work being proposed; whether to act; when the work is due; the consequences of being late; and the resources required to achieve success.

Taking Care of People and Communication

Along with protecting the health, safety, and welfare of our men and women in uniform, we make sure that taking care of our people is a top priority. People are our greatest resource and in order to ensure their success we must develop leaders, promote good communication, and ensure accountability.

When I arrived in July 2008, our training division had begun implementing in-house leadership courses. Since then, we have conducted workshops designed to reach all of our supervisors and managers, to include leadership courses for non-supervisory personnel, along with special seminars for our senior leaders. To date, more than 550 members of DoD IG have completed this training – accounting for over one quarter of our total work force. Senior leaders within our organization continue to be actively involved in each course as sponsors or speakers. Leadership needs to be taught, reinforced, and made a priority throughout any organization.

In May 2010, we held our first ever DoD IG-wide leadership training conference called “Fostering Excellence Through Unity,” which was attended by approximately 300 supervisors from across the organization – both domestic and overseas. Our goal was to promote leadership through a better understanding of the IG vision, to develop practical leadership skills and techniques, and to increase awareness of the expectations

of DoD IG stakeholders. The conference is now a yearly event. We held our second leadership conference in June of this year and our focus was on “Becoming a Model Oversight Organization.”

Enhancing communication is critical. It is impossible to be a model oversight organization if people are uncertain about what is expected of them. Clearly defined goals begin with good communication. I recently implemented a strategic communications program at DoD IG in order to develop a coordinated, proactive strategy to address our internal and external communications. The foundation of the program is an annual plan, which addresses our goals and objectives, key stakeholders, and strategies and tactics to communicate better about our work. We focus on increasing avenues for two-way communications with employees and encouraging employees to engage, identify problems, and develop solutions. For example, based on an employee suggestion – we now publish an e-newsletter, which we provide to our employees, congressional staff members, and senior leaders in the Department to share what we are doing, what reports are about to be released, and what projects we have recently announced.


I also encourage every leader at DoD IG to engage and interact with his or her staff. In support of that effort, I hold periodic, impromptu small group meetings with employees from our various components in order to hear their concerns and get their feedback. I believe that people are unlikely to follow leaders who do not communicate well.

Communication is even more important when you have employees located in field offices around the world, especially when working in war zones. That is why I, along with my senior leaders travel to various theaters of command to visit DoD IG personnel in Afghanistan, Iraq, Qatar, Kuwait, Germany, and Korea. It is important that we reach out, solicit feedback, and are available to listen.

While we are making sure that the lines of communication are open, it is also important that we ensure integrity and accountability. For example, shortly after I arrived at DoD IG in July 2008, one of my first initiatives was to create an office of ombudsman to provide DoD IG employees with an independent, impartial resource for informal and confidential dispute resolution. In addition, I established an Office of Professional Responsibility that reports directly to me and is charged with ensuring that all DoD IG employees are accountable; that we have policies in place; that they are current; and that they are being followed.

Conclusion

To become a model oversight organization, DoD IG must also become the organization of choice – the one our stakeholders unhesitatingly turn to when they need objective facts and candid assessments relating to DoD programs and operations. Successfully meeting the expectations of the Department, the Congress, and the American people consistently requires producing work products that are timely and relevant, and that address the health and safety of our troops, as well as ensuring the effectiveness and professionalism of our people.

Model organizations embrace change. Although we are an organization in transition, we are also most fortunate to have highly talented and dedicated people who embody the very best of public service. The credit for the many accomplishments highlighted in this article, and those accomplishments we will achieve in the future, goes directly to them – the hard working men and women of the Department of Defense Office of Inspector General. 



Gordon S. Heddell

Gordon S. Heddell was sworn in as the seventh inspector general for the Department of Defense on July 14, 2009, one year after being appointed as acting inspector general. Mr. Heddell has over ten years experience as a presidentially appointed, Senate confirmed inspector general, and has led inspector general offices of two cabinet level departments within the executive branch.

From 2001 to 2008, Mr. Heddell served as inspector general of the U.S. Department of Labor. Mr. Heddell served for 28 years in the U.S. Secret Service, where he held various management and leadership positions. Mr. Heddell began his government service as an Army chief warrant officer, helicopter pilot, serving in both Korea and Taiwan during the Vietnam-era conflict.

As inspector general, Mr. Heddell serves on the executive committee of the federal Council of Inspectors General for Integrity and Efficiency, and is chair of the Information Technology Committee.

Mr. Heddell holds a bachelor's degree in political science from the University of Missouri, a master's degree in legal studies from the University of Illinois [formerly Sangamon State University], and was a Woodrow Wilson Public Service Fellow while at the Secret Service. He was the creator of the Secret Service mentoring program at two D.C. public schools.



Another Tool in the Toolbox

Alerting Congress About Possible Threats to Agency Efficiency

By Inspector General Paul K. Martin

The Inspector General Act directs federal inspectors general to, “review existing and proposed legislation . . . relating to [the] programs and operations” of their agencies and make recommendations “concerning the impact of such legislation on . . . [the] economy and efficiency” of their agencies. In addition, inspectors general are required to keep Congress informed about “serious problems, abuses, and deficiencies relating to the administration of [the] programs and operations [of their agencies]” and recommend corrective action.

Traditionally, inspectors general accomplish these directives through the issuance of audit, investigative, and semiannual reports. In January 2011, the National Aeronautics and Space Administration Office of Inspector General used a different method to inform Congress about an issue that was affecting the economy, efficiency, and effectiveness of NASA programs. Specifically, the NASA OIG sent a letter to the chairs and ranking members of the agency’s oversight and appropriations committees urging congressional action to address a situation created by “holdover” language in NASA’s fiscal year 2010 appropriation that prohibited the agency from terminating contracts related to its multi-billion dollar space exploration program or starting new programs to address the goals set out in the 2010 NASA Authorization Act.

As explained in the letter, because NASA was funded by a continuing resolution that carried over restrictive language from the FY 2010 appropriation, the agency was spending approximately \$200 million each month on a rocket program that, through passage of the 2010 Authorization Act, both NASA and Congress had agreed not to build. The letter pointed out that without congressional intervention, by the end of FY 2011, NASA anticipated spending more than \$575 million on contracts and projects associated with this program that, absent the restrictive appropriations language, it would have considered canceling or significantly scaling back.

The following is a reprint of one of NASA OIG’s letters.

Dear Chairman Rockefeller and Senator Hutchison:

The Inspector General Act of 1978 directs federal inspectors general to, among other things, “review existing and proposed legislation and regulations relating to programs and operations” of their agencies and to make recommendations “concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment.” In addition, inspectors general are required to keep their agency head and Congress informed about “serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, [and] to recommend corrective action concerning such problems.”¹

We write this letter to highlight a situation at NASA that we believe requires immediate action by Congress. Due to restrictive language in NASA’s FY 2010 appropriation,² coupled with the fact that NASA and the rest of the federal government are currently being funded by a continuing resolution that carries over these restrictions and prohibits initiation of new projects,

1) The Inspector General Act of 1978, as amended, 5 U.S.C. App. § 4(a) (2) & (5).
2) Public Law No. 111-117, which funded NASA in FY 2010, designated approximately \$3.7 billion for exploration activities available until September 30, 2011, with the following limitation:

“Provided, that notwithstanding Section 505 of this Act, none of the funds provided herein and from prior years that remain available for obligation during fiscal year 2010 shall be available for the termination or elimination of any program, project or activity of the architecture for the Constellation program nor shall such funds be available to create or initiate a new program, project or activity, unless such program termination, elimination, creation, or initiation is provided in subsequent appropriations Acts.” NASA’s budget had called for it to spend \$2.402 billion of the \$3.7 billion exploration appropriation on Constellation in FY 2011.

In July of 2010, Congress placed an additional restriction on NASA providing that “notwithstanding any other provision of law or regulation, funds made available for Constellation in fiscal year 2010 for ‘National Aeronautics and Space Administration Exploration’ and from previous appropriations for ‘National Aeronautics and Space Administration Exploration’ shall be available to fund continued performance of Constellation contracts, and performance of such Constellation contracts may not be terminated for convenience by the National Aeronautics and Space Administration in fiscal year 2010.” Pub. L. No. 111-212. Both provisions are carried over in the current continuing resolution funding NASA and the rest of the federal government.

NASA is continuing to spend approximately \$200 million each month on the Constellation program, aspects of which both NASA and Congress have agreed not to build. Without congressional intervention, by the end of February 2011, NASA anticipates spending up to \$215 million on Constellation projects that, absent the restrictive appropriations language, it would have considered canceling or significantly scaling back. Moreover, by the end of FY 2011, that figure could grow to more than \$575 million if NASA is required to continue operating under the current constraints and is unable to move beyond the planning stages for its new Space Exploration program.

The limitation on NASA's ability to end Constellation-related contracts was discussed at a December 1, 2010 hearing of the Senate Committee on Commerce, Science, and Transportation chaired by Subcommittee Chairman Nelson and attended by Ranking Member Hutchison and other committee members. Senators at the hearing discussed developing options to address the restriction, but the CR enacted at the end of the last congressional session retained the limiting language.

Background

In October 2010, the president signed into law a three-year Authorization Act for NASA (Pub. L. No. 111-267) that provided specific guidance for the agency's manned space program when the space shuttle era comes to a close later this year. The Authorization Act calls for the development of a new heavy-lift rocket and multi-purpose crew vehicle to replace the existing rockets and capsules being built as part of the Constellation program. The Act directs NASA "to the extent practicable to utilize existing contracts, investments, workforce, industrial base and capabilities" from the Constellation program in meeting these directives.³

However, to date, Congress has not enacted corresponding appropriation legislation to fund these directives. Instead, like all other federal agencies, NASA has been operating under a CR that continues the agency's budget at the FY 2010 level and perpetuates the restriction in NASA's 2010 appropriations law prohibiting the agency from canceling the Constellation program or terminating related contracts. As a result, NASA is in the difficult position of having to fund elements of a program that have been canceled. At the same time, restric-

3) The major components of the Constellation program are the Ares I rocket that was being built to lift the Orion crew capsule into low-Earth orbit and a much larger Ares V rocket that could lift heavy cargo into low-Earth orbit and also carry a crew to the moon. In February 2010, the president announced his intention to cancel the program and instead develop commercial efforts to send cargo and astronauts to the International Space Station and fund research by NASA to develop new technologies to travel beyond low-Earth orbit.

tions in the CR and the FY 2010 appropriations legislation prohibit NASA from establishing any new programs to implement the directives set forth in the 2010 Authorization Act.

Under the Authorization Act, NASA was directed to develop the architecture for a Multi-Purpose Crew Vehicle and a Space Launch System that would enable a rocket to lift 130 tons of cargo and crew to low-Earth orbit and to prepare for future deep space missions.⁴ NASA officials told us that although they will not make a final decision until spring on the architecture that they will adopt to meet these goals, the information they have gathered to date suggests they likely will use many of the major components currently under development in the Constellation program.⁵

The Problem

Recent media accounts have reported that the interaction of the 2010 Authorization Act and the CR will result in NASA wasting nearly \$500 million on the Constellation program through March 4, 2011.⁶ Given the mission of the OIG to prevent waste in NASA programs, we asked agency officials to quantify their spending on the various aspects of the Constellation program and characterize any effect the appropriations restriction has had on the way they have allocated these funds. In sum, we found that by March 4, NASA expects to have spent up to \$215 million on Constellation projects they otherwise would have considered canceling or scaling back absent the restrictive language in the CR. That figure could rise



4) On January 10, 2011, NASA submitted to Congress a report required by Section 309 of the Authorization Act that describes the agency's preliminary plans for developing this Space Launch System and Multi-Purpose Crew Vehicle.

5) In November 2010, NASA funded 13 private research studies as part of a Broad Agency Announcement to solicit alternative approaches for the next generation Space Launch System. Officials said they may reconsider their initial intention to use architecture similar to the Constellation program for the new heavy-lift system depending on the results of these studies.

6) See, e.g., Mark K. Matthews, NASA has to keep defunct Ares rocket program going, The Orlando Sentinel, December 30, 2010.

to more than \$575 million if the CR remains unchanged through the end of the fiscal year.

NASA has budgeted \$2.4 billion for the Constellation program through September 30, 2011. Senior NASA officials told us they have directed the majority of this funding to contracts for products, engineering, and testing that they believe will most likely benefit the heavy-lift vehicle and crew capsule that will be developed pursuant to the 2010 Authorization Act. Specifically, of the \$2.4 billion budgeted for Constellation, NASA plans to spend \$1.029 billion on Ares rockets and \$983 million on the Orion crew capsule.

“Recent media accounts have reported that the interaction of the 2010 Authorization Act and the CR will result in NASA wasting nearly \$500 million on the Constellation program...”

For example, NASA officials said that of the four major elements of the current Ares program, two could be used in the new heavy-lift system: the first stage solid-fuel rocket engines and the upper stage liquid-fuel engine.⁷ Accordingly, NASA said it is focusing its spending on the two existing contracts related to these elements and plans to pay Alliant Techsystems Inc. \$303 million in FY 2011 to build a five-segment solid rocket booster engine and Pratt & Whitney Rocketdyne \$213 million for development of the J-2X upper stage engine. Conversely, NASA officials said they have dramatically scaled back funding for the third and fourth elements of the Ares program—the upper stage and related avionics, both currently being designed by Boeing—because those elements are less likely to be applicable to the new heavy-lift system. In fact, NASA officials told us that absent the CR language preventing them from doing so, they likely would have considered canceling these contracts with Boeing rather than spending \$26 million on these projects in October and November 2010.

With respect to the new crew capsule, NASA officials told us they are considering using a capsule very similar to the Orion capsule that Lockheed Martin has been building for the Constellation program. As a result, NASA officials believe very little of the \$147 million spent on Orion during the first two months of FY 2011 would not have been spent even if the agency were not bound by the Appropriations Act language.

NASA managers also told us that in addition to the Boeing contracts cited above, they likely would have

7) NASA officials gave two reasons for planning to hew closely to the Ares rocket design: the time and cost that would be associated with designing and building an entirely new rocket and the directive in the Authorization Act that NASA should “to the extent practicable” utilize existing contracts and capabilities.

considered canceling or significantly scaling back three other aspects of the Constellation program and the associated contracts at the beginning of FY 2011, but for the restrictions in the Appropriations Act:

- \$27 million spent in October and November 2010 for “ground operations,” including rebuilding Launch Pad 39B at the Kennedy Space Center and other fuel, equipment, and transportation costs. Although some of these funds eventually would have been spent to rebuild the launch pad to accommodate the new heavy-lift launch system, NASA likely would have postponed funding this project until a later date.⁸



- \$7 million during these same two months for “mission operations,” including funding for control operations, facilities, software development, tools, and training.⁹
- \$11 million in October and November for “program integration,” to ensure that contractors working on

8) Before the president announced his intention to cancel Constellation in February 2010, NASA had originally planned to spend \$790 million on ground operations for the program in FY 2011. The agency reduced that figure to \$197 million for FY 2011 after the current CR was passed in December 2010.

9) In September 2009, NASA had planned to spend \$232 million in FY 2011 on mission operations for the Constellation program. The agency reduced the mission operations budget to \$76 million upon passage of the CR in December 2010.

CONSTITUTION FUNDING UNDER THE CONTINUING RESOLUTION (red text highlights potential inefficient use of funding)				
Project/Contract	FY 2011 Budget as of Sept. 2009 – Original	FY 2011 Budget as of Dec. 2010 – Revised	FY 2011 – First 2 Months (actual)	FY 2011 – End of Feb. 2011 (estimated)
Constellation	\$5.309 billion	\$2.402 billion	\$369 million	\$972 million
Ares – Overall	\$1.988 billion	\$1.029 billion	\$172 million	\$441 million
ATK: 1st Stage Engines		\$ 303 million	\$ 57 million	\$132 million
PWR: J-2X Engine		\$ 213 million	\$ 43 million	\$103 million
Boeing: Upper Stage & Avionics		\$ 210 million	\$ 26 million	\$ 83 million
Orion – Overall	\$1.767 billion	\$ 983 million	\$147 million	\$386 million
Lockheed Martin: Orion		\$ 805 million	\$123 million	\$316 million
Ground Operations*	\$ 790 million	\$ 197 million	\$ 27 million	\$ 75 million
Mission Operations*	\$ 232 million	\$ 76 million	\$ 7 million	\$ 23 million
Program Integration*	\$ 223 million	\$ 94 million	\$ 11 million	\$ 34 million
Potential Inefficient Use of Funds		\$ 577 million	\$ 71 million	\$215 million

Source: Constellation program managers.

* NASA officials noted that even if they had complete freedom to stop spending on these aspects of the Constellation program, they still would need to expend some amount of money for infrastructure and personnel costs to maintain program readiness. The officials did not provide a breakdown of these costs.



each part of the program were communicating with each other so that the capsule, rocket, avionics, and space suits all work in tandem.¹⁰

In response to our questions, NASA officials were only able to produce concrete figures on the amount the agency spent on Constellation projects they would have considered canceling or scaling back but for the restrictive appropriations language for the first two months of the fiscal year (October 1 to November 30, 2010). However, they indicated that it was very likely that spending in December would have been at roughly the same rate as the previous two months. As the table on the left page shows, by the end of February 2011, NASA anticipates spending \$215 million on such Constellation projects. Moreover, according to agency figures, NASA will spend more than \$575 million on such projects if the CR is continued through the end of the fiscal year and the appropriations directive remains unchanged.

In sum, it appears that NASA has taken steps to concentrate its spending on those aspects of the Constellation program it believes may have future applicability, and that these efforts have helped reduce the potential inefficient use of taxpayer dollars. However, based on what we have learned from agency officials, as NASA moves closer to making final decisions regarding how best to move forward in designing and building the next generation space system, it will become increasingly more difficult for the agency to continue to juggle the inconsistent mandates of the Authorization Act and the appropriations legislation so as to avoid wasting taxpayer funds. As one senior NASA official described it, "There's a point coming up soon where we would just be spending money to spend money."

Constraining NASA's ability to stop spending money on aspects of a rocket program that the administration and Congress both have agreed to cancel while at the same time prohibiting the agency from beginning the follow-on program called for in the 2010 Authorization Act strikes us as a problem ripe for correction. Accordingly, we urge Congress to take immediate ac-

¹⁰ In September 2009, NASA had planned to spend \$223 million in FY 2011 on program integration, but reduced that budget to \$94 million after the CR was passed in December 2010.

tion that will enable NASA to reduce or cease funding aspects of the Constellation program in order to more efficiently redirect these funds to the priorities outlined in the Authorization Act.¹¹

Please contact us if you have any questions about this letter. ☞



Paul K. Martin

Paul K. Martin was confirmed by the United States Senate as NASA inspector general on November 20, 2009.

Prior to his NASA appointment, Mr. Martin served as the deputy inspector general at the U.S. Department of Justice, Office of Inspector General. In that capacity, he assisted the inspector general in managing the audit, inspection and investigative activities of the office's 425 employees. From 2001 to 2003, he served as counselor to the inspector general, and from 1998 to 2001, he served as special counsel to the inspector general.

Before joining the Department of Justice OIG, Mr. Martin spent 13 years at the U.S. Sentencing Commission in a variety of positions, including six years as the commission's deputy staff director. He was one of the Sentencing Commission's first employees when the agency was created in 1985, and helped to develop the first set of federal sentencing guidelines. Mr. Martin began his professional career as a reporter with The Greenville News, a daily newspaper in Greenville, S.C. He holds a bachelor's degree in journalism from Pennsylvania State University and a Juris Doctorate from Georgetown University Law Center.

¹¹ The Inspector General Act contains a concept called a "Recommendation that Funds Be Put to Better Use" that strikes us as appropriate in this situation. The term refers to money that could be used more efficiently if management took actions to implement certain recommendations. In this case, we believe NASA could more efficiently use its funds designated for space flight if it were free from the constraints in the 2010 Appropriations Act.



A New Information Tool

Available to Inspectors General for Evaluating Contracting Resources

By **Tony Baptiste**

In the article, we introduce to the reader a new database (as of January 30, 2011) compiled by management at each federal agency which contains detailed service contract actions by fiscal year. In order to improve transparency, the Office of Management and Budget regulations mandate posting of all the information on an agency's Web page. After proper validation and verification of the data, an OIG will find that the database can yield useful preliminary information for a deeper analysis of agency contract actions. Anticipated improvements in fiscal year 2011 to the database known as the Service Contract Inventory, will offer contract-specific information such as the actual number of contractors on board and their location. This database will aid OIGs to evaluate contractor participation and performance in the delivery of an agency's mission, address President Obama's concern about a balanced workforce (federal employees performing inherently governmental functions while contractors assist federal employees), and aid OIGs in identifying potential cases of fraud, waste, and abuse.

The Federal Acquisition Regulation, known as FAR,¹ guides all federal agencies with specific procedures to follow when contracting for services with the private sector. Recent data from the Government Accountability Office revealed that federal contract spending exceeds \$500 billion annually, and in Fiscal Year 2010 was \$535 billion.² At some large agencies such as the General Services Administration, FY 2010 procurements exceeded \$66 billion. GSA also manages the largest interagency contracting program in the federal government, the Multiple Award Schedules. In FY 2010, sales through the MAS program were \$38.9 billion with 18,396 contracts.³ However, few OIGs are able to quickly sort through all the new service contracts issued by an agency's procurement office. One notable exception is the Recovery Accountability and Transparency Board

headed by Earl Devaney. The RAT Board's arsenal of data mining tools can aid inspectors general in identifying potential contracts for further investigation. Its Web address is USASpending.gov and contains information about procurements, grants, and loans. Now, more contracting databases are emerging that can aid inspectors general to efficiently conduct procurement-related searches in their agencies.

New Legislation Requires Agencies to Post All Service Contracts

In an effort to establish more transparency for the public, the FY 2010 Consolidated Appropriations Act, (P.L. 111-117), Section 743 of Division C, mandates civilian, non-defense agencies to prepare an annual inventory of their service contracts. According to OMB, a service contract inventory is a tool for assisting an agency in better understanding how contracted services are used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.⁴ Data contained in the agency's produced service contract inventory⁵ spreadsheets can provide an OIG analyst with a plethora of useful information for structuring future queries to management and aid in developing annual audit plans. Today, with limited budgets, OIGs must leverage the skills on hand to satisfy their IG Act mandate for rooting out fraud, waste, and abuse in federal agencies.⁶

As of January 30, 2011, most executive agencies have posted their SCI data on their home Web page.⁷ For comparatively smaller OIGs, with limited staff, this information can guide you to identifying potential contract risks in the agency. Some OIGs who have real time direct access to all contracting data can still find the SCI data useful for their initial examination of macro contracting trends. For example, one can sort SCI data by

1) Available at <https://www.acquisition.gov/Far/loadmainre.html>; and at <http://farcite.hill.af.mil>.

2) GAO-11-331T CONTRACT AUDITS Role in Helping Ensure Effective Oversight and Reducing Improper Payments Statement of Jeanette M. Franzel managing director accompanied by Gayle L. Fischer assistant director Financial Management and Assurance (Washington, D.C.: February 1, 2011), page 1.

3) Statement of Hon. Brian D. Miller Inspector General, General Services Administration Before Senate Committee on Homeland Security and Governmental Affairs, Ad Hoc Committee on Contracting Oversight, February 1, 2011.

4) OMB Memorandum for Chief Acquisition Officers Senior Procurement Executives dated November 5, 2010.

5) OMB Memorandum for Chief Acquisition Officers Senior Procurement Executives dated November 5, 2010-Attachment at paragraph A.2. Agency inventories should include all service contract actions over \$25,000 that were awarded in FY 2010.

6) See Inspector General Act of 1978, as amended, Section 2(B).

7) Over a two-day period, starting February 22, 2011, the author searched 61 non-defense related agency websites and found that 51 percent had the Service Contract Inventory report available via a simple search for the phrase Service Contract Inventory.

type of contractor: sole source, competitively bid, or non-competitively awarded contractor; and by time of obligation (i.e., which quarter the funds were spent). In several appendices, summary data are also available for contract types. Armed with that information — the dollar amount of the contract and other data elements — one can drill down and evaluate contracts issued to a specific firm and initiate relevant and timely audits and investigations.

Background

Section 1423 of the Services Acquisition Reform Act of 2003⁸ created the Acquisition Advisory Panel to review and recommend any necessary changes to acquisition laws and regulations as well as government-wide acquisition policies with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting. The panel made a number of recommendations, one of which directly led to the creation of the current Web-based SCI. For example, a panel recommendation⁹ issued in 2006 stated:

#15. Within one year, OMB shall conduct feasibility and funding study of integrating data on awards of contracts, grants, cooperative agreements, inter-agency service support agreements, and other transactions through a single, integrated, and Web-accessible database searchable by the public.¹⁰

The panel examined data from the Federal Procurement Data System¹¹ maintained by GSA. This database contains all contracts having a value of \$3,000 or more. FPDS acquires contractor-specific information from the Central Contractor Registration Database, which is the primary database for identifying all contractors providing services to the government.¹² FPDS can be a useful starting point for evaluating management's allocation of its resources by program areas. The recent arrival of SCI is a leap forward in presenting contract data in a clear and easily accessible source. However, prior to using the SCI and FPDS, you may want to validate and verify the accuracy of the information stored in the two databases with your specific agency files.

8) P.L. 108-136, Nov. 4, 2003, NDAA for FY 2004, includes the Services Acquisition Reform Act of 2003.

9) Provisionally adopted by the Acquisition Advisory Panel during a public meeting held on August 10, 2006.

10) See Acquisition Advisory Panel recommendations at <https://www.acquisition.gov/comp/aap/documents/Datapercent20Findingspercent20andpercent20Recommendations2percent20percent2008percent2010percent2006.pdf>.

11) Specifically known as Federal Procurement Data System—Next Generation, this database contains contract information from fiscal year 2004 to present. FPDS-NG is the primary government-wide contracting database, providing information on government contracting actions, procurement trends, and achievement of socioeconomic goals, such as small business participation.

12) Another database known as fedbizopps can provide information on federal contract solicitations and award notices. See <http://www.fedbizopps.gov>.

Prior Experience Using Contracting Data

In determining which programs and contracts to review, an OIG considers internal risk assessments, congressional requests, hotline information, and other sources that raise allegations of potential contracting violations. Several years ago, at our OIG, we initiated a review of the agency's use of contractors. We read and evaluated all contracts entered into by the agency for characteristic information that is now easily available in the SCI.¹³ Today, a similar initial review could be conducted in one quarter of the time,¹⁴ a genuine productivity improvement. The usefulness of SCI data is that it can enable an OIG or the public to evaluate the proportion of contracted services that an agency is relying on for conducting its mission. Furthermore, such information and additional research will enable the user to assess the cost effectiveness of public/private resources employed in delivering agency services.

President's Directive - Increase Contracting Competition and Reduce Outsourcing

The president's March 4, 2009 memorandum¹⁵ on federal government contracting established certain policy goals for contracting for services. President Obama specified the following guidelines:

Federal agencies should not rely on sole-source contracts and cost-reimbursement contracts, which may lead to wasteful spending by the government.

OMB is directed to clarify when governmental outsourcing for services is and is not appropriate, consistent with Section 321 of Public Law 110-417.¹⁶ Re-evaluate OMB Circular A-76 that encourages outsourcing of work performed by federal employees.

There is a preference for fixed-price type contracts and directed that cost-reimbursement contracts shall only be used in circumstances when an agency cannot define its requirements sufficiently.

To evaluate an agency's response to this presidential directive, an OIG analyst can access, review, and evaluate volumes of contracting data for preparing highly focused audit plans. An OIG analyst could use SCI data to enable it to conduct a first pass at identifying program-spending patterns at its agency. One can then:

- Identify contracting clusters.
- Identify follow-on contracts.
- Identify non-competitive contracts.
- Generate leads for further scrutiny of sole source contracts.

13) SCI does not cover micro purchases (valued at less than \$2,500) made by agency employees.

14) Author's estimate.

15) Go to <http://edocket.access.gpo.gov/2009/E9-4938.htm> to view.

16) (31 U.S.C. 501, note).

This enables the analyst to assess the agency's posture towards the above stated guidelines one and three, from the March 4, 2009 presidential directive. Usable data regarding guidelines one and three are available in the FY 2010 SCI database in the contract type analysis section.

New Data Mining Tool

The traditional labor intensive and time-consuming methodology for initiating agency-wide contracting reviews would involve making a formal request for information from the procurement office and wait for delivery of the data. In some agencies, such a request may necessitate legal review. After receiving the information, an OIG analyst would then perform a validation test on whether funds were properly obligated for all contracts under review. Finally, to close the loop, an analyst would consult with the OIG financial statement audit team to gain any insight into contract spending patterns. Along the way, the analyst would naturally assemble data on the number of contractors and their interaction with federal employees for delivering mission critical services. In some instances, the number of contractors may have become overwhelmingly essential for agencies to conduct critical missions, disrupting an essential balance between federal employees and private sector contractors.

If the function is...	Positions performing the function may be filled...
Inherently governmental	Only with federal employees
Critical but not inherently governmental	Only with federal employees to the extent required by the agency to maintain control of its mission and operations (or if required by law, executive order, or international agreement) And By either federal employees or private sector contractors once the agency has sufficient internal capability to control its mission and operations
Essential but not inherently governmental	By either federal employees or private sector contractors

Source: OMB M09-26 Managing the Multi-Sector Workforce (July 29, 2009).

SCI Data and President's Balanced Work Force Initiative

Using SCI data can enable an analyst to measure an agency's approach to meeting the president's and OMB's directive of evaluating the balanced workforce.¹⁷ Antici-

¹⁷ For guidance on labor force-rebalancing issues see OMB Memorandum M-09-26 Managing the Multi-Sector Workforce, issued on July 29, 2009.

pated in FY 2011, SCI database will include the number of contractors per contract, a valuable data element for initiating labor cost performance analyses. The following are the criteria recommended by OMB for evaluating the nature of the work performed in the program area under review.

In FY 2011, the analyst will have sufficient contractor population data that can facilitate analysis of balance workforce issues in your agency.

Selected Review of FY 2010 Posted SCI Data - Two ECIE Agencies

Using SCI data posted on agency websites, we randomly selected two Designated Federal Entity agencies to gauge the usefulness of currently available data. In the following tables, we omitted the specific agency's name.

From the following chart labeled DFE Agency A, notice that:

- In FY 2010, 68 percent of Product Service Contract obligations were spent on ADP Facility Management expenditure category, 92 percent of the contract(s) were fixed-price, and 8 percent were classified as other.
- An additional 17 percent of total agency product service contract obligations were spent on the category Other Professional Services; of those contracts, 26 percent were fixed-priced, and 74 percent consisted of time and materials, labor and handling contracts.

Now the OIG analyst can drill down to individual contracts for more information.

From the following chart labeled DFE Agency B, notice that:

- In FY 2010, 32 percent of PSC obligations were spent on Other ADP & Professional Services expenditure category; five percent of the contract(s) were fixed-price; 28 percent were time and materials, labor and handling contracts; and the remaining 67 percent were classified as other contracts.
- An additional four percent of total agency PSC obligations were spent in the category Other Professional Services, and 38 percent of those contracts were fixed-priced, five percent were cost type of contracts, and 57 percent consisted of time and materials, labor and handling contracts.

Also, notice that in the case of Agency B, the remaining 64 percent of contracted obligations, not listed in the table, are scattered among many descriptive categories. In this case, an analyst would dig deeper into the contract listings to extract more details such as the trend in outlays within each category.

As you can see, the SCI data can be an excellent initial source for conducting a preliminary evaluation of your agency's annual contracting activity.

Designated Federal Entity Agency A								
Agency Product or Service Contract Analysis - FY2010 Posted on the Web as of 2-22-11								
To Large PSC Categories in Each Agency								
Designated Federal Entity Agency A		Contract Type Analysis						
PSC code	Category Description used for Comparative Purposes	Obligations	% of Total Obligations	Fixed Price	Cost	T&M/LH	Other	Row Totals
D301	ADP Facility Management	\$12,258,208	68%	\$11,296,939	\$0.00	\$0.00	\$951,269	\$12,248,208
		Calculated percentage		92%			8%	100%
R499	Other Professional Svcs	\$2,982,918	17%	\$788,373	\$0.00	\$2,194,545	\$0.00	\$2,982,918
		Calculated percentage		26%		74%		100%
	Remaining categories not posted in this table and available at agency website		15%					
	Category Total		100%					

Source: Agency web site.

Designated Federal Entity Agency B								
Agency Product or Service Contract Analysis - FY2010 Posted on the Web as of 2-22-11								
To Large PSC Categories in Each Agency								
Designated Federal Entity Agency B		Contract Type Analysis						
PSC code	Category Description used for Comparative Purposes	Obligations	% of Total Obligations	Fixed Price	Cost	T&M/LH	Other	Row Totals
D399	Other ADP & Professional Services	\$65,503,458	32%	\$3,276,112	\$0.00	\$18,341,325.24	\$43,886,020	\$65,503,458
		Calculated Percentage		5%		28%	67%	100%
R499	Other Professional Svcs	\$8,788,850	4%	\$3,339,763	\$439,443	\$5,009,645	\$0.00	\$8,788,850
		Calculated Percentage		38%	5%	57%	0%	100%
	Remaining categories not posted in this table and available at agency website		64%					
	Category Total		100%					

Source: Agency web site.

Concluding Remarks

The current budget concerns of the federal government will challenge all OIGs to use efficiently limited resources. Technological tools can enable some OIGs to leverage valuable employee skills for structuring queries that can aid in preparing audit plans and investigations. Contractor-provided services to agencies can aid the agency in performing its mission. However, underperforming contracts are an unacceptable drain of resources that an OIG should identify for corrective action.

The new SCI data posted on agency websites contains valuable information for assisting the public in demanding greater government accountability. Currently, the reliability of the SCI data is unknown. However, in the next few months, agency-produced SCI data will likely undergo independent review by OIGs to ascertain its reliability. In FY 2011, more detailed contract and contractor information will be available to enable OIGs to identify relative performance of contracts and aid in evaluating issues such as a balanced work force in carrying out an agency's mission. ☛



Tony Baptiste

Tony Baptiste has served in a number of roles at the Commodity Futures Trading Commission Office of Inspector General, specifically as the assistant inspector general for auditing. Additionally, in 2009, he served as the inspector general at the United States International

Trade Commission. Prior to joining the Office of Inspector General at the CFTC, he served in the CFTC Division of Economic Analysis where he authored several reports on international competitiveness of the U.S. commodities markets and co-authored an often-cited report on estimating the impact of imposing a transaction tax on exchange-traded futures trading in the United States. Prior experiences include management at two stock exchanges, bank examination, and investment banking. He earned a bachelor's degree in economics from Boston College, a master's degree from Harvard University Graduate School of Business, and a master's degree in public administration from the John F. Kennedy School of Government at Harvard University.



Protecting Federal Employees

From Reaction to Prevention

By Andrew Cannarsa and Ron Gunia

The Lloyd D. George Federal Courthouse in downtown Las Vegas was less than a half-hour from opening for business on the first Monday of 2010. On a brisk, clear morning, government workers filed through the building's grand entrance located at the corner of Las Vegas Boulevard and Bridger Avenue. Among the federal employees lurked a 66-year-old man wearing black pants, a black shirt, and a black jacket. The man climbed up the steps to the Courthouse entrance. Upon entering the building's lobby just after 8 a.m., he pulled from beneath his jacket a shotgun and opened fire on innocent people in front of him.

The shots ignited chaos in the Courthouse as people fled from the building in a panic. Seven court security officers returned fire on the shooter, pursuing him as he ran from the building. He was ultimately shot and killed by officers across the street from the Courthouse, but not before he killed a 72-year-old retired police officer, a federal court security officer of more than 15 years, and injured a deputy U.S. marshal, who required surgery after the shooting.

According to an investigation, the man acted alone in his plot and his motive for the attack was his dissatisfaction with the Social Security Administration, which has a Las Vegas hearing office located across the street from the George Federal Courthouse. The shooter recently lost a case against SSA, according to authorities. He was a Supplemental Security Income recipient who, upon moving from California to Nevada, lost a California state supplement of \$317 per month. The man sued the agency in March 2008, upset with the benefit reduction, but a federal district court judge dismissed the man's case in September 2009.

As more and more Americans turn to the government for financial assistance during times of economic challenge, the potential for threats and attacks against federal workers increase. In SSA's case, the number of beneficiaries served has jumped from 52.5 million in December 2009 to 54 million in December 2010 – a 2.9

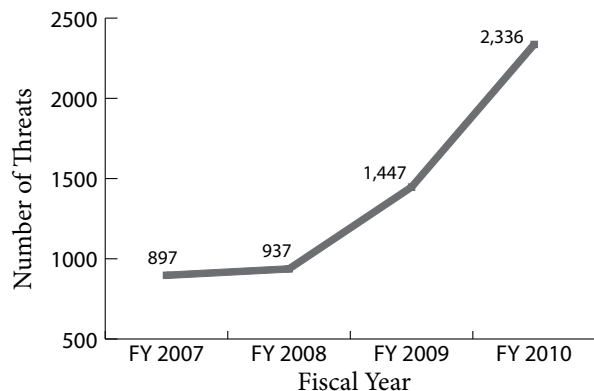
percent increase (the average year-over-year increase from 1998 to 2008 was 1.4 percent). The workload is increasing for SSA employees at a time when their customers will be the most demanding.

The commissioner of Social Security, SSA's inspector general, and all federal agency heads and inspectors general agree that the safety of federal employees and facilities are of paramount concern. While what transpired in Las Vegas in January 2010 was an extreme example of the potential harm our employees face, it serves as a grim reminder that additional preparative measures are needed. First, offices of inspectors general must expand their role from that of after-incident response to proactive prevention.

Threat Allegations Increasing Nationwide

About a month after the Las Vegas shooting, an incident in New York again reinforced the notion that our employees must be prepared for any and all contingencies. In February 2010, SSA employees at the Regional Commissioner's Office in Manhattan received a package postmarked from California that contained a threatening letter and a suspicious white powder. After nine SSA workers came in contact with the substance, SSA evacuated its offices on the 40th floor of 26 Federal Plaza. The

Reported Threats Against SSA Employees or Property (FY 2007 - 2010)



incident conjured memories of the anthrax envelopes that media outlets and U.S. lawmakers received in 2001, leading to the deaths of five people. Medical technicians decontaminated the employees, and New York City authorities examined the substance and determined that it was non-hazardous.



SSA facilities in Maryland, Missouri, and Pennsylvania, along with the White House, received similar suspicious packages. Our San Francisco office began investigating a transient man who previously received Social Security disability benefits and was upset that his benefits were suspended. We quickly located and apprehended the man in northern California. He confessed to sending the packages and authorities charged him with mailing threatening communications. In August 2010, after pleading guilty to an anthrax hoax, threats against the president, and failure to register as a sex offender, the man was sentenced to 20 years in prison and 120 months of supervised release.

As with the Las Vegas shooting, this case paints a vivid picture that represents the increasing number of threats made against SSA employees or property in recent years. Threats come from a variety of sources. Most originate in SSA field offices, where most public contact occurs.

Sometimes there is a fine line between an expression of anger and a threat. SSA personnel must use judgment in deciding whether the situation rises to the level of an incident. However, employees are encouraged to report all threat-related incidents immediately to management.

SSA and its OIG take threat reports very seriously. Managers are required to document within two work-days all incidents that directly or indirectly adversely affect the safety and security of SSA's personnel, visitors, and property. SSA electronically routes those incident reports to regional management and security coordinators. Employees or supervisors can also report threats to law enforcement officials, including the OIG's Office of Investigations.

Below are a few examples of allegations that SSA reported to our investigators and we took quick action to investigate and bring the cases to closure:

- After receiving a referral from the Gainesville, Georgia Social Security office, our Atlanta office investigated a man for threatening employees after they told him that he did not qualify for disability benefits. Our office worked with the Bureau of Alcohol, Tobacco, Firearms, and Explosives; Federal Protective Service; and local police. We executed a search warrant at the man's residence and arrested him for being a convicted felon in the possession of a firearm.
- An agent in our San Juan, Puerto Rico office investigated a disability beneficiary after he used a wooden bat to attack a security guard at the Humacoa Social Security office. The beneficiary was charged with simple battery and weapon possession, and sentenced to 60 days in jail.
- Our Washington, D.C. office investigated a disability beneficiary for threatening a SSA service representative in the Anacostia Social Security office during a visit involving a retroactive payment. The man entered a four-month deferred prosecution agreement that included maintaining mental health services as directed by the Pretrial Services Agency; writing a letter of apology to the SSA employee; and staying away from the employee and several area offices.
- After receiving a referral from the New Iberia, Louisiana Social Security office, our Baton Rouge office investigated a Supplemental Security Income applicant for threatening an employee after his claim was denied. Our investigation revealed that the man was the author of five anonymous letters that contained vicious, sexually graphic threats of bodily injury and death to a claims representative. A forensic

examination confirmed the man wrote the letters. In December 2010, the man pled guilty to mailing threatening communications and was sentenced to five years in prison and three years' supervised release.

Legislation Expands OIG Role In Employee Safety

Congress passed the Social Security Protection Act of 2004 to provide additional safeguards for SSA workers. The law made it a crime to attempt to intimidate or impede, by either force or by threat of force, any SSA officer, employee, or contractor acting in his or her official capacity. The law further set forth procedures for the receipt of threat or assault allegations, as well as for the actions that Office of Investigations agents and SSA managers are expected to take when threats or assaults are reported. These procedures enhance the SSA OIG's ability to respond to these types of allegations and to conduct investigations.

The new legislation extended to SSA employees the same protections provided to employees of the Internal Revenue Service under the Internal Revenue Code of 1954. The protections were intended to allow employees to perform their tasks with confidence that they would be safe from potential dangers. However, in its report on these amendments, the Senate Finance Committee cautioned:

“The Committee expects that judgment will be used in enforcing this section. Social Security and SSI disability claimants and beneficiaries are frequently subject to multiple, severe life stressors, which may include severe physical, psychological, or financial difficulties. In addition, disability claimants or beneficiaries who encounter delays in approval of initial benefit applications or in post-entitlement actions may incur additional stress, particularly if they have no other source of income. Under such circumstances, claimants or beneficiaries may at times express frustration in an angry manner, without truly intending to threaten or intimidate SSA employees. In addition, approximately 25 percent of Social Security disability beneficiaries and 35 percent of disabled SSI recipients have mental impairments, and such individuals may be less able to control emotional outbursts. These factors should be taken into account in enforcing the provision.”

OIGs Proactive Approach

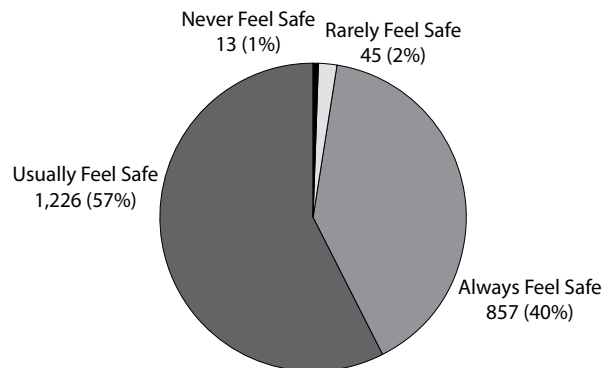
Employee safety is among the top priorities of the SSA OIG, and we continue to work diligently to ensure the safety of SSA's dedicated employees. As part of this effort, all 10 OIG field divisions have taken several preventative actions, including the following examples:

- We foster communication between Social Security field offices and OIG offices, encouraging supervisory special agents to speak to Social Security field managers about offering safety training to staff members.
- We routinely reach out to field offices where threats have occurred, to offer assistance and address concerns.
- We have developed a strong working relationship with Federal Protective Service across the country.
- We worked with SSA to develop an employee-safety training video that is now available to SSA's more than 50,000 field office workers.

Employee Perspectives On Workplace Safety

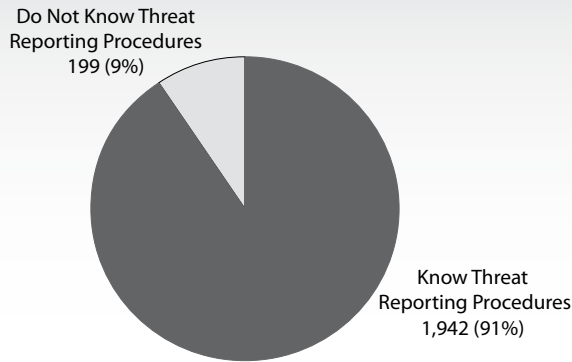
Our audit office has also contributed to the improvement of SSA employee safety. In November 2010, our auditors released a report examining SSA employees' opinions on workplace safety as well as SSA's threat reporting process. In May 2010, we conducted an email survey of 2,500 randomly selected SSA personnel whose duties likely involved interaction with the public. Using this questionnaire, we assessed the employees' overall attitudes regarding workplace safety and the threat-reporting process. Over the course of about one month, 2,141 employees (86 percent) submitted responses to the questionnaire.

Employee Attitude Regarding Workplace Safety
(2,141 Respondents)



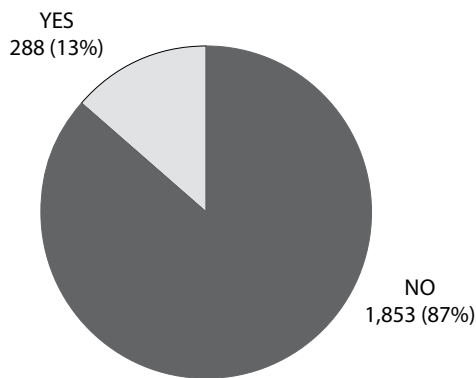
We asked employees to describe their attitude regarding SSA workplace safety. Ninety-seven percent of the respondents indicated that they either always or usually felt safe at work.

Knowledge of Threat Reporting Procedures
(2,141 Respondents)



We asked employees to indicate whether they were aware of SSA's threat reporting procedures. Ninety-one percent of the respondents indicated that they knew the

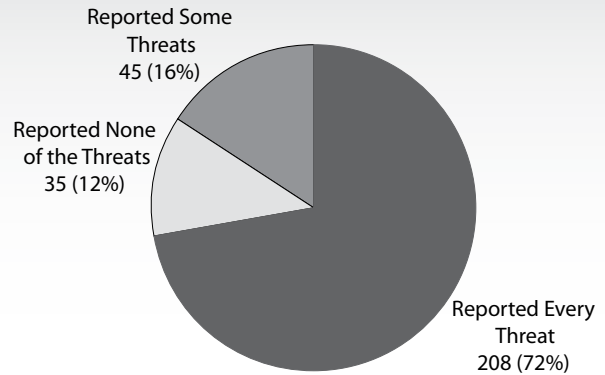
Threatened at Work During the Past Three Years
(2,141 Respondents)



procedures to follow if they were threatened at work.

We asked whether, during the past three years, the employees have been threatened while working for SSA. Of the 2,141 respondents, 288 (13 percent) indicated that they had been threatened at work. A majority of these employees said that the threat was communicated either through a face-to-face exchange or over the telephone.

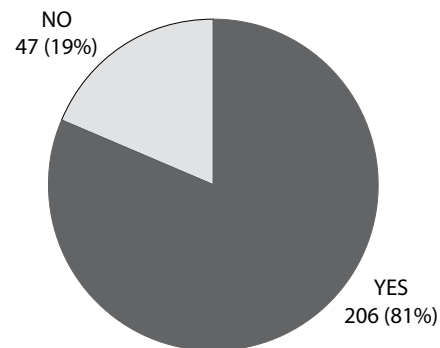
Report Threat to Supervisor or Other Official
(288 Respondents)



We asked the 288 employees who were threatened at work to indicate whether they reported the threat(s) to their supervisor or another official.

Of those respondents, 72 percent indicated that they reported every threat, and 16 percent indicated that they reported some of the threats. The primary reason respondents gave for why they did not report threats was

Reported a Threat - Satisfied with Agency Response
(253 Respondents)



that they did not believe the threat was serious.

Of the employees that reported a threat, 81 percent said that they were satisfied with the agency's response.

In this report, we also found that SSA officials recognize the disturbing trend in the number of employee threats, and have taken several steps to protect employees and the public. For example, SSA increased the presence of armed security guards, and is considering additional security enhancements, such as the installation of duress alarms and closed circuit surveillance.



Andrew Cannarsa

Andrew Cannarsa is a public affairs specialist at the Office of External Relations in the Social Security Administration Office of Inspector General. Mr. Cannarsa writes and develops congressional testimony, speeches, presentations, and other public outreach products for SSA

OIG and senior OIG officials.

Prior to joining the SSA OIG, Mr. Cannarsa served as a business reporter for a daily newspaper in Baltimore for nearly two years and as a crime and safety reporter for a community newspaper outside Philadelphia for two years. He received his undergraduate degree from Boston University.

Conclusion

Whenever the SSA OIG interacts with Social Security's front-line employees, we offer two critical pieces of advice. First, employees should know their policies for reporting threats, and should always report threats or disturbances. Second, employees must always be vigilant and aware of who is coming into the office. If a person appears to be angry or upset, employees should be prepared to alert security or a supervisor if the visitor does not calm down.

Finally, we reassure SSA's dedicated employees that their safety is among our top priorities, and we will continue to work diligently with SSA, the Federal Protective Service and local law enforcement agencies to ensure that they can safely carry out their critical mission now and into the future. ❧



Ron Gunia

Ron Gunia began working for the Social Security Administration Office of Inspector General in 2004 and is currently the director of the Dallas audit division. Since joining the SSA OIG, Mr. Gunia has earned the IG's award and four awards for excellence from the Council of the

Inspectors General on Integrity and Efficiency.

Prior to joining SSA OIG, he spent 15 years with the Air Force Audit Agency and the U.S. Postal Service OIG. Mr. Gunia has a bachelor's degree in business administration from the University of Nebraska-Lincoln and is a certified public accountant.



How the IG Community is Giving Back

Teaching in Higher Education

By Thomas D. Coogan

“A primary object should be the education of our youth in the science of government. In a republic, what species of knowledge can be equally important? And what duty more pressing than communicating it to those who are to be the future guardians of the liberties of the country?”
— George Washington

Author’s Note: As I sit here in Malta, a small and remarkably historic and welcoming island between Sicily and Tunisia, as a fulbright scholar teaching at the University of Malta, my best memories after more than twenty-five years in the inspector general community and more than twenty years as a college instructor are the times I was able to draw upon my inspector general experience and teach students about more than just theory. I have been fortunate to have had the support of my inspector general in allowing me to teach, and have been honored to have been asked to teach at home and now abroad. My life has been blessed twice—by my work with the inspector general community, and my work in higher education. It is my hope that this article will accomplish three goals: 1) inspire others to teach; 2) recognize the many contributions of inspector general personnel who already teach; and 3) highlight the value of inspector general teachers participating with organizations that bring together professionals and educators.

After a long day at the office, when most of us are heading home, a cadre of inspector general employees head to campus to teach America’s youth. Other federal law enforcement and non-law enforcement personnel do the same all over America. They are giving back by educating college students about audits, investigations, and legal practice, and sharing their knowledge so that the next generation is prepared to take on the responsibili-

ties of protecting our country from fraud, waste, abuse and mismanagement in government programs and operations.

To prepare effectively for the future, institutions of higher learning have developed undergraduate and graduate programs designed to afford students the opportunity to learn about topics that are relevant to the kind of work performed by inspector general personnel. Accredited, degree-granting programs include accounting and auditing, computer forensics, criminalistics, cybercrime, investigations, and law. The curricula offers general courses such as evidence and criminal justice, while specialized courses are offered in subjects such as tax fraud, white-collar crime, and intrusion detection systems.

Experienced, knowledgeable, and dedicated inspector general employees are filling a critical need in higher education. Colleges and universities need instructors with advanced degrees to teach subjects that are not typically studied by persons seeking a master’s or doctorate degree. There are many educators with advanced degrees in traditional subjects but very few with degrees in subjects that are relevant to the work performed by inspectors general. Inspector general employees with master’s and other graduate degrees, along with their on-the-job experience, have become vital resources for educating college and university students in areas such as fraud prevention, detection, investigation, and prosecution.

In addition to teaching, inspector general employees are participating in nationwide educational initiatives designed to improve and expand the study of fraud and related topics in higher education. These initiatives seek to bring together educators and government and private sector professionals to increase the quantity and quality of educational offerings in areas relevant to the inspector general community. When inspector general staff participate in these endeavors, they are able to share their knowledge, skills and experiences with educators,

who in turn are able to share their academic perspectives, providing value to both parties.

Whether teaching students or participating in educational initiatives, inspector general employees are not only giving back to the community by sharing their expertise, but are also getting more in return. Those who are involved in higher education not only get to see the next generation come better prepared to take on their challenges, but also learn from students and fellow faculty about new techniques, different approaches, and better ways of doing what has been done before. This cycle of giving and receiving continues and often returns more to the person who is giving.

Giving Back by Teaching

Why should we teach? In addition to George Washington's admonition above that we educate the next generation about government, we have a stake in ensuring that there are an enough highly skilled and educated graduates to fill important roles and positions held by inspector general auditors, investigators, lawyers, and other professionals. As one generation retires, the following generation takes over, and a new generation steps in to replace those moving ahead. We need to do whatever we can for both ourselves and those who follow us to make sure that we have the best and brightest working to fight fraud, waste, and abuse.

From the perspective of higher education, the ability to have working professionals on the faculty has all sorts of advantages. From a strictly economic point of view, it is less costly to have a part-time adjunct instructor who typically works as an independent contractor and therefore receives no fringe benefits as compared to

a full-time faculty member who not only is paid substantially more, but also has additional overhead costs. An inspector general employee who teaches is giving back by helping to keep down the rising costs of higher education.

From a student perspective, having a working professional teach brings into the classroom what many students want, which is learning about what really happens in the outside world. As one might imagine, college and university students have no shortage of professors who are highly educated, but who often are inexperienced or unfamiliar with how what is being taught can be applied to the workplace. When inspector general auditors, investigators, and others teach students and share their real-life experiences, it often provides a meaningful, concrete, and tangible illustration that encourages students to study harder in order to be prepared for the world outside the classroom.

When we teach, we also learn. If you ask anyone who teaches, you will doubtless hear that as they prepared for class, they were surprised by how much they learned about their subject. Even though many adjunct faculty have worked successfully for many years in their field, they often learn many new techniques and skills as they prepare to teach a class. In addition, when we teach, we also surround ourselves with people we ordinarily do not deal with every day. For example, most of us do not deal with college-age students at our work, yet it is important for us to know what the next generation is doing or planning to do so that we can do our jobs better. We also are surrounded by full-time faculty who often relish the opportunity to share with us their ideas on how to do our jobs better.

IG-Related Subject to Be Taught in Higher Education	Appropriate IG Occupation for Instructing	Examples of What IG Instructor Has to Offer	What Higher Education Has to Offer IG Instructor
Forensic Accounting	Auditors	Teaching how to spot fraud when conducting an audit	Learning new ideas from full-time Ph.D. accounting faculty
Computer Forensics	Cyber professionals	Teaching how to address latest cyberthreats	Learning how young, tech-savvy students use IT
Investigations	Investigators	Teaching how to assess a person's credibility	Learning new language and lifestyle cues from students
Law	Counsel	Preparing witnesses	Learning from other law faculty, such as AUSAs

The previous table illustrates the kind of subjects being taught by inspector general employees, the occupation most suitable to teach each subject, as well as an example for each subject about what an instructor may offer as well as get from teaching.

Who teaches? At one graduate program that specializes in forensic accounting, computer forensics, investigations, and law, the faculty includes persons who have served as inspectors general, deputy inspectors general, assistant inspectors general for investigations, assistant inspectors general for audit, chief counsel, as well as other senior audit, investigation, and legal positions, and several with backgrounds in computer forensics. As previously mentioned, other federal employees are also giving back by teaching, including assistant U.S. attorneys and federal law enforcement personnel from outside the inspector general community. The numerous inspector general and other federal law enforcement faculty not only provide a rich learning environment for students and traditional faculty, but also allow adjunct faculty to get better acquainted with inspector general and other federal counterparts that they might not ordinarily work with during regular work hours.



At Stevenson University's forensic studies master's degree program, for example, current and former inspector general personnel teach a variety of courses at

the Owings Mills, Md. campus as well as online courses offered to students around the country. Among other courses, computer forensics is taught by a senior special agent, fraud examination is taught by an assistant inspector general, and criminal justice is taught by an inspector general. In addition to inspector general personnel, white-collar crime is taught by a federal prosecutor, tax auditing is taught by a former senior IRS official, and investigative courses are taught by current and former federal investigators from the inspector general community as well as the FBI. The vast knowledge and experience of these current and former federal employees provide students with an unique and invaluable insight into the inner workings of our community.

In addition to teaching, some inspector general community employees are also involved in organizations that bring together educators with anti-fraud professionals. Most of the time, the educators are full-time faculty and academics with little or no formal practice or applied experience; however, inspector general employees who also teach and who then become involved in these partnerships bring another dimension. Working professionals who also teach can bridge the gap between the academics and the professional, and provide a vital link between theory and practice.

Many professional associations have developed partnerships with academic institutions and educators. These partnerships often allow educators to join at reduced rates and sometimes fund educational research in areas of mutual interest. Educators who are involved in these types of associations get the benefit of learning from their professional peers. They notice how the study and theory of a subject is actually applied and learn what works – and sometimes what does not work. Educators are also given an inside look into career opportunities for their students and information that can be shared back in the classroom to a welcoming audience.

In return, the association and its professional members are given an opportunity to hear from educators who have spent much of their life focusing on a particular subject to become an expert in their chosen field. These educators often have an extended network of other educators who they can draw upon for additional information. Educators typically have exhaustive research in a particular area, and also resources to draw upon for additional resources and research. In addition, while many educators may seem to be more theoretical than practical, when they become involved with practitioners, they often seem to be energized in finding ways to make their theories apply to professional practice.

There are other initiatives, but the following two are discussed here.

The Institute For Fraud Prevention

The Institute for Fraud Prevention is housed at West Virginia University. It is dedicated to multidisciplinary research, education, and the prevention of fraud and corruption. The IFP seeks to improve the ability of business and government to combat fraud and corruption and to educate the general public on effective methods of recognizing and deterring them. The IFP draws on the talents and resources of domestic and international universities, as well as top experts from around the world to shed light on the root causes of fraud, the methods by which it is committed, and the scope of its damages.

The IFP was founded by “The Association of Certified Fraud Examiners and The American Institute of Certified Public Accountants.” Partners include the Federal Bureau of Investigation; U.S. Government Accountability Office; U.S. Postal Inspection Service; National White-Collar Crime Center; and Bureau of Alcohol, Tobacco, Firearms and Explosives; and FinCEN. There is a research consortium that includes West Virginia University, the University of Tennessee, North Carolina State University, the University of Connecticut, Kennesaw State University, York College, CUNY, the University of Central Florida, and St. Xavier University. Other agencies, businesses, firms, and educational institutions participate in periodic meetings.

The IFP functions as a central repository for fraud-related knowledge; actively disseminates its key findings; and serves as a catalyst for the exchange of ideas among those with an interest in deterrence, detection, prevention, and punishment of fraud and corruption. Through its research and education initiatives, the IFP seeks to assist all classes of fraud victims. There is a huge unmet need by law enforcement, regulators, corporations, and individuals for the advantages of this comprehensive approach.

The inspector general community has been represented at the IFP by faculty that also work in the inspector general community. Participating in IFP meetings allows the IFP membership to learn about and gain a greater appreciation for the inspector general community, and also allows the inspector general community to learn about methods being used by the public and private sector or being proposed or researched by academics to prevent, detect, investigate, and prosecute fraud.

ACFE Anti-Fraud Education Partnership

Many inspector general employees are members of professional associations, including the Association of Certified Fraud Examiners. The mission of the ACFE is to reduce the incidence of fraud and white-collar crime, and to assist the membership in fraud detection and deterrence. The ACFE Anti-Fraud Education Partnership was established to help colleges and universities provide expert anti-fraud training to their students. The ACFE established the initiative to address the need for fraud



examination education at the university level. The ACFE has a Higher Education Committee made up of college and university professors that provide input and guidance to assist the ACFE in developing and promoting anti-fraud education at colleges and universities. The committee is a liaison among ACFE administrators, practitioners, and educational institutions.

The ACFE as well as member chapters support college and university students by awarding scholarships to those enrolled in qualified anti-fraud education programs. Several hundred colleges and universities offer anti-fraud education that qualify them for membership with the ACFE.

The inspector general community has been represented on the Higher Education Committee through involvement by employees who also serve on college faculty and receive their appointment through the educational institution.

Participation by working professionals with predominantly full-time academics with doctorates in fields such as accounting once again affords the inspector general practitioner an opportunity to learn from the educators, for the educators to learn from the practitioner, and for both to be better prepared to teach college and university students preparing for careers as anti-fraud professionals, including working in the inspector general community.

Conclusion

Many of us who have dedicated our lives to working in government, and in particular, in the inspector general community, have done so because we want to give back. It is likewise true that many educators are motivated by the same sense of duty. As George Washington asked, what duty is “more pressing than communicating it to those who are to be the future guardians of the liberties of the country” than to educate the next generation about what we do, how it is done, and why we do what we do to promote integrity, efficiency, and effectiveness, as well as preventing and detecting fraud, waste, abuse, and mismanagement in government programs and operations? In the inspector general community, we can give back as many do by taking time after work to teach and to share our knowledge, skills, and experience with students as well as academics. ❧



Thomas D. Coogan

Thomas D. Coogan served in various capacities at the U.S. Department of Agriculture, Federal Deposit Insurance Corporation, and the U.S. Postal Service OIGs until his retirement from federal service. He now serves as the assistant inspector general for investigations at the Legal Services Corporation and is on leave of absence after having been awarded a Fulbright Scholar grant by the U.S. Department of State. Mr. Coogan is also the program coordinator for the Forensic Studies master's degree program at Stevenson University in Owings Mills, Md.



Organizational Ombuds

The Best-Kept Secret for Strengthening Internal Efficiency

By *Scott Deyo and Michael Kamins*

Not too long ago, I participated in an off-site training geared for senior leaders (consisting of nearly 300 GS-14s, GS-15s and senior executives). In one plenary session entitled “Crucial Conversations,”¹ the facilitator asked how many in the room were open and willing to receive direct, honest constructive feedback from their subordinates about how they’re doing, how to improve the organization, and so on. Nearly everyone raised their hand to affirm they were willing recipients of such feedback. The follow-up question reversed the scenario, “How many of you feel comfortable providing that type of information to your boss and above?” In response, very few raised their hand. Not only did this moment shine a spotlight on very real barriers to open dialogue, it reinforced the critical and continuing need for anonymous mechanisms to raise concerns.

Organizational ombuds² hear the unique, difficult, challenging, complex, strange, fascinating, infuriating, and perplexing issues that organizations face. Why is that? Because ombuds, who are independent and impartial, are entrusted to carry out a unique charter: to hear, receive, and attempt informal resolution of employee concerns (and/or related systemic problems) while maintaining strict confidentiality.³ Under the cover of anonymity, employees bring forward unpopular, controversial, yet critically important problems to the attention of the ombuds. At its very core, the ombuds office is one in which the process remains informal and inviting.

In my experience, employees not only bring grievances, but also generate new and innovative ideas that challenge the status quo. Therefore, ombuds are uniquely positioned to help assist agency transformation by providing an additional tool for employee engagement, motivating participation, leveraging the collective

knowledge of its constituents, and addressing problems (or ideas) they would otherwise not reveal through normal channels.

The ombuds office provides this anonymous facilitation of dialogue with the goal of movement towards systemic organizational resolution. Employees trust the ombuds to remain both neutral and impartial and facilitate fair and equitable resolution of concerns in the workplace. Ombuds are authorized to conduct informal and impartial inquiries, issue reports, and advocate for positive change. “If people have a place to voice concerns, in an informal and confidential setting, changes will take place.”⁴

Why an Ombuds?

Research suggests that only having one enforcement function as the sole avenue for reporting wrongdoing is not effective. Organizations are well served by having multiple avenues to foster a culture of ethical attitudes and conduct.⁵ According to the Ethics Resource Center’s 2009 National Business Ethics Survey,⁶ nearly half of employees observed misconduct in the workplace. Of those, 63 percent reported their observation (up from 58 percent in 2007). Seventy-five percent of those reporting did so to management (46 percent to a direct supervisor; 29 percent to upper management). Only three percent reported the misconduct to an existing hotline. These findings are consistent with the 2007 NBES. In a related study with similar results, only half of those reporting felt they would be protected from retaliation, “and even fewer (39 percent) believed that they would be satisfied with the outcome if they reported misconduct to management.”⁷

According to the American Bar Association:

1) Based on Patterson, Grenny, McMillan, and Switzler. “Crucial Conversations: Tools for Talking When Stakes are High.” McGraw-Hill: June 2002.
2) The Swedish Constitution of 1809 established the first ombudsman. Independent from the king, this role, which still exists today, is charged with ensuring that laws are observed, public authorities and officials act in the public trust, and rights of citizens are protected. Since the 1960s, ombuds in the United States have flourished in local, state, and federal governments.
3) Caveats to confidentiality are discussed further under the “standard...” section subtitle “Confidentiality.”

4) Levine-Finley, Samantha, and Carter, John S. “Then and now: Interviews with expert U.S. organizational ombudsmen.” Conflict Resolution Quarterly, Volume 28, Issue 2, pages 111-139. Winter 2010.
5) Ethics Resource Center. “Blowing the Whistle on Workplace Misconduct.” Available online at <http://www.ethics/files/us/WhistleblowerWP.pdf>.
6) An electronic copy of this document may be requested by visiting <http://www.ethics.org/nbes/downloadnbes.html>.
7) KPMG LLC. Integrity Study 2008-2009. Available online at http://us.kpmg.com/RutUS_prod/Documents/8/IntegritySuvey08_09.pdf.

- “Because ombuds programs can fill gaps unmet by the other mechanisms, organizations should consider an ombuds program as a confidential and anonymous way for employees and others to seek guidance and ultimately help them report their concerns.”
- Even with multiple avenues of redress, such as whistleblower mechanisms, hotlines, and compliance efforts, “a significant segment of the employee population is not comfortable using them.”
- “These findings are important in that they underscore the advantages of having a knowledgeable person with whom one can speak, but they do not support the conclusion that supervisors should be the only other communication channel besides compliance and human resources.”
- “In addition to being an alternate channel, an ombuds office should be purely voluntary. Its effectiveness as a place to seek guidance confidentially depends on people deciding that they want to use it, not being required to do so. It should be a place where someone can ask questions or explore reporting or conflict resolution options without running the risk that by doing so, they are initiating the investigatory machinery or coming to the attention of their bosses or their colleagues.”⁸

Case Study: DoD IG Ombuds

On March 1, 2009, then Acting Department of Defense Inspector General Gordon S. Heddell administratively established an office of the ombuds. The mission of this office is to serve as an independent, impartial resource that provides over 1,600 DoD IG employees worldwide with informal and confidential means of early dispute resolution.

To provide a professional working environment that fosters commitment, excellence, and teamwork, it is DoD IG policy to promote the amicable and conciliatory resolution of internal conflicts, disputes, and workplace concerns. To that end, the DoD IG ombuds receives concerns about alleged improprieties and systemic problems; helps analyze complex and difficult problems; serves as a feedback mechanism for organizational climate issues; and explores non-adversarial approaches for resolving concerns.

Professional disagreements arise even in the best organizations. By facilitating constructive dialogue about perceived differences, the ombudsman plays a significant part in DoD IG's continuous improvement efforts and

8) American Bar Association. 2010. *The Organizational Ombudsman: Origins, Roles, and Operations* – A Legal Guide / Howard, Charles L.

helps to increase mutual gains throughout the agency. Organizational ombuds “handle individual complaints and are also expected to explore those complaints as a means to identify, understand and recommend suggestions to address systemic problems in the administration and functioning of an agency or institution.”⁹

Methods

The ombudsman uses a wide variety of conflict resolution techniques, such as shuttle diplomacy, conflict coaching, mediation, group facilitation, ombuds climate assessments, consultation about organizational barriers, and upward feedback on systemic patterns.

An International Ombudsman Association special task force developed categories and subcategories that ombuds worldwide could use to capture the types of issues brought to their attention. Their research was initiated by an underlying belief that mature organizations must have the capacity to report the essential characteristics of its profession in a meaningful way to its members and the general public. Further, it was theorized that using consistent data would allow monitoring of concerns over time; standardize professional responses; identify training needs; consistently capture ombuds' work; and represent our experiences to colleagues and administrators. Regarding process, the task force researched, created preliminary categories, coordinated extensively (through surveys and interviews), benchmarked, and incorporated additional recommended changes from ombuds globally. The DoD IG Office of the Ombuds adopted these uniform reporting categories.

Employee Engagement Through the Ombuds

As with any organization, various forms of conflict do arise as a normal part of business. In times of economic instability and spending reform, programs and initiatives are under the microscope. The Defense Department, for example, set a goal to eliminate \$100 billion by 2016,¹⁰ and President Barack Obama proposed to reduce the deficit by \$1 trillion.¹¹ The ability to handle these seemingly insurmountable obstacles constructively is principal to overcoming the hump of impasse and returning to positive morale, dedication, commitment, teamwork, and productivity.

Because little issues often escalate if ignored or mishandled, no issue can be thought of as too mundane or miniscule. Instead, all issues should be handled with the

9) *Supra* note 1.

10) American Forces Press Service. “Defense Department to Prune Senior Ranks, Freeze Staffing.” <http://www.defense.gov/news/newsarticle.aspx?id=62354>. January 6, 2011.

11) Office of Management and Budget. “The 2012 Budget.” Available online at <http://www.whitehouse.gov/blog/2011/02/14/2012-budget>. February 14, 2011.

same commitment to an anonymous and confidential resolution method facilitated by an impartial/neutral person acting on behalf of the process. The organizational ombuds is just that person. DoD IG ombuds receive problems and complaints. However, it is quite typical to hear the following caveat, “I absolutely love working here, and for the most part, things are great, but...” A number of employees cited their underlying goal was to help the agency get from “good” to “great.” Many have observed that the significant number of interactions with the ombuds is an affirmative testament to the workforce’s dedication and commitment to making the agency a world-class organization. It is important to keep this in mind when considering the number of visitors and issues presented to the DoD IG ombuds so the information is taken in the intended context.

Metrics: Facts and Data

Since the office was established in March 2009, DoD IG ombuds met with 646 employees, or approximately forty percent of agency staff. There were 167 (26 percent) individual “walk-ins” and 479 (74 percent) employees that voluntarily participated in nine ombuds climate assessments.¹² The ombuds office adopted the uniform reporting categories created by the International Ombudsman Association,¹³ and it has proven to be a useful tool in identifying top issues, trends, and systemic concerns. Employees shared 2,296 issues related to these categories.

How to Start an Ombuds Office: Ethics and Standards

The International Ombudsman Association’s code of ethics, standards of practice, and best practices cite four major tenets: informality, neutrality, confidentiality, and independence.

Informality

The organizational ombuds pursues resolution of concerns as an informal and off-the-record resource. The office looks into procedural irregularities and/or broader systemic problems when appropriate. It is a supplement, not a replacement, to any formal avenue of redress. Use

¹² This ombuds climate assessment is a customized conflict management process geared toward large groups, and designed to identify shared interests, differences, problems and opportunities for resolution and/or positive organizational change. Regarding methodology, employees in specific organizations were asked three broad questions: what is working well (and why); what isn’t working well (and why); and what changes should be made. While maintaining anonymity, this method highlighted organizational successes, areas of concern, and solicited specific recommended changes to improve their division, component, and/or DoD IG as a whole. Further, it was a proactive way to bring issues to the forefront and allow leadership to address problems before they escalate.

¹³ Available online at http://www.ombudsassociation.org/members/Reporting_Categories/V2_Desk_Reference.pdf.

of the ombuds office is voluntary, and is not a required step in any grievance, complaint, or investigatory process. The ombuds does not make binding decisions, mandate policies, or formally adjudicate issues. Similarly, the ombuds does not participate in or conduct any formal investigative or adjudicative procedures.

Neutrality

The ombuds conducts inquiries and facilitates resolution in an impartial manner, free from bias, conflicts of interest and conflicts of position. “Neutrality is the ultimate standard of practice for an ombuds, demanding fairness, objectivity, impartiality and even-handedness despite our personal preferences, partisan commitments, previous experiences and individual subjectivities. It is an unobtainable ideal toward which we strive even knowing that we cannot obtain it.”¹⁴

An organization neutral, by definition, lends itself to many distinct characteristics. Ombuds are not officially part of management, do not participate in setting policy or making managerial decisions (except in the case of ADR), and have no other assigned duties. Neutrality is asserted by not taking sides in disputes, but rather being advocates for an interactive resolution process.

Confidentiality

Confidentiality is the cornerstone of ombuds practice. All communications with employees are in strict confidence. Organizational ombuds take all reasonable steps to safeguard both anonymity and confidentiality. The identities of individuals contacting the ombuds are not disclosed without that individual’s explicit permission. Further, ombuds do not reveal information provided in confidence that could lead to the identification of any individual contacting the ombudsman.

The organizational ombuds pursues systemic issues in a way that safeguards the identity of individuals; keeps no records containing identifying information of individuals making the allegation; and maintains information in a secure location and manner, protected from inspection by others.

Generally, there is no legal privilege for communications with the ombuds. However, particular ombudsman communications while serving as a “neutral” in a dispute resolution proceeding pursuant to the Administrative Dispute Resolution Act of 1996 are privileged. This privilege is unavailable where there appears to be imminent risk of serious harm and there is a full admis-

¹⁴ Gadlin, Howard and Pino, Elizabeth Walsh. 1997. Neutrality: What an organizational ombudsperson needs to know. The Ombudsman Association [now International Ombudsman Association]. Email: info@ombudsassociation.org.

sion or direct evidence, rather than a general allegation of fraud, waste, and abuse. Federal ombuds must report these incidents to the appropriate authorities.

Independence

“The ombudsman office and the ombudsman are independent from other organizational entities,” and delineates the following best practices:

- The director of the ombudsman office should report directly to the highest level of the organization (such as board of directors, chief executive officer, agency head, etc.) in a manner independent of ordinary line and staff functions. At a minimum, the ombuds must have unfettered access to top leadership.
- The director of the ombudsman office should have terms of employment that indicate that his or her stature in the organization is not subordinate to senior officials.
- The ombudsman should be able to function independently from control, limitation, or interference imposed by any official in the entity.
- The ombudsman should be protected from retaliation (such as the elimination of the office or the ombudsman, or reduction of the ombudsman budget or other resources) by any person who may be the subject of a complaint or inquiry.¹⁵

Further, the Coalition of Federal Ombudsmen, Federal Interagency ADR Working Group Steering Committee, and American Bar Association developed standards for the internal management and operations of ombuds programs in the federal executive branch.¹⁶ Regarding independence:

- An entity should authorize the ombuds to operate consistently with the following essential characteristics. Entities that have established ombuds offices that lack appropriate safeguards to maintain these characteristics should take prompt steps to remedy any deficiency.
 - The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.

- In assessing whether an ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone who may be affected by actions of the ombuds office (a) can control or limit the ombuds’ performance of assigned duties; or (b) can (1) eliminate the office, (2) remove the ombuds, or (3) reduce the budget or resources of the office for retaliatory purposes.
- The independence of an ombuds office is a fundamental prerequisite to its effective operations. To ensure this independence, the federal ombuds should, if possible, report and have direct access to the highest agency official. If the ombuds reports to a designee, it is critical that the reporting relationship not present a conflict that would impact adversely the integrity, independence and impartiality of the ombuds. Thus, it would not be appropriate for an ombuds to resolve employment-related matters to report to the agency’s director of human resources, even as the designee of an agency head.

The ombuds office should be physically located outside of administrative structures to preserve the perception of neutrality. “In accordance with the organizational ombudsmen tenets of independence, neutrality, informality, and confidentiality, the location of the ombudsman’s office must not give any impression that the ombuds is somehow part of management, leadership, or any other department within an organization....”¹⁷ The ombuds would not be serving in decision-making capacities, not making policies, not participating in the decision-making aspect of hiring committees, and not evaluating employees (other than those working in the ombuds office). According to the ABA, “if an ombuds office serves as an agent of management or has management responsibilities, then statements made to an ombuds, along with other information learned by an ombuds, risk being imputed to the organization and cannot be kept confidential.”

Benefits

Senior leaders within DoD IG credited the Office of the Ombuds as being a trusted, confidential forum that shed light on inefficiencies, inconsistent application of policies, potential unfair practices, and other anomalies that had major impacts on the agency’s people, processes and resources. By facilitating constructive dialogue, the DoD IG ombuds program resulted in major improvements to: corporate communications; decision-making processes;

15) Available online at <http://www.ombudsassociation.org/standards/>.

16) Coalition of Federal Ombudsmen, Federal Interagency ADR Working Group Steering Committee, and American Bar Association. *A Guide for Federal Employee Ombuds – A Supplement To and Annotation of the standard for the Establishment and Operations of Ombuds Offices*, May 9, 2006.

17) *Supra* note 1.

merit systems principles; quality and timeliness of agency processes; teamwork; acquisition; oversight; field operations; the transition back to the general schedule; and many other areas involving mission readiness. These efforts helped to improve morale, transparency, collaboration and early resolution efforts throughout the agency. Other benefits that agencies may realize for implementing an ombuds may include:

- Create a secure venue to raise concerns anonymously with “no fear.”
- Serve as an “early warning system” for managers and leaders.
- Identify imbedded, systemic problems.
- Receive and provide real-time feedback.



Scott M. Deyo

Scott M. Deyo assumed his duties as ombudsman for the National Geospatial-Intelligence Agency on April 25, 2011. Mr. Deyo is an independent, impartial resource that provides NGA employees worldwide and external consumers of agency products with informal and confidential

dispute resolution services.

Prior to joining the NGA community, Mr. Deyo served as Ombudsman for the Department of Defense Inspector General (from 2009 - 2011). Prior to his assignment at the DoD IG, he served the Office of the Secretary of Defense and a number of Defense agencies - first as the alternative dispute resolution advisor (from 2001 to 2007) and later as the deputy, then director of equal opportunity (from 2007 to 2009). In these roles, he was the principal advisor to the director of Administration and Management for civilian and military equal opportunity complaint processing, diversity, ADR, affirmative employment, special emphasis, and partnership-in-education programs. Mr. Deyo received the OSD Medal for Exceptional Civilian Service for his leadership, sustained excellence and effectiveness leading these programs.

Mr. Deyo earned a bachelor's degree in psychology with honors from James Madison University and a master of science from the Institute for Conflict Analysis and Resolution at George Mason University. He is an expert mediator, facilitator, trainer and consultant regarding conflict resolution within complex organizational systems. Mr. Deyo is a member of the International Ombudsman Association, vice chair of the Coalition of Federal Ombudsmen, and an IOA certified organizational ombudsman practitioner.SM

- Explore potential consequences and outcomes (both positive and negative).
- Propose valuable, agency-wide enhancements.
- Promote efficiency by supporting effective change management.
- Provide leadership with a unique enterprise-wide perspective.
- Generate practicable, targeted solutions.
- Save resources by eliminating unfair processes and improve inefficient business/administrative processes.
- Provide a means of internal control - vulnerable areas can be identified anonymously and corrected before material weaknesses arise.
- Enhance transparency and accountability.

Conclusion

An organizational ombuds is a valuable tool agencies can use to reinforce core values of integrity, efficiency, and transparency. Ombuds allow agencies to handle complex issues better that have major impacts on the agency's people, processes and resources. They shed light on inefficiencies, inconsistent application of policies, potential unfair practices, and other anomalies. Employees routinely show appreciation for creating a mechanism that has not only heard their concerns, but helped facilitate positive change. Senior staff members appreciate the role because it serves as an additional, proactive voice in identifying and addressing workplace and mission concerns. Research and experience have shown that organizations benefit greatly from having multiple avenues available to raise concerns, and an organizational ombuds is one of the best places to start. ☞



Michael Kamins

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trained mediator and facilitator and is an affiliate member of International Ombudsman Association and a member of the Association for Conflict Resolution. Mr. Kamins completed an internship with the Department of Defense Inspector General, Office of the Ombudsman.



Growing Old Together

Inspector General and Ethics Counsel Changing Environments & Challenges

By Nancy Eyl, Maryann Grodin, and Alexandra Keith

Both the Inspector General Act and the Ethics in Government Act date from 1978, an important year for “good government,” with the concurrent creation of the Merit Systems Protection Board and the office of special counsel.¹ The past thirty-three years have given inspector general counsels and designated agency ethics officials the opportunity to work together and iron out some of the problems we noted in our article of 1995.² Nevertheless, questions continue to arise because of the different roles each plays. The purpose of this article is to revisit basic issues and report on the legal and practice changes that have occurred in the intervening years. Our goal is to provide an update, overview, and some suggestions for best practices regarding the IG counsel/DAEO relationship and respective roles. In addition to identifying relevant statutes and policies, we intend to clarify misunderstandings and restate our common objectives.

The IG Counsel Develops

The Inspector General Act of 1978 mandated only three positions within each Office of Inspector General: the Inspector General and Assistant Inspectors General for Auditing and Investigations.³ Neither the original statute, nor its first major amendment in 1988, mentioned the role of counsel within an OIG. Indeed, many IGs initially received legal advice and representation from attorneys working in their agency’s Office of General Counsel.⁴ However, because independence is the cor-

nerstone of the OIGs, independence of counsel was a recurring issue.

While some IGs initially relied on OGC counsel, they began to recognize the value of having their own counsel. Since the IG Act gave IGs broad authority to hire employees, contract with persons with appropriate knowledge and skills, and organize their own offices, in the decades following the IG Act’s passage, many IGs eventually shed their assigned OGC attorneys and hired attorneys to work exclusively as part of the OIG staff.⁵

Congress Considers Independent IG Counsel

The Federal Acquisition Streamlining Act of 1994 was a key turning point leading to IG Act amendments requiring presidentially appointed IGs to have independent counsel.⁶ Section 6007 of the FASA directed the comptroller general to review the independence of legal services provided to presidentially appointed IGs.

GAO Reports on IG Legal Services

Consistent with the FASA’s requirement, the Government Accountability Office issued GAO Report GAO/OGC-95-15, “Inspectors General: Independence of Legal Services Provided to IGs,” in March 1995.⁷ In this report to Congress, GAO compared the independence of legal services provided to IGs by attorneys located in agency OGCs with those provided by attorneys hired by and located in OIGs. GAO asked whether agency attorneys could provide the independent legal services necessary for an official who is statutorily required to review independently that agency’s programs and operations.

GAO reviewed the premise of federal IG functions from the IG Act, as amended, reporting that the intent was to establish OIGs in departments and agencies to consolidate the audit and investigative functions of those departments and agencies in an independent office under the leadership of a senior official, the IG.

1) IG Act, 5 U.S.C. App., Pub. Law No. 95-452, 92 Stat. 1101 (1978), as amended; Ethics in Government Act, 5 U.S.C. App., Pub. Law No. 95-521, 92 Stat. 1824 (1978), as amended. The Merit Systems Protection Board and the Office of Special Counsel were created by the Civil Service Reform Act of 1978, Pub. Law No. 95-454, 92 Stat. 1111-1227 (1978).

2) The substance of this article was presented in lectures given to ethics attorneys at the Interagency Ethics Council on May 4, 1995, and at the Office of Government Ethics Annual Conferences in 1995 and 1996 in, respectively, Philadelphia and Williamsburg, Virginia. The original article, which sought to provide a comprehensive description of statutory and regulatory rules that define the roles of federal government attorneys serving in ethics and Office of Inspector General counsel positions, was published as “The Role of Inspectors General in Ethics: Inspector General counsel and Ethics counsel Interface” (without copyright restrictions) in the August 1995 edition of the Federal Ethics Report. A second publication, essentially a restatement of the original, was published as “Legal Eagles: Ethics” in the Spring 1996 edition of the *Journal of Public Inquiry*.

3) IG Act, 5 U.S.C. App., §. 3(d).

4) GAO/OGC-95-15, March 1, 1995, “Inspectors General- Independence of Legal Services Provided to IGs,” Appendix IV, pp. 19-20.

5) 5 U.S.C. App., §. 6(a)(7), (9).

6) Pub. Law No. 103-355.

7) GAO/OGC-95-15, p. 12.

Based on a survey of 27 OIGs, and interviews with five IGs whose legal advisors were located in the OGC and seven whose legal advisors were on the OIG staff, GAO concluded that there was no evidence that the composition and duties of the legal staffs of the IG Offices reviewed for their report were significantly different based on their organizational location.⁸ Further, GAO reported that it was the preference of the individual IGs that influenced the functions and activities of their counsel. Finally, GAO found no indication that attorneys located in agency OGCs were less able than those within OIGs to provide independent legal services.⁹ So with that result, no changes were made to the status of IG counsel.

The Homeland Security Act of 2002 Gives IGs Independent Law Enforcement Authority

The structure and authority of the OIGs received a major boost in 2002 with the second major IG Act amendment.¹⁰ The Homeland Security Act of 2002 amended Section 6 of the IG Act to allow the Attorney General, after an initial determination of need (for certain IGs not exempted), to authorize full law enforcement powers for eligible personnel of each of the various offices of presidentially appointed IGs.¹¹ As required by the Homeland Security Act, the attorney general issued guidelines governing the exercise of such law enforcement powers.¹² The guidelines provide that OIGs have “primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility [with the Department of Justice] for the prevention and detection of fraud and other criminal activity within their agencies and their agencies’ programs.”¹³

Prior to enactment of the Homeland Security Act, the IG Act had not provided firearms, arrest, or search warrant authority for IG investigators. Rather, the IGs of the various executive agencies relied on a Memoranda of Understanding that “provided temporary grants of law enforcement power through deputations. As the volume of investigations warranting such police powers increased, deputations were authorized on a blanket or [OIG] office-wide basis.”¹⁴ Nevertheless, today, certain IGs, such as the IG for the Department of Defense, en-

joyed – and today continue to enjoy – specific grants of statutory authority under which they exercise law enforcement powers.¹⁵

Congress Mandates Independent IG Counsel

In 2008, it was the lawyers’ turn. The third major IG Act amendment, the IG Reform Act of 2008, addressed a number of matters related to enhancing the independence and prestige of the IGs.¹⁶ Among them was a provision for an independent counsel to support IGs. Section 6(a) of the Reform Act amended Section 3 of the IG Act to add:

“(g) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service, obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General.”

With this provision, IGs no longer had to rely, for confidential legal advice, on attorneys employed by and reporting to someone else – the general counsel. This provision gave each IG a dedicated IG counsel whose job, job assignments, and professional loyalty belonged exclusively to the IG.

In his signing statement, President Bush addressed the different roles of the agency and IG counsel as follows:

It is important that inspectors general have timely and accurate legal advice. It is also important that agencies have structures through which to reach a single, final authoritative determination for the agency of what the law is. This determination is subject to the authority of the attorney general with respect to legal questions within, and the president’s authority to supervise, the executive branch and, of course, the courts in specific cases or controversies. To this end, the “rule of construction” in Section 6 ensures that, within each agency, the determinations of the law remain ultimately the responsibility of the chief legal officer and the head of the agency.¹⁷

With these words, the president emphasized that even though the OIG is independent, the IG does not determine law for the agency; nor does the IG counsel. The IG counsel’s role is to advise and represent only the IG. The

8) Id.

9) Id.

10) Pub. Law No. 107-296, Section 812 of the Homeland Security Act amended Section 6 of the IG Act to provide full, statutory law enforcement powers.

11) Section 812(a), Homeland Security Act; 5 U.S.C. App. § 6(e)(1)-(2). The OIGs listed in Section 6(e)(3) of the IG Act are exempt from this requirement of an initial determination of need.

12) Section 812 of the Homeland Security Act; 5 U.S.C. App. § 6(e)(1), (4); Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (hereinafter “Guidelines”), Dec. 8, 2003.

13) Id., p. 1.

14) Id.

15) Id.

16) IG Reform Act of 2008, Pub. Law No. 110-409, 122 Stat. 4302.

17) Statement on Signing the Inspector General Reform Act of 2008, 44 Weekly Compilation of Presidential Documents 1345 (Oct. 14, 2008).

agency general counsel is the sole attorney with authority to interpret the agency's law.

Independence of the IG

In addition to the aforementioned amendments that enhanced IG independence, the IG Act contains other provisions designed to ensure that IGs carry out their responsibilities independently. For example, IGs do not report to those directly responsible for carrying out the programs and activities subject to audit and investigation. Rather, they report to, and are under the general supervision of, the agency head or the official next in rank, if such authority is delegated.¹⁸ OIGs have their own hiring authority, as well as the authority to enter into contracts and to structure their offices and perform their mission as they see fit. With few exceptions, neither the agency heads nor subordinates are to prevent or prohibit IGs from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena.¹⁹ Further, IGs may not accept cash awards or bonuses from the agency head.²⁰ Presidentially appointed IGs must be appointed by the president with the advice and consent of the Senate "without regard to political affiliation and solely on the basis of integrity and demonstrated ability" in fields critical to OIG functions.²¹ They may be removed from office only by the president, who is required to inform both Houses of Congress not later than 30 days before the removal.²² In addition, all IGs are required to report at least semiannually to Congress (and some IGs are required to report quarterly),²³ but Congress cannot order or prohibit the IG from conducting an investigation, audit, or other review, or from issuing a subpoena, except through legislation. OIGs are prohibited from carrying out agency programs and operations so that they can objectively and independently

"...even though the OIG is independent, the IG does not determine law for the agency; nor does the IG counsel. The IG counsel's role is to advise and represent only the IG. The agency general counsel is the sole attorney with authority to interpret the agency's law."

18) 5 U.S.C. App., Sec.3(a).

19) 5 U.S.C. App., Sec.3(a). Under the IG Act, the heads of only six agencies – the Departments of Defense, Homeland Security, Justice, and the Treasury, plus the U.S. Postal Service and the Federal Reserve Board – may prevent from the IG from initiating, carrying out, or completing an audit or investigation, or issuing a subpoena. These agency heads may only exercise this authority for specific reasons, including to protect national security interests or ongoing criminal investigations.

20) 5 U.S.C. App., Sec. 3(f).

21) Id.

22) 5 U.S.C. App., Sec. 3(b).

23) 5 U.S.C. App., Sec. 5.

audit and investigate such programs and operations.²⁴ Moreover, OIGs in the establishments have a separate budget authority that the agency head must submit to the president.²⁵ Finally, the IG Reform Act established the the Council of Inspectors General on Integrity and Efficiency.²⁶ The integrity committee was established under CIGIE as a receiver to review and refer for investigation allegations of wrongdoing made against an IG or designated OIG employees.²⁷ In short, all of these provisions were intended to ensure that IGs are able to fulfill their mission without interference from senior officials, such as general counsels and management.

DAEO's Role

Title 5 of the Code of Federal Regulations, Part 2600 implements 5 U.S.C. App., the Ethics in Government Act of 1978, as amended, the statute that created the Office of Government Ethics, the overseer of ethics regulation in the executive branch.²⁸ As the agency responsible for directing ethics programs in executive departments and agencies, OGE issues rules, directives, and advisory opinions on ethics matters. It partners with executive branch agencies and departments to prevent conflicts of interest on the part of executive branch employees and resolves the conflicts of interest that occur. Pursuant to the authority granted under Title 5 of the Ethics in Government Act, OGE directs the administration of agency ethics programs and agency DAEOs. Title 5 of the C.F.R., Section 2638.201, *et. seq.*, mandates that each agency shall have a DAEO (and alternate DAEO) to coordinate and manage the agency's ethics program and provide liaison with the OGE regarding such ethics program. The director of OGE and agency DAEOs have different roles from that of the IG and the IG counsel. With noteworthy exceptions, the director of OGE directs, and the agency DAEO and deputy DAEOs implement, the Ethics in Government Act. The DAEO's mission is to provide ethics advice and preventive legal assistance to agency employees. Specifically, as described in 5 C.F.R. 2638.203, the DAEO's duties include liaison with OGE, review of financial disclosure reports (one of the most unappreciated and tedious tasks in government), initiation and maintenance of ethical education and training programs, and monitoring of administrative actions and sanctions.

Like IGs and their counsel, the functions and authorities of OGE and agency DAEOs have grown in

24) 5 U.S.C. App., Sec. 9(a).

25) 5 U.S.C. App., Sec. 6(f).

26) 5 U.S.C. App., Sec. 11.

27) 5 U.S.C. App., Sec. 11(d)(1).

28) 5 U.S.C. App.; Pub. Law No. 95-521, 92 Stat. 1824.

scope and prestige since 1978. For example, while requiring executive branch appointees to sign an ethics pledge is not new, DAEOs now have more discretion in implementation. To illustrate, recently issued Executive Order 13,490, “Ethics Commitments by Executive Branch Personnel,” requires every full-time political appointee appointed on or after January 20, 2009, to sign an Ethics Pledge, committing the appointee to comply with seven ethics obligations generally involving lobbying, employment actions and post-employment.²⁹ Following the model in the Ethics in Government Act, the OGE director is charged with providing government-wide guidance as to how DAEOs and their agency heads should implement the EO. In addition to recounting ethics restrictions applicable to the appointees and the procedural steps for oversight and enforcement, Section 3(a) of the executive order vested waiver authority with the director of the Office of Management and Budget, in consultation with the counsel to the president.³⁰ Shortly thereafter, however, a DAEOgram informed agencies that OMB had authorized DAEOs of each executive agency to exercise waiver authority in consultation with the counsel to the president.³¹ As a result, DAEOs’ authority grew to include a new authority – to waive the ethics pledge requirement for certain executive employees.³²

DAEOs Provide Written Ethics Advice

As part of a program of formal advice to all agency employees, one of the DAEO’s most critical functions is to develop and provide counseling on ethics and standards of conduct. Most ethics restrictions are found in Sections 202 to 209 of Title 18 of the U.S. Code and in EO 12,674 as modified by EO 12,731.³³ The standard, found at 5 C.F.R. Part 2635, cover the basic ethical obligations of public service, including rules regarding gifts from outside sources and between employees, conflicting financial interests, impartiality in performing official duties, outside employment and activities, post-employment, and misuse of position.³⁴ The regulations require the DAEO to keep records on advice rendered “when

appropriate.”³⁵ To ensure a productive relationship with the OIG, however, a DAEO should strive to record and maintain consistent written advice to employees and communicate promptly regarding administrative actions.

Written records evidencing the facts conveyed by an employee, and limitations and restrictions identified in the ethics advice given by the DAEO in response to those facts, play a vital role in ethics investigations. This is because OIG investigators and DOJ attorneys rely on them in prosecution, as may an employee in his or her defense.

DAEOs Have a Special Relationship with the IG

The federal ethics regulations recognize a special relationship between DAEOs and IGs. In carrying out their agency ethics programs, DAEOs are required by the standard to review information developed by the OIG and other auditors.³⁶ The purpose of such review can be to determine whether there is a need for revising the agency’s supplemental standard or taking corrective action to remedy actual or potential conflict of interest situations. Thus, if an OIG audit identifies a recurring conflict situation unique to the agency, and it is not addressed by the standard, then the DAEO might consider a curative supplemental regulation. If an OIG investigation finds that an agency contracting officer has violated the standards by, for instance, purchasing stock in a firm with which the agency contracts, the DAEO might be asked by management to recommend appropriate remedial or corrective action.



DAEOs are in an excellent position to refer to the IG allegations of criminal, civil, or administrative ethics violations that they encounter in their daily work, including violations of the standard. When employees

29) Executive Order 13,490 was issued on January 21, 2009. For example, registered lobbyist-appointees are required to recuse themselves for two years after appointment from any particular matter lobbied during the two years prior to appointment, and all appointees must agree not to lobby certain executive branch officials for as long as President Obama is in office. Notably, former President Clinton required every senior appointee to sign a stricter ethics pledge. For instance, Clinton mandated five-year restrictions on lobbying on all appointees, not just lobbyists, as well as a permanent bar from participating in an activity on behalf of a foreign government or political party.

30) Executive Order 13,490, Sec. 3.

31) DAEOgram DO-09-008, “Authorizations Pursuant to Section 3 of Executive Order 13490,” February 23, 2009. A DAEOgram is an OGE memorandum to the DAEOs. Starting in January 2011, “OGE Advisories” replaced DAEOgrams.

32) *Id.*

33) The executive order is implemented by regulations at 5 C.F.R. 2635.

34) 5 C.F.R. 2635. et. seq., standard of Ethical Conduct for Employees of the Executive Branch.

35) 5 C.F.R. 2638.203(b)(8).

36) 5 C.F.R. 2638.203(b)(11).

come to the DAEO for prospective ethics advice, there is usually no need to refer the matter to the IG. However, the DAEO might choose to discuss proactively concerns with the IG; after all, disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege.³⁷ When agency employees inform the DAEO of past transgressions, or explain what prospective mischief they are planning, however, the DAEO is obligated to make sure that “prompt and effective action” is taken to remedy the potential or actual violation.³⁸ The best thing that the DAEO can do at this point is to refer all information, documentary and otherwise, to the IG, pursuant to the standards and the agency’s own regulations. This is because, first, the DAEO is required to use the services of the agency’s OIG, including the referral of matters to and acceptance of matters from the OIG.³⁹ Second, an agency’s internal investigative authority resides with the IG, and the IG must be given the opportunity to investigate.

DAEOs Refer Investigations to the IG Through the Agency Head

The law regarding the OGE director’s responsibilities provides that when the OGE director believes an employee is in violation of a conflict of interest or standard regulation, he or she may recommend that the agency head investigate possible violations and take disciplinary action.⁴⁰ Section 403(a) of the Ethics in Government Act states that the director has the authority to request assistance from the inspector general to conduct ethics investigations. In these cases, the usual practice for an agency head in receipt of such a request is to ask the OIG to investigate.

This is for two main reasons. First, even though the OGE director is authorized to undertake administrative investigations of ethics violations, the Ethics in Government Act prohibits the director *or any designee* from finding that any provision of Title 18 of the U.S. Code or any U.S. criminal law has been or is being violated.⁴¹ Most of the ethics rules on which the standards are based are located in Title 18 U.S.C. Sections 201, *et seq.*, and are criminal violations, although rarely prosecuted as such. Accordingly, while an ethics violation may constitute a regulatory violation, it could also be a crime and require a criminal investigation. Neither the OGE director nor agency DAEOs are, or have on their

staff, internal criminal investigators. This is the exclusive province of the OIG and outside the jurisdiction and scope of employment of a DAEO.

What Does The IG Investigate?

The IG Act authorizes IGs to conduct criminal, civil, and administrative investigations. This broad investigative authority is the same for the presidentially appointed IGs generally at the larger departments and agencies, and agency head-appointed IGs at the generally smaller “designated federal entities” and “federal entities.”

The IGs’ investigative authority is found in several places in the IG Act. First, Section 2(1) of the IG Act authorizes IGs “to conduct and supervise audits and investigations relating to the programs and operations of [their agencies].” Section 7(a) provides that an IG may receive and investigate complaints or information from employees about an array of activities. These are described as activities that could constitute, “a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.”⁴²

Section 4(d) of the IG Act requires the IGs to report “expeditiously” to the attorney general when they have reasonable grounds to believe that there is a violation of federal criminal law. IGs interpret this section to mean referrals for prosecution. Thus, an IG may, although may not always choose to, undertake significant investigative work to determine whether an allegation can be substantiated before presenting evidence of a violation of federal criminal law to the DOJ or an assistant U.S. attorney for prosecution. The attorney general and the Federal Bureau of Investigation have authority to investigate any violation of federal criminal law, including those involving government officers and employees.⁴³

To carry out their investigative authority, IGs are given some helpful law enforcement tools. For example, Section 6(a)(1) of the IG Act permits IGs to access all records, reports, documents, etc., available to the agency relating to the programs and operations for which the IG has responsibility.⁴⁴ IGs interpret this section to mean that anything the agency can access, the IG can access also. If the agency does not have the material, then the IG can subpoena it if it is held privately.⁴⁵ If the record is in the custody of another federal entity, the IG may not issue a subpoena, but may request and expect to receive the information.⁴⁶

37) 5 C.F.R. 2635.107(b).

38) 5 C.F.R. 2638.203(b)(9).

39) C.F.R. 2638.203(b)(12).

40) 5 U.S.C. 402(f)(2)(A)(ii)(I). If the employee involved is the agency head, however, any such recommendation must be submitted to the president.

41) 5 U.S.C. 402(f)(5).

42) 5 U.S.C. App., Sec. 7(a).

43) 28 U.S.C. 535.

44) 5 U.S.C. App., Sec. 6(a)(1).

45) 5 U.S.C. App., Sec. 6(a)(4).

46) 5 U.S.C. App., Sec. 6(a)(3).

With one exception, IGs do not yet have testimonial subpoena authority. Thus, IGs may require agency employees to speak with them about official matters within the confines of the constitutional privilege against self-incrimination, but, except for the Department of Defense OIG, they cannot subpoena a private citizen to speak with OIG agents.⁴⁷ Section 6(a)(2) of the IG Act allows IGs “to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are . . . necessary and desirable.”⁴⁸ As investigations are completed, IGs may issue reports and make recommendations for prosecution, administrative discipline, systemic internal controls, or anything else that would help the agency improve operations, prevent or detect fraud, or save money.

What Constitutes an Investigation?

Agency counsel and DAEOs may justifiably assert that they correctly understand the requirement to refer criminal allegations to the OIG, and to request approval to undertake administrative investigations when the IG decides not to pursue an investigation. The agency counsel and DAEOs also may argue that, based on the information before them, they cannot always determine whether an allegation rises to a criminal level or is simply a management issue. The DAEO or OGC attorney then might interview witnesses, request documents, and do other things an IG investigator might do, and later decide whether to refer to the IG.

This can present problems for an OIG if the allegation is eventually referred to or discovered by the OIG after an agency lawyer has gathered evidence and talked with witnesses. The IG investigator may find witnesses tainted, documents altered or destroyed, and confidentiality nonexistent. Moreover, agency attorneys gathering evidence rarely provide the employee the necessary and proper warnings, and they likely are not as skilled at using the tried-and-true investigative techniques that professional law enforcement employs. Accordingly, some agency OIGs have endeavored to specify in internal policies exactly what should be referred to the IG and when. Others use a rule of thumb, such as if the OGC attorney needs to talk with more than one other person to substantiate an allegation, then he or she should refer the matter to the OIG.

47) The National Defense Authorization Act for Fiscal Year 2010, Pub. Law No. 111-84, enacted on October 28, 2009, at Title X, Subtitle D, Section 1042, amended Section 8 of the Inspector General Act to grant the Defense Department IG testimonial subpoena authority.

48) 5 U.S.C. App., Sec. 6(a)(2).

What Happens When IGs Do Not Investigate Allegations

On occasion, IG investigators do not investigate allegations of administrative ethics violations in order to pursue solely criminal violations, sometimes based on the advice of the U.S. Attorney’s office. In such cases, if no one is investigating, the DAEO should be advised at the right time, so he or she can pursue administrative remedies and inform the director of OGE. *This does not mean that the DAEO can undertake an investigation on his or her own, as discussed above, however, without the IG’s approval.* A DAEO may be able to use the IG’s evidence to recommend administrative action against an employee, e.g., discipline or counseling. If the issue is one that affects many agency employees, the DAEO can ensure that training and written advice address the troublesome issues.

It might be hard to determine immediately the effects of an unexplored allegation of an ethics violation. At the least, however, failure to deal with such allegations and to administer appropriate discipline when they are substantiated, runs counter to the purpose of the Ethics in Government Act and may diminish the overall ethical culture that DAEOs try to foster. Furthermore, it could hurt national security and significantly harm government operations. For example, if an employee in a “public trust position” commits a certain ethics violation, and the violation is not taken seriously and investigated, that employee – and the government – might not recognize the potential harm until it is too late. The employee may be encouraged by the lack of oversight to commit another violation, or lackadaisically or unwittingly create vulnerabilities. A public trust position includes those involved in policymaking, major program responsibility, public safety and health, law enforcement, fiduciary responsibilities, or “other duties demanding a significant degree of public trust, and positions involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain.”⁴⁹ An employee in such a position is particularly able to cause harm through continued access to or control of critical systems, records, and information. No matter the reason for the possible violation, failing to investigate could lead to serious national security consequences. Therefore, it is not only in the OIG’s and agency’s best interest to explore all potential violations, but also it protects national security.

49) 5 C.F.R. § 731.106(b).

“Agency counsel and DAEOs may justifiably assert that they correctly understand the requirement to refer criminal allegations to the OIG, and to request approval to undertake administrative investigations when the IG decides not to pursue an investigation.”

IGs Should Cooperate With DAEOs

Communications cannot be a one-way street. The DAEO is required by regulation to be aware of all ethics infractions, and must maintain a list of all situations that have resulted or may result in noncompliance with ethics laws and regulations.⁵⁰ This list must be published within the agency and made available to the public. Thus, the IG must inform the DAEO of all ethics infractions the IG has verified to enable the DAEO to fulfill his or her regulatory obligations.

This does not mean the IG must notify the DAEO immediately each time he opens an investigation involving a violation of the standard, nor must the IG advise the DAEO at any particular point in an investigation. Nevertheless, the quality standard for federal OIGs (October 2003) state that the OIG “should make a special and continuing effort” to keep the DAEO informed about OIG activities, including “the results of investigations and allegations of ethical misconduct where appropriate, that relate to the ethics official’s responsibilities for the agency’s ethics program.”⁵¹ When an IG investigation uncovers an ethics violation, the DAEO may serve as a consultant for OIG investigators on technical issues of ethics law. OIG investigators and counsel might both consult the DAEO, within the confines of the Privacy Act, about what constitutes a violation, whether a violation has occurred, and what remedy or corrective action is usual within the agency.

IGs also may refer to DAEO’s audit or investigative findings regarding the agency’s ethics program, e.g., which employee grades and classifications are required to submit financial disclosure forms, which employees are not receiving their confidential forms or whether an employee is not filling them out properly or in a timely manner.

50) 5 C.F.R. 2638.203(b)(5).

51) Quality standard for Federal Offices of Inspector General, President’s Council on Integrity and Efficiency, October 2003, pp. 30-31.

IG Counsels May Serve As Deputy DAEOs

In many large agencies, DAEOs delegate deputy DAEO authority to attorneys in various agency sub-components, including the OIG, pursuant to 5 C.F.R. 2638.204(a). A deputy DAEO in the OIG who is aware of the OIG’s special needs and mission can help the DAEO implement the agency’s ethics program. Having a deputy DAEO in-house might appear to enhance an IG’s independence. Further, OIG employees may feel more comfortable seeking advice from the OIG deputy DAEO than with the DAEO, and this comfort may encourage employees to seek advice, and as a result, have a preventive effect.

The first consideration that an OIG must make in implementing an agency’s ethics program in-house, however, is whether this authority is officially delegated. Based on the regulations, each agency has only one primary DAEO and one alternate DAEO, and deputy DAEOs must receive their authority through delegation. The DAEO must keep a list of persons to whom delegations have been made to provide to OGE upon request.⁵² OIGs that have deputy DAEOs in-house serving without a delegation may lack the support of the Ethics in Government Act.

Second, because of the nature of the DAEO’s duties, OIGs with deputy DAEO functions in the IG counsel’s office might risk at least a perceived conflict of interest. When and if IG counsel adopt this role, they must be cautious. IG counsels may give ethics advice to IG employees, which may provide a “safe harbor.” The regulations state that disciplinary action for violating ethics rules “will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.”⁵³ However, if an IG counsel were to give a “safe harbor” opinion to an IG employee, and that employee relied on the advice to commit an act later investigated by the IG, the deputy DAEO must be careful to recuse himself or herself from any ensuing investigation. If not, not only could the investigation be jeopardized, but also the attorney risks violating rules of professional conduct. Accordingly, the soundest way to prevent conflicts of interest within the OIG is for IG counsel not to accept the deputy DAEO role or to undertake the responsibilities, but limit advice to informal ethics advice and communicate the limits of such advice to the employee. Additionally, the IG counsel deputy DAEO should recuse himself or herself

52) 5 C.F.R.2638.203(b)(13).

53) 5 C.F.R.2635.107(b).

from any investigations involving matters in which he or she gave advice. Finally, when the OIG's deputy DAEO faces a novel or complex issue, or when an employee requires a written opinion, he or she should refer it to the agency's DAEO.

Reporting Requirements

Reporting requirements are imposed on both OIGs and DAEOs. In accordance with 5 U.S.C. App. §402 (b)(2), the director of OGE, in consultation with the attorney general and the Office of Personnel Management, promulgated regulations pertaining to conflicts of interest in the executive branch. The regulations require agencies to notify the OGE director when any matter involving an alleged violation of federal conflict of interest laws is referred to the Attorney General in accordance with 28 U.S.C. §535.⁵⁴ This is usually accomplished by OIG submission of OGE Form 202 (7/94), "Notification of Conflict of Interest Referral," at the time formal referral is made to the DOJ. The form indicates that it is to be used in cases involving possible violation of 18 U.S.C. §203, 205, 207-209 by current or former executive branch employees. As discussed above, under §4(d) of the IG Act, OIGs are required to report violations of federal criminal law to the attorney general.

OIGs and DAEOs Can Work Together Better

To summarize, the federal OIG and ethics communities have flourished, making important contributions to government integrity. Employees dedicated to ethics issues have earned high degrees of respect and deference as valued experts within their individual agencies and as the source of high-level insights at the federal level. As the DAEOfgram discussing the DAEOs' new waiver authority of the president's ethics pledge stated, "This designation reflects the high degree of trust and confidence with which the experience and professional judgment of the DAEOs is viewed."⁵⁵ OIG's and OGE's combined efforts and achievements have been individually recognized by statutory and executive enhancements to their responsibilities and authorities. Together, IG counsel and DAEOs can continue to improve government by adopting or maintaining the following best practices.

⁵⁴ 5 C.F.R. 2638.603(b).

⁵⁵ DAEOfgram Do-09-008, Authorizations Pursuant to Section 3 of EO 13490, "Ethics Commitments by Executive Branch Personnel," Feb. 23, 2009.

IG Counsels and DAEOs Should Maintain Ongoing Communications

It may be trite, but it is true – regular communication can solve many problems. When IG counsel and DAEOs build and maintain strong relationships, problems can be resolved by informal discussion before they blossom into full-fledged headaches. IG counsels can keep DAEOs informed of the progress of relevant ethics investigations and whether documents and/or testimony may be requested. For their part, DAEOs can consult with IG counsel and refer potential ethics violations to the IG for investigation.

IG Counsels & DAEOs Should Do Joint Training

DAEOs are required to provide annual ethics training, and many IGs present integrity awareness briefings. Combining the two provides agency employees with the continuum from ethics education and advice to investigation and prosecution of violations. Such cooperation fosters a stronger ethical culture, which in turn breeds employees who care about doing the right thing, whether the action is guided by a standard or not. IGs can publish internal Web newsletters highlighting recurring issues and reminding agency staff of common pitfalls. DAEOs can write articles for their agency Web and social networking sites to make agency employees aware of current ethics issues. OGE has always graciously invited IGs and IG counsels to participate and present at annual OGE conferences. This cooperation is valuable to everyone and should be continued.

DAEOs Should Promptly Document Ethics Advice

Friction between IGs and DAEOs can be avoided when written records of advice relevant to an allegation are available. In these cases, disputed testimony about whether the DAEO's advice indicated the activity was permitted or prohibited, can be eliminated and potential for prosecution can be preserved.

DAEOs Should Refer Investigations to the OIG

DAEOs can potentially complicate OIG investigations if they undertake their own investigations without OIG approval and before referring allegations to the OIG. By exposing confidential information, they can inadvertently allow wrongdoers to destroy evidence, fabricate

stories, and taint testimony. Thus, DAEOs should *always* refer investigations to the OIG.

IG Counsels Should Be Cautious if Acting as DepDAEOs

IG counsel and DAEOs roles are not the same, so when an IG counsel is confronted with an unusual, complicated, or novel ethics issue that could be referred to the OIG for investigation, he or she should also refer it to the agency DAEO.

IG Counsel Should Consult with DAEOs on Ethics Investigations

Recognizing that DAEOs are ethics experts, IG counsel assisting with investigations involving ethics violations should consult with and exchange information with DAEOs. IG counsel can be a bridge between OIG investigators and the DAEO. Through training and education targeting specific problems, IG counsel can further the




Nancy Eyl

Nancy Eyl is assistant counsel to the inspector general at the Department of Homeland Security, where she works on new media legal issues, among other areas. She began her legal career at the Special Inspector General for Iraq Reconstruction. Before entering the legal profession,

Ms. Eyl trained to teach Russian and other Slavic languages and literatures at the university level. She taught Russian at Indiana University Bloomington and Russian, German, and the literary genre of autobiography at Tulane University.

As an academic, she received numerous awards, fellowships and scholarships, including a Fulbright to Ukraine, an award for outstanding achievement by Harvard University's Ukrainian Summer Institute, and grants supporting independent research in Germany, Ukraine, and Eastern Europe.

Ms. Eyl graduated from Georgetown University Law School and is a member of the New York bar. She received a master's degree in Slavic languages & literatures from Indiana University Bloomington, where she was a chancellor's fellow, and a B.A., magna cum laude, in German and Russian from Loyola University New Orleans, where she was a presidential scholar.

DAEO mission, even without being formally delegated DepDAEOs. Moreover, by sharing information with the DAEO, an OIG ensures that no ethics violation will go unnoticed. Such vigilance serves not only to promote an ethical culture, but also can protect national security. 



Maryann Lawrence Grodin

Maryann Lawrence Grodin is general counsel to the inspector general at the U.S. Nuclear Regulatory Commission. Prior to assuming this senior level service position, she was a supervisory attorney with the Navy Office of the General. She served on active duty and as a reserve officer in the Navy Judge Advocate General's Corps and retired as a captain in 2010.

Ms. Grodin received a B.A., cum laude, with departmental honors in political science from Stony Brook University and a J.D. from California Western School of Law in San Diego, California. She is a member of the California Bar and admitted to practice before the U.S. Supreme Court.

In addition to authoring agency publications, her writing has been published in the Federal Bar Journal, the Judge Advocate General Journal, the Federal Ethics Report, as well as the Journal of Public Inquiry, where she served as an editor. She has served as a faculty instructor and is a frequent public speaker and has appeared at venues including the Office of Government Ethics Conference.



Alexandra Keith

Alexandra Keith is senior counsel in the Office of General Counsel of the Special Inspector General for Iraq Reconstruction. Prior to serving in that position, she worked as counsel to the inspector general of the Corporation for Public Broadcasting, deputy counsel to the inspector

general of the Environmental Protection Agency, counsel and assistant inspector general for investigations of the National Credit Union Administration, deputy inspector general for the Peace Corps, and counsel to the inspector general of the Department of the Treasury.

She has also served as an administrative law judge and prosecutor in the District of Columbia government, a foreign service officer with the U.S. Department of State, and a Peace Corps volunteer. Ms. Keith holds a B.A. from the College of Wooster, Ohio, a master's degree in international relations from the Fletcher School of Law and Diplomacy and J.D. from the Georgetown University Law Center.



Ensuring Contractor Accountability

Past Performance and Suspension and Debarments

By Michael G. Carroll

Testimony before the Commission on Wartime Contracting in Iraq and Afghanistan.

February 28, 2011 - I am pleased to appear before you to testify on behalf of the Office of Inspector General for the U.S. Agency for International Development and to be joined by such distinguished panelists. Today, I would like to share information on the progress of USAID's suspension and debarment efforts and discuss the current contractor accountability environment.

Past Problems

As you may know, a year and half ago, in October 2009, we issued an audit report of USAID's suspension and debarment practices.¹ At the time, we observed a number of problems with agency practices and decision-making processes.

We found that USAID had not considered the use of suspension and debarment in many cases in which such action might have been warranted. In fact, the agency had only taken suspension or debarment actions in response to indictments and convictions reported by our office. The agency did not take action in response to other kinds of cases, such as those stemming from matters that had been declined for prosecution by U.S. authorities, or those arising from referrals from contracting officers or other agency employees. In two instances, USAID did not take action to suspend or debar firms even when the firms had acknowledged making significant false and inflated claims for reimbursement. This limited approach to suspensions and debarments led USAID to apply these sanctions in relatively few cases. During the period covered by our audit (fiscal years 2003–2007), USAID documented or reported suspension and debarment actions in response to only nine investigative cases.

Our audit found that even when USAID had pursued suspension and debarment actions, it did not al-

ways execute them properly. USAID did not routinely abide by federal guidelines on providing notice of its final debarment decisions, entering suspension and debarment information into the federal database of excluded parties, or documenting the actions it took. A key step in the process of effectively suspending or debaring an organization from government contracts and awards is listing the entity in the Excluded Parties List System – the system for tracking entities that have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded or disqualified. Despite the acquisition regulation requirement to post information about exclusion actions in EPLS within five workdays, we found that USAID failed to meet this requirement in six of nine cases. In one case, the agency omitted four debarred entities from EPLS. In another case, we had difficulty discerning what steps, if any, the agency had taken to implement a debarment decision because the division responsible for maintaining debarment records had no documentation of the matter.

Finally, we found that USAID had not consistently used available information on excluded firms during the contracting process. Federal agencies must perform EPLS checks at two points before awarding funds: during the bidding process and during the award process. To determine whether USAID had consulted EPLS as required, we reviewed a random sample of agency contracts. We found that USAID generally lacked documentation that it had checked EPLS during the bidding process, and documentation of such checks during the award process was inconsistent. USAID could not establish that it had performed required the EPLS checks at any point for 20 of the 54 contracts we examined.

Present Observations

I am happy to report that USAID's current suspension and debarment posture stands in sharp contrast to its past efforts. Although we have not had an opportunity to thoroughly re-evaluate the agency's suspension and

1) Audit of USAID's Process for Suspension and Debarment, Report No. 9-000-10-001-P, October 1, 2009.

debarment process since 2009, we have observed considerable progress in its application of these tools. Since our audit, USAID has established a Compliance and Oversight of Partner Performance Division focused on suspension and debarment actions in response to one of our recommendations. Whereas in 2009, USAID had no staff exclusively dedicated to such efforts; the agency is now building a division of eight acquisition, assistance, and audit personnel supported by an attorney from the agency's office of general counsel to handle these matters and other contractor accountability functions.

Rather than waiting for OIG referrals, USAID has taken the initiative to identify cases suitable for suspension or debarment consideration. In fact, for the first time in recent history, USAID debarred an individual based on information that did not originate from our office. In September 2010, USAID responded to independent reports that an employee of an USAID grantee pleaded guilty to stealing federal funds, and took action to debar this individual.

Provided dedicated agency staff to work with on suspension and debarment actions, OIG has been able to engage USAID earlier in the investigative process. Whereas in the past we generally waited for investigations to be completed before referring matters to USAID's suspension and debarment official, absent limitations imposed by the Department of Justice, we now share "real-time" case information that the agency needs to determine if suspension or debarment action is warranted. This close collaboration has helped us develop a clearer understanding of the information agency officials need to make prudent decisions.

"I am happy to report that USAID's current suspension and debarment posture stands in sharp contrast to its past efforts."

To keep up with the pace of exchange on these matters, we have also increased the frequency with which we communicate. Early last year, we initiated monthly meetings with suspension and debarment staff. Now, our exchanges with them are routine and occur many times a week.

This earlier and more intensive engagement between the OIG and USAID staff has produced greater results. Accordingly, of the 37 USAID suspensions and debarments currently in effect, more than three-quarters – or 28 in total – are based on actions taken within the last year.

While there has been a major uptick in the quantity of work that USAID is doing in the suspension and debarment arena, the most notable sign of progress over the last year relates to a single case. In December 2010, following months of consultation with our office, USAID took the extraordinary step of suspending one of its largest funding recipients, the Academy for Educational Development. USAID's suspension decision underscored the seriousness of its commitment to responding to mismanagement of U.S. government funds and established that no implementing partner was too large to escape accountability. Indeed, at the time USAID took this extraordinary step, it had 65 active awards valued at approximately \$640 million with AED and work underway in countries like Afghanistan and Pakistan. In addition, the implications were felt across the government, as AED's portfolio extended to other federal agencies.

As you might imagine given the ramifications, USAID did not make this decision lightly. OIG opened the underlying investigation in the spring of 2009 and began sharing information with the agency's suspension and debarment staff last summer. USAID determined to proceed with the suspension after we presented it with evidence of serious corporate misconduct, mismanagement, and a lack of internal controls that raised grave concerns about the firm's integrity.

This significant step followed on another notable case in which a major firm was held to account for its work with USAID. After years of investigative work, OIG established that high-level Louis Berger Group employees had conspired to charge the U.S. government falsely inflated overhead costs. In November 2010, our work in unraveling the complex accounting scheme behind this effort produced plea agreements from LBG's former chief financial officer and controller, and a \$69.3 million settlement with the company.

This settlement and USAID's new approach to suspension and debarment have helped reset the accountability environment in foreign assistance. Individuals and organizations working with USAID now have heightened awareness that they will be held accountable.

OIG intends to capitalize on this new momentum by increasing our engagement with those who come forward with information about possible violations. We are intensifying outreach efforts and reinforcing opportunities for fraud reporting. We have increased our permanent staff presence in priority countries and are working closely with host government investigators and prosecutors to secure convictions of local lawbreakers affecting

USAID programs. These efforts all serve to extend our reach and enforce a culture of accountability.

These measures would not be as successful had USAID not expanded the use of its suspension and debarment authorities. We applaud the administrator for his determination to hold the agency's "implementing partners to strict account, regardless of their size." In addition, we are hopeful that in establishing a new suspension and debarment task force with the deputy administrator as its lead, the agency will ensure that suspension and debarment considerations remain at the forefront of efforts to promote accountability.

This type of senior leadership engagement is necessary because effective suspension and debarment efforts require continuing vigilance. One case in particular illustrates this point. In December 2008, after months of investigation and following the successful prosecution of its husband and wife owners for conspiracy and fraud, USAID debarred U.S. Protection and Investigations, LLC, a firm that provided security services to the agency in Afghanistan. In addition to debarring the Texas-based firm, USAID also debarred the couple who owned it. Despite these measures, the couple was later found to be associated with a new firm, SERVCOR, which was performing work on other federally funded contracts. USAID promptly took action to debar the company last December.

Our recent efforts and those of the agency have had the effect of strengthening the integrity of USAID's contractor base. However, much work remains to be done. Despite our renewed emphasis on suspension and debarment, we are still identifying new opportunities to use these tools and refining our follow-through on case referrals. The agency can strengthen its efforts to independently identify cases suitable to suspension or debarment. It can also do more to ensure that past performance information is entered into corresponding systems.

Proper stewardship of U.S. taxpayer dollars requires a solid accountability framework and the steps that the agency has begun to take can serve as a sound basis for the future of foreign assistance. We will continue to work with the agency to ensure that these steps only represent the start of efforts to provide taxpayers with greater assurance that foreign assistance funds are administered with integrity.

I thank you for this opportunity to address the commission and appreciate your interest in our work and perspectives on these important topics. I would be happy to answer any questions you may have at this time. ☞



Michael G. Carroll

Michael G. Carroll is the deputy inspector general for the U.S. Agency for International Development. In this position, he manages the day-to-day operations of the organization, which consists of approximately 200 auditors, investigators, and support specialists located in

Washington, D.C., and in nine overseas locations. Mr. Carroll has also served as the assistant inspector general for management at USAID OIG.

Mr. Carroll is a member of the federal government's senior executive service and has over 28 years of public service. In addition to his work at USAID OIG, he has served as the director of administration for the Bureau of Industry and Security in the Department of Commerce. Before joining BIS, Mr. Carroll was the deputy executive director of the U.S. Nuclear Waste Technical Review Board and served in several management positions at the U.S. Information Agency.

He holds a bachelor's degree in transportation management from St. John's University, New York, and is a graduate of the Federal Executive Institute and of George Washington University's Executive Development Program.



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**Inspector General Act of 1978,
as amended
Title 5, U.S. Code, Appendix**

**2. Purpose and establishment of Offices of Inspector General;
departments and agencies involved**

In order to create independent and objective units--

- (1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);
- (2) to 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
- (3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;