

Project On Government Oversight

Inspectors General: Accountability is a Balancing Act

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EXECUTIVE SUMMARY

In February 2008, POGO released its first report on the federal Inspector General system, entitled *Inspectors General: Many Lack Essential Tools for Independence*. In that report we considered the factors affecting IGs' independence, and determined some of the best practices, policies, and changes in the law necessary to bring the system into optimal balance between the two essential values of independence and accountability.

Since that time we have been examining the other side of that essential equation: Accountability.

While the first report's findings and recommendations were relatively clear-cut, the findings and recommendations in this report are necessarily more nuanced. In fact, it may be that our single most important recommendation will be that IGs, as well as their stakeholders in the administration, Congress, and public, continually and thoughtfully review whether they have achieved the appropriate balance in a number of areas, including:

Quantity vs. Quality

The IG law requires Semi-Annual Reports from each OIG, covering the preceding six months' activities. The law in fact spells out, page after page, the numbing list of statistics, facts, and figures that are required. But POGO urges IGs to be more thoughtful in their reporting, so that the meaning behind the numbers is evident, and the reports exhibit some balance between quantity and quality.

Prioritizing: Big Windows vs. Little Windows

Former CIA IG John Helgerson told POGO, "We have to wash the big windows and ignore the little ones." But some OIGs spend inordinate amounts of scarce time and resources on small-window issues. We acknowledge that small issues can sometimes grow into something large and ugly, so exhort IGs to periodically reassess whether they are putting their energies and resources into overseeing the most significant issues facing their agencies.

Inward vs. Outward Focus

It is no secret that there are many different federal agencies with significantly different missions. However, it may not be quite so obvious that the 67 statutory IGs, in overseeing their respective agencies, should reflect the agency's focus with their own. For example, HHS spends roughly 85 percent of its budget on programs such as Medicare and Medicaid; and the IG for HHS spends about 83 percent of his budget helping the Department ensure that those programs are not defrauded. POGO's concern is that the remaining 17 percent must be spread so thinly over all the important issues of FDA, CDC, NIH, and public health emergencies. Once again, POGO does not say the percentages should be rigid or the mirroring exact, but we do strongly recommend that IGs periodically review whether their emphasis is in balance.

Impact: Roar, Don't Squeak

It should go without saying: an OIG must have impact to be successful. Its reports and actions must make a difference in its agency's programs and activities. We would frankly like to see IGs shouting their findings from the rooftops. Instead we all too often find OIGs hiding behind such protestations as, "we don't leak" or "IGs don't talk to the press." We don't need any more

showboats in Washington, and no agency chief will appreciate first learning about problems from a blaring headline. But if an IG is doing his or her job exposing or even preventing waste, fraud, abuse, and misconduct, then we want to hear about it. An IG report falling silently in the forest is just a waste of trees. POGO strongly urges IGs to do much more outreach—to the public as well as to Congress.

Shameful: Whistleblowers and IGs

Easily our most troubling finding was that IGs, the very offices charged by Congress with receiving complaints about agency problems, all too often treat those complainants or whistleblowers as mere afterthoughts. Even IGs who give lip service to the importance of whistleblowers and their disclosures often fail to protect them from retaliation by their managers. Here is one issue on which POGO does not demand balance: we strongly urge all OIGs to treat the information from genuine whistleblowers with the significance it merits, and treat the complainants with the dignity and protection they deserve.

POGO's Recommendations include:

- All IGs should be cognizant of their impact, and focus more on outcomes than outputs.
- IGs should regularly review their focus to determine if they are appropriately balancing their programs and activities based on the most significant issues facing their agencies.
- Congress should consider revamping the reporting requirements of the Inspector General Law so that Semi-Annual Reports (SARs) are more meaningful and reflective of the information that Congress and the agencies actually need and use.
- Even in the absence of a change in the law, IGs should focus their SARs on the most significant audits, investigations, and inspections or evaluations, while briefly summarizing the others.
- The entire IG community should engage in a review of how it treats whistleblowers, including how it handles hotline callers. This means having a well-trained and experienced unit dedicated to conducting thoughtful examinations of both the disclosures made and of any allegations of retaliation.
- Congressional offices should carefully reconsider the impact of mandates on the ability of OIGs to perform their missions.
- The Integrity Committee should make explicit recommendations at the end of an investigation conducted under its auspices.
- The Integrity Committee should not be chaired by the FBI's designee to the IG Council. That FBI official should instead be an advisor to the Integrity Committee. The Chair of the Committee should be an Inspector General with experience in investigating sensitive matters.

BACKGROUND: A BRIEF RECAP OF PART I AND THE IG REFORM ACT OF 2008

In February 2008, POGO reported on the first phase of its long-term study of the federal Inspector General system in *Inspectors General: Many Lack Essential Tools for Independence*.¹ The report, issued as the federal Inspector General (IG) Act approached its thirtieth birthday, concluded that while the concept had proven to be a good one, its execution is sometimes flawed.

Created by Congress to be its eyes and ears inside the federal bureaucracy, IGs were conceived of as unique federal officers, reporting to both their agency chiefs and their congressional oversight committees regarding the issues of fraud, waste, abuse, and misconduct in their respective agencies.

POGO's first report found that "IGs have been remarkably successful in the face of entrenched resistance from some agencies and officials over the past three decades,"² and documented some of the most troubling examples of that resistance to IG independence. The report concluded that some Inspector General Offices (OIGs) were lacking basic tools:

- A lack of sufficient authority by IGs over their own budgets, and a lack of transparency so that the IGs could raise their concerns with Congress and other stakeholders.
- Insufficient staffing and other resources. Some OIGs had six or fewer staff members, making the accomplishment of their mission difficult, if not impossible.
- A lack of in-house counsel. Some IGs, even the OIG at the massive Department of Defense, lacked their own dedicated legal adviser. Worse, some IGs relied on their agencies' general counsels for legal advice despite the fact that the general counsel's role is to protect the agency—a goal frequently at odds with the IG's role.
- No easy website access or use. Some IGs even had trouble posting their reports on their own webpages, and most agencies lacked a clear and easy link from their homepages to the OIGs' pages.
- Fettered investigative authority. Several agencies contained another investigative unit whose functions overlap with that of the IG.

POGO subsequently worked with congressional offices, and a number of our recommendations were incorporated into legislation that became the Inspector General Reform Act of 2008.³ (Appendix A for a summary of the report's recommendations and their current status)

The 2008 IG Reform Act generally buttressed IGs' independence, increased their resources, and held them more accountable for their performance. The changes to the IG law made the system a much better tool for the U.S. taxpayer; the watchdogs now had keener eyes and sharper teeth,

¹ Project On Government Oversight, *Inspectors General: Many Lack Essential Tools for Independence*, February 29, 2008. <http://pogoarchives.org/m/go/ig/report-20080226.pdf> (Downloaded March 18, 2009) (hereinafter POGO IG Report Part I)

² POGO IG Report Part I, p. 5.

³ Inspector General Reform Act of 2008, Public Law No. 110-409. (hereinafter 2008 Reform Act)

and were to be held to tougher standards. Major provisions of the amended law of particular interest to this report are:

- The appointment of all IGs “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.”⁴
- The newly created council of all IGs—the Council of the Inspectors General on Integrity and Efficiency (CIGIE or IG Council)—which will now finally be given resources.⁵
- Compromise language that, because the Senate and Bush administration balked at the idea of dismissal of IGs only for cause, merely requires that the President notify both Chambers of Congress at least 30 days in advance before the transfer or removal of any Inspector General.⁶ (Appendix B)

⁴ 2008 Reform Act, Sec. 2.

⁵ 2008 Reform Act, Sec. 7(c)(3)(A), (B).

⁶ 2008 Reform Act, Sec. 3 (a).

METHODOLOGY IN BRIEF

In POGO's first IG report, we pointed out that the ultimate goal was to achieve the perfect balance for Inspectors General between independence and accountability. Mention was made of several "horror stories" of IGs who had been accused of misconduct, but for the most part those issues of accountability were left for this report. In the past year, POGO has sought advice and wisdom on how to deal with this knotty problem.

The first part of our investigation relied to a great extent on responses to a POGO questionnaire from the Inspectors General themselves, as well as follow-up interviews with the IGs and information from numerous other experts on the IG law and how it works.

For this second part of the investigation, POGO distributed to all IGs another questionnaire, more detailed and admittedly requiring more time and attention to complete. Although the response rate was less than that of the first (about 60 percent compared to 77 percent), the replies were extremely helpful and often illuminating. (Appendix C) The actual responses are confidential and are for the most part anonymous, but we do identify individuals or offices whenever possible. In addition, quite a few Inspectors General and some of their staff members made themselves available for extensive interviews, and often supplied useful documents and suggestions for follow-up.⁷

POGO also again reached out to various other stakeholders, including former IGs, Government Accountability Office (GAO) and Congressional Research Service (CRS) experts, academics, whistleblowers, and even a few agency heads. In addition, POGO staff closely analyzed all the Semi-Annual Reports prepared and submitted by all the IGs for the period ending March 31, 2008.

Finally, as the Obama administration was getting under way and dealing with the financial crisis, POGO consulted with congressional offices and with various IGs regarding the duties and authority of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and the Recovery Accountability and Transparency Board (Recovery Board) to ensure they had the tools needed for their enormous missions, and to learn whether any lessons could be gleaned from their experiences so far to assist in the work of other IGs.⁸

⁷ At the time of POGO's first IG report, there were 64 statutory IGs; at this writing there are 67. They comprise 30 who are presidentially appointed; 31 appointed by the heads of their agencies, which are smaller government boards, commissions, or agencies known as Designated Federal Entities; and six "other" federal IGs—the Inspector General for the Office of the Director of National Intelligence, and the five congressional OIGs, located in the Architect of the Capitol, the Capitol Police, the GAO, the Government Printing Office, and the Library of Congress. (For a full listing of OIGs, visit: IGSNet, "Inspector General Directory/Homepage." <http://www.ignet.gov/igs/homepage1.html> (Downloaded March 18, 2009))

⁸ As this report is being prepared in February 2009, it is almost entirely reflective of programs and activities preceding the Obama administration.

ACCOUNTABILITY FOR CONDUCT

For the Inspector General system to work well, IGs must be allowed independence from their agencies in order for them to perform their duties. But they must also be held accountable for their conduct. In our first report, we noted some of the recent, more notorious, scandals involving Inspectors General who themselves had been accused of misconduct.⁹ Former Commerce Department IG Johnnie Frazier was accused of numerous ethical violations, including taking trips with no apparent official purpose at government expense, and then retaliating against his employees when they objected and refused to sign his travel vouchers.¹⁰

Allegations against other IGs have been widely reported in recent years. For instance, while not eligible for a bonus, Acting Environmental Protection Agency IG Bill Roderick reportedly accepted a \$15,000 bonus anyway; at the same time, Roderick announced plans to cut 60 of 360 IG staff positions because budget cuts were “very likely,” even though the OIG’s budget increased for FY 2007 and had not been determined for FY 2008.¹¹ Former Department of Health and Human Services (HHS) IG Janet Rehnquist resigned in 2003 amid charges she had interfered with an investigation. Former Postal Service IG Karla Corcoran also resigned in 2003 amid investigations into allegedly wasteful spending that included elaborate teambuilding exercises in which she required employees to dress up in animal costumes, on official time, at public expense.¹² As a longtime GAO expert on IGs told us, “Nothing in the law says that you can’t have a skunk for IG.”

Former Department of Transportation (DOT) IG Kenneth Mead told POGO, make a list of problem IGs and you’ll find that a lot of the problems would have been identified by better vetting, and one longtime congressional aide thinks the answer to holding Inspectors General accountable is simplicity itself: just choose better IGs! In fact, the law specifically states that candidates for the post should be chosen “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.”¹³ But that hasn’t always resulted in great appointments.

The new IG Reform law took a giant step toward helping Presidents, and agency heads in the case of Designated Federal Entities (DFEs),¹⁴ by providing that the IG Council should submit slates of qualified candidates for openings in the Inspector General ranks.¹⁵ Nothing of course will compel the President or agency head to choose one of the recommended individuals, but if an unqualified person is picked instead, we hope that the Congress and other stakeholders will

⁹ POGO IG Report Part I, pp. 5-6.

¹⁰ U.S. House of Representatives, Committee on Oversight and Government Reform, Subcommittee on Government Management, Organization and Procurement, *Inspectors General: Questions of Independence and Accountability*, Fact Sheet, June 2007, p. 3. <http://domesticpolicy.oversight.house.gov/documents/20070620214436.pdf> (Downloaded March 18, 2009). (hereinafter Fact Sheet)

¹¹ Fact Sheet, p. 4.

¹² Fact Sheet, p. 7.

¹³ Inspector General Act of 1978, 5 USC Sec. 3(a). (hereinafter 1978 IG Act)

¹⁴ Designated Federal Agencies are smaller executive agencies, commissions, and boards. Their IGs are statutory, but are appointed by their agency heads rather than by the President. See: 1978 IG Act, 5 USC Sec. 8G.

¹⁵ 2008 Reform Act, Sec. 7 (c)(1)(F).

call attention and demand change. The Senate committees of jurisdiction are charged with confirmation of only the presidentially appointed IGs, but we would hope that the appropriate committees would carefully scrutinize all new IGs to ensure their qualifications actually meet the demands of their position.

Attempting to choose the best IG is only part of the answer to accountability. The rest of the answer is also a simple one: if an IG does something wrong, hold him or her accountable. Despite the changes in the law to ensure the quality and professionalism of IGs, human nature predicts that they will inevitably be accused of misconduct, and those accusations must be examined scrupulously. Thus, the IG Council has an Integrity Committee to examine such allegations, determine whether they merit investigation, and if so, to oversee such a probe.

Integrity Committee

While the IG Council has long had an integrity committee, Section 7 of the 2008 IG Reform Act required the Council to codify that Committee as a body “which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members.”¹⁶ The Chair of the Integrity Committee (IC or Committee) is the FBI official who serves on the IG Council, generally the Assistant Director for Criminal Investigations. The other six members of the IC are four IGs chosen by the IG Council Chair, OSC’s Special Counsel, and the Director of the Office of Government Ethics. The legal advisor to the Committee is the chief of the Public Integrity Section of the Justice Department’s Criminal Division.¹⁷

At this writing, new policies and procedures for the operations of the IC have not been made publicly available, but it appears the 2008 IG Reform Act, in addition to making the Committee a statutory body, also requires streamlining some of its procedures and adding more transparency to its reporting. (Appendix D)

The basics of the law now require that:

- An IG shall refer to the Integrity Committee any allegation of wrongdoing against the IG or a staff member of that OIG if the allegation cannot reasonably be referred to another federal agency, and if the IG determines that an objective investigation by his own office is either not feasible, or might appear not to be objective. The Integrity Committee also receives and considers complaints of IG wrongdoing from individuals outside the OIGs.
- The IC then shall review all such allegations and either refer them to the appropriate federal agency or refer them to the IC Chair (the FBI designee to the IG Council).
- The IC Chair shall undertake a “thorough and timely investigation” of the allegation. At his or her request, other federal agencies may supply resources or detail staff to assist the investigation.
- At the end of an investigation, whether conducted by a federal agency or under the auspices of the IC Chair, a report will be made to the Integrity Committee.
- The IC forwards the report and its recommendations, including those on disciplinary action, within 30 days to the Executive Chair of the IG Council (who is the Deputy Director for Management of OMB) and to the President or the agency head, whichever appointed the IG under investigation.

¹⁶ 2008 Reform Act, Sec. 7 (d)(1).

¹⁷ 2008 Reform Act, Secs. 7 (d)(2) and (3).

- Thirty days after the report is sent to the Executive Chair and the President or agency head, an executive summary shall be sent to the government oversight committees and other congressional committees of jurisdiction.
- The Executive Chair shall report to the IC on the final disposition of the matter.¹⁸

Concerns About Integrity Committee

As important to holding IGs accountable as the Integrity Committee is, quite a few stakeholders indicated to POGO in interviews that they had problems with the way the Committee has pursued investigations through the years, although fewer questionnaire responses reflect those concerns.

The primary concern was that there needed to be more transparency. According to the questionnaire response of one IG, “The Committee would benefit from publicizing their policies and procedures (i.e. provide more transparency). It is somewhat of a ‘black box’ even to those of us in the community.” Another pointed out, “OIG supports transparency so would support making the IC process and results more transparent by reporting the results of inquiries.”

Another problem is that the IC has sometimes recommended that a certain discipline be *considered*, but has fallen short of actually recommending the imposition of the punishment. Several IGs mentioned the situation involving a recent investigation of the NASA IG.

At the request of the IC, the Department of Housing and Urban Development (HUD) OIG conducted an investigation into allegations of possible misconduct by the NASA IG.¹⁹ At the conclusion of the HUD OIG’s investigation, the Committee sent a letter to the Office of Management and Budget (OMB) Deputy Director for Management (who was the Chair of the IG Councils until the 2008 IG Reform Act made the OMB DDM the Executive Chair of the IG Council) noting its conclusions that the NASA IG “had engaged in abuse of authority by creating an abusive work environment,” and his actions had “created an appearance of a lack of independence.”²⁰ In a report about the issue, the GAO pointedly noted: “However, the Integrity Committee offered no recommendations for corrective actions in their letter.”²¹ According to the GAO, “the Integrity Committee advised us that they had not believed it necessary to include specific recommendations in this case due to the extent of the findings and the presumption that the Chair of [the IG Council] ... would take disciplinary action commensurate with these findings.”²² However, when the NASA Administrator responded to the report with what the IC clearly considered a mere wrist-slap, the IC wrote to the IG Council Chair that all members of the Committee “believed the proposed course of action recommended by the Administrator of NASA was inadequate to address the conduct of [the IG]. All members of the committee further believed that disciplinary action up to and including removal could be appropriate.”²³

¹⁸ 2008 Reform Act, Secs. 7(d)(4) through 7(d)(8)(B).

¹⁹ Government Accountability Office, *Inspectors General: Actions Needed to Improve Audit Coverage of NASA* (GAO-09-88), December 18, 2008, pp. 22-30. <http://www.gao.gov/new.items/d09888.pdf> (Downloaded March 18, 2009). (hereinafter GAO Report on NASA IG)

²⁰ GAO Report on NASA IG, p. 22.

²¹ GAO Report on NASA IG, p. 23.

²² GAO Report on NASA IG, p. 23.

²³ GAO Report on NASA IG, p. 23.

OMB's Deputy Director for Management in effect called the IC's bluff. He wrote back demanding that they confirm that the IG had not broken any laws, that they were not unanimous in their view of what action should be taken, they were not recommending the IG's removal, and they had not made any definitive recommendation for action. After that, the IC essentially folded its tent and crept away, informing the NASA IG that "their review was complete and that the case is considered closed."²⁴

GAO concluded, and we concur:

Given the importance of IG independence both in fact and appearance and the lack of any corrective actions to fully resolve this matter, we believe that additional follow-up and recommendations by the Integrity Committee are warranted related to its investigative finding dealing with the NASA IG's appearance of a lack of independence.²⁵

The NASA IG asserts he was vindicated by the investigation; however, due to the lack of a precise recommendation by the Integrity Committee and the lack of any public release of the IC's report, no official conclusion is available.²⁶

The IC cannot be a serious mechanism for holding IGs accountable if it can get away with essentially punting rather than making specific recommendations when it concludes an IG has not met its standards of behavior and performance. Furthermore, POGO believes the public has a right and an interest in being informed of the recommendations and results, especially when a matter such as the case of the NASA IG has achieved such notoriety that it is addressed in a joint hearing by two congressional committees.²⁷

Another weakness of the IC is that an FBI official instead of an IG chairs it. A former DoD OIG official put it bluntly: criminal investigators should not be in charge of administrative inquiries. The FBI Assistant Director could perhaps serve as an investigative advisor to the IC, in the same way that the head of the Justice Department's Public Integrity Section provides legal advice, and the FBI could still assist the IC with staff and other resources in the conduct of investigations.

Not all allegations received by the IC amount to violations of law, with which the FBI is primarily concerned. Rather, the allegations are generally about inappropriate behavior or other misconduct that, while not rising to the level of a crime, are nevertheless significant when alleged against an IG. The risk is that if the head of the Committee is trained to be looking for criminality, he or she may overlook misconduct or inappropriate behavior that does not actually violate any laws. For instance, DoD IG Joseph Schmitz was accused of protecting senior officials

²⁴ GAO Report on NASA IG, p. 24.

²⁵ GAO Report on NASA IG, p. 25.

²⁶ Robert W. Cobb, "Statement by Robert W. Cobb, Inspector General," Testimony at Joint Hearing between the Senate Commerce Committee's Subcommittee on Space, Aeronautics, and Related Sciences and the House Science and Technology Committee's Subcommittee on Investigations and Oversight, June 7, 2007, p. 1. http://commerce.senate.gov/public/_files/Testimony_RobertCobb_Statement060707.pdf (Downloaded March 18, 2009)

²⁷ "Oversight Review of the Investigation of the National Aeronautics and Space Administration (NASA) Inspector General," *Joint Hearing between the Senate Commerce Committee's Subcommittee on Space, Aeronautics, and Related Sciences and the House Science and Technology Committee's Subcommittee on Investigations and Oversight*, June 7, 2007.

in investigations. In addition, Senator Charles Grassley (R-IA) decried Schmitz's decision to submit "IG reports to the White House Counsel for review" because it resulted in the White House redacting "large chunks of critical evidence" from Schmitz's final report on the Boeing tanker leasing deal.²⁸ However, the IC exonerated Schmitz, finding that he had not violated "any law, rule, or regulation," or engaged in "gross mismanagement, gross waste of funds, or abuse of authority in connection with any of the matters under review." (Appendix G) The question remains, however, did he act inappropriately for an IG?

Still another problem with the IC, cited by a number of IGs and others who spoke to POGO about the Committee, is its lack of timeliness. Former National Science Foundation (NSF) IG Dr. Christine Boesz believes there should be a definite timeframe to an IC investigation, the costs of which have sometimes been substantial, and it shouldn't last more than a year. Certainly, if an investigation needs to take longer, there should be some justification for the delay.

The issue of timeliness arose in the case of an IC investigation of Special Counsel Scott Bloch, the head of the Office of Special Counsel, who also sits on the IC. The fact that the Bloch investigation lasted for more than three years without any publicly reported result was deeply unfortunate for all concerned.²⁹ While the IC investigation dragged on and Bloch clung to his post, other senior OSC officials either fled or were fired by Bloch, and the morale of the staff plummeted. Even after the IC investigation developed into a more serious criminal investigation—including a very public FBI raid and the serving of search warrants on both Bloch's home and office in May 2008—Bloch was never held accountable as the Special Counsel.³⁰

Another problem has been that in the past the subject of the investigation has to pay the costs of the inquiry. This creates an impossible conflict: the IG under scrutiny cannot question expenditures without being accused of wanting to shut the probe down. In addition, the IC should not have to go hat in hand from agency to agency seeking funds or other resources to conduct an essential investigation. It is our hope that new funding streams made available in the 2008 IG Reform Act will obviate this situation.

One IG raised another problem with the IC, in that there are no clear procedures for handling matters when the IG resigns before the investigation has concluded. Arguments can be made for finishing an inquiry and releasing a report: First, the IG would be exonerated or held accountable, even *in absentia*; second, the report would be kept in FBI files and if the subject IG were under consideration for any other government post, an FBI background check would turn up the report for consideration.

²⁸ Senator Charles Grassley, "Senator Charles Grassley Letter to Joe Schmitz," August 8, 2005, p. 5, http://pogoblog.typepad.com/Grassley_letters_Schmitz.pdf. See also: T. Christian Miller, "The Scrutinizer Finds Himself Under Scrutiny," *Los Angeles Times*, September 25, 2005.

<http://articles.latimes.com/2005/sep/25/nation/na-schmitz25> (Downloaded March 19, 2009)

²⁹ Project On Government Oversight, "White House Ousts Special Counsel Bloch: Federal Workers Are Vindicated," October 23, 2008. <http://www.pogo.org/pogo-files/alerts/whistleblower-issues/wi-osc-20081023.html>

³⁰ Project On Government Oversight, "POGO's letter to White House Chief of Staff Joshua Bolten urging the removal of Scott Bloch as U.S. Special Counsel," July 17, 2008. <http://www.pogo.org/pogo-files/letters/whistleblower-issues/wi-osc-20080717.html>

Finally, some IGs have suggested that the membership of IGs on the Committee should rotate more often among other IGs, who need to become more involved in its activities. Such a change would remove any possible appearance of the IC being an “old boys club” that protects its own. The IC also needs staff with experience conducting investigations. Former DOT IG Mead suggested the IG Council set up a system in which OIG staff with such experience could do a tour of duty staffing the Integrity Committee.

ACCOUNTABILITY FOR WORK

In addition to being held accountable for their conduct, IGs must also be held accountable for the quality of their work. Although all OIGs have many characteristics in common, they are often startlingly different in focus and activities. As scholar Paul Light has often said, if you’ve seen one IG, you’ve seen one IG. Thus, it is almost impossible to determine one set of findings, conclusions, or recommendations that will always apply to each and every OIG. Many of our findings, therefore, may come in the form of nagging questions they should be regularly asking themselves rather than in formulas and checklists.

As this report is being written, with a financial crisis and many billions of federal dollars flowing out the Treasury’s doors, the work of Inspectors General has never been more important. An IG’s main duties and responsibilities by law are:

- 1) to conduct and supervise audits and investigations
- 2) to provide coordination and promote economy, efficiency, and effectiveness
- 3) to prevent and detect fraud and abuse
- 4) to keep the agency head and the Congress fully and currently informed about problems and deficiencies relating to the programs of the agency³¹

Measuring quality can be elusive. For that reason, we caution that not all of our observations will always apply to all OIGs, and none of these measures is sufficient by itself to judge an IG’s performance or effectiveness.

Numbers Don’t Count—But the Law Requires Them

The current system of monitoring IG work heavily favors numbers. For instance, IGs are required to file Semi-Annual Reports (SARs) at the end of each April and October, recording their activities for the preceding six months. The specific items that must be included in each SAR are many and some are frankly mind-deadening. In fact, it is these requirements that probably account for the fact that so many SARs go unread by their supposed readers on Capitol Hill. Although some of the required reporting is of course quite useful in keeping tabs on an OIG, many of the required lists and tables are not particularly meaningful for any but the most avid number-cruncher. Very briefly, the reports must include:

- any significant problems, abuses, and deficiencies
- recommendations for corrective actions
- identification of each significant recommendation from previous SARs on which corrective action has not been completed

³¹ 1978 IG Act, as amended, 5 USC App. Secs. 2 and 4(a).

- matters referred to prosecutors and resulting actions
- a list of every audit, inspection, and investigation report issued
- a summary of each particularly significant report
- statistical tables showing the total number of reports and total dollar value of questioned costs, the dollar value of recommendations that funds be put to better use, and a breakdown of management decisions taken or pending³²

These requirements have for decades resulted in SARs that frequently open with a long list of facts and figures that do little to illuminate the work that has actually occurred—or not—in the OIG.

Most IGs follow at least the letter of the law with their SARs and other required reports, but POGO sought to ascertain whether those reports actually provide meaningful information that allows all the stakeholders to assess the performance of an IG. They don't. As Brookings Institution's Thomas Mann once testified, "...for someone who is not an aficionado of these reports, I have to tell you they are long, vague, and boring, and they are not likely to get the attention of members of the Congress or of congressional staff."³³ Whereas it can be useful to track the numbers of, say, audits over time, and to question any sharp drops or changes, the flat listing of bare numbers without any explanation does little to assist in evaluating the effectiveness of the IG or to otherwise inform the reader. POGO agrees with the IGs who told us that the required reporting "reflects a measure of success but doesn't tell the whole story," that their "success goes beyond the numbers."

One unhappy result of the SARs' unreadability is that Congress and administrations have often missed the warning signs given by IGs but buried in their reports. For example, Paul Light points out that then-HUD Inspector General Charles Dempsey genuinely tried to alert Congress about serious management problems at his Department, problems that later exploded into a major scandal. Dempsey later testified that, despite his multiple investigations of the most senior Department officials and "very heavy publicity in the *Washington Post* and other papers around the country ... I still didn't receive a call [from Congress]. It was reported to the Congress in the semiannual reports but it was also with heavy publicity. I never received a call from a congressional committee."³⁴

Other observers consulted during the course of POGO's investigation agree that the focus on statistics, or outputs, in SARs does not provide much basis for assessing actual OIG accomplishments, or outcomes, in programs improved or money saved. Far more useful in determining overall OIG effectiveness would be information on recommendations that were implemented, and whether the results were as anticipated, actual monetary recoveries, and the implications of significant unimplemented recommendations.

³² 1978 IG Act, Sec. 5. Technically, each SAR is to be provided no later than April 30 and October 31 of each year to the agency chief, who then must transmit the SAR to the appropriate committees of Congress within another 30 days.

³³ Paul Light, *Monitoring Government: Inspectors General and the Search for Accountability*, Washington D.C.: The Brookings Institution, January 1993, p. 74. (hereinafter Paul Light)

³⁴ Paul Light, p. 71.

We do not totally discount the importance of numbers. They are useful in discerning trends over time, or differences between OIGs. In this regard, we found fascinating the appendix in the recent GAO Report on NASA's IG.³⁵ The GAO had compared, for all 30 of the presidentially appointed OIGs, the IG's total budgetary resources with its "monetary accomplishments," and had then calculated the "dollar return on IG's budget." The NASA OIG ranked twenty-seventh on the list, having a "return" of only 36 cents on the dollar, compared to the overall average of \$9.49. That is the type of statistic that raises serious questions that demand review and response.

However, too many times the tables and columns and lists of statistics bring little more than glazed eyes and incomprehension. As one former longtime member of the IG community says, "The one constant is that these very labor intensive reports have become increasingly longer and more difficult for an average reader to digest."³⁶ POGO therefore has endeavored to go behind the numbers and assess whether they are useful in holding IGs accountable for their work. We found that while the numbers may at first appear to be an important indicator of success and quality work, sometimes the numbers are just numbers.

An example of this is the list of "matters referred to prosecutive authorities and the prosecutions and convictions which have resulted" that IGs are required to report in their SARs.³⁷ But there are a number of reasons these statistics don't tell the whole story.

The number showing how many referrals an OIG sends to DOJ for prosecution in any given year is a good example. That number simply means that for a given year an OIG has more or fewer criminal cases. That is not in itself an indication that the office was or was not doing its job. It may very well be that the more important issues facing that agency were civil, administrative, or good old-fashioned waste.

A low number could mean that an OIG was not pursuing difficult criminal violations in its agency. Or, alternatively, it could mean that the OIG is sending fewer but better cases for prosecutors' consideration. For instance, data from the Transactional Records Access Clearinghouse (TRAC) indicates that the DoD IG's referrals for prosecution have gone down from 185 cases in 2000 to 99 in 2008. But the percentage of cases declined for prosecution has also gone down: 57 percent (106) of the 185 cases were declined for prosecution in 2000, but only 38 percent (38) of the 99 cases were declined in 2008. Interviews helped to tell the story behind those numbers.³⁸

Several prosecutors told POGO that, especially ten to fifteen years ago, cases brought by IGs tended not to be very good. They were "wildly uneven" and "not very attractive," in the words of one prosecutor, who added that OIG cases for the most part were "marginal and not very well

³⁵ GAO Report on NASA IG, p. 33.

³⁶ Hubert Sparks, "OIG Issues, Comments, and Recommendations for Improvement," February 10, 2009, p. 7. (hereinafter Sparks)

³⁷ 1978 IG Act, Sec. 5 (a)(3).

³⁸ Transactional Records Access Clearinghouse, <http://trac.syr.edu/>, data compiled March 17, 2009. (hereinafter TRAC). In our questionnaire we asked the OIGs about their declination rates—the percentage of IG referrals declined for prosecution by DOJ—but we were not able to draw any clear conclusions from the answers. (Appendix C)

investigated.” A former DOJ official declared that IG cases had been so bad and had to be declined so frequently, that his own statistics were starting to look bad.

Contributing to the problem was that, according to one former prosecutor, in the old days the IGs were “very territorial.” He said they thought it was their job to do the investigation, then wrap it all up in a package and deliver the finished product to Justice. He recalled one case in particular, in which an IG had conducted a two-year investigation, interviewing 60 witnesses, including some overseas, before bringing the case to the prosecutor. The prosecutor said he took one look at the case and realized there was no violation of law there.

POGO learned, however, that in the mid to late 1990s, Main Justice and several of the larger U.S. Attorney Offices undertook some major outreach to educate OIGs in what prosecutors were looking for to build a successful case. There were also informal talks to address topics of mutual interest. Further, guidelines issued by the Attorney General in December 2003 for OIGs with law enforcement authority required that federal prosecutors be consulted “at an early stage to ensure that the allegations, if proven, would be prosecuted. Such consultation will also ensure coordination of investigative methods.”³⁹

Since then, the mantra has largely become early cooperation and consultation. Both OIGs and prosecutors’ shops have reached out to each other, and in the very best relationships the cases are worked together. POGO heard particularly good comments from prosecutors about working with investigators from the IGs at HUD, HHS, Education, and the Social Security Administration. The Small Business Administration and General Services Administration were also mentioned by one. In response to POGO’s questionnaire, only one IG office said it waits until an investigation is largely completed before consulting with prosecutors.

Thus, as more than one source pointed out, the statistics of cases referred could be lower than a decade ago, but the cases are of higher quality and may be declined for prosecution less often.

Nowadays the focus is on task forces, to leverage not only expertise but also scarce resources. Multi-agency task forces combining OIGs with other federal, state, and local agencies have become a force multiplier. Good examples of the task forces are the Medicare Fraud Strike Force, Gulf Coast Hurricane-related Fraud Task Force, and the National Procurement Fraud Task Force.⁴⁰ The most significant joint effort by IGs may well turn out to be the Recovery Accountability and Transparency Board (Recovery Board), chaired by a former longtime IG, to oversee the spending of the \$787 billion Recovery Act.⁴¹

³⁹ Office of the Attorney General, *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority*, December 8, 2003, p. 5. <http://www.ignet.gov/pande/standards/agleguidelines.pdf> (Downloaded March 18, 2009). (hereinafter *Attorney General Guidelines*)

⁴⁰ Department of Justice, “Strike Force Formed to Target Fraudulent Billing of Medicare Program by Health Care Companies,” May 9, 2007. http://www.usdoj.gov/opa/pr/2007/May/07_ag_339.html (Downloaded March 18, 2009); Department of Justice, “Hurricane Katrina Fraud Task Force Releases Report on First Year of Activities,” September 13, 2006. http://www.usdoj.gov/opa/pr/2006/September/06_crm_616.html (Downloaded March 18, 2009); Department of Justice, “National Procurement Fraud Task Force,” October 10, 2006. <http://www.usdoj.gov/criminal/nptf/> (Downloaded March 18, 2009)

⁴¹ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, February 17, 2009.

While IGs may complain that prosecutors have turned down good cases, and prosecutors may sniff that IG investigators don't have much understanding of criminal law, much less DOJ priorities, it appears to POGO that working relations between the two groups have markedly improved over the past two decades. As a result, less time and fewer resources are wasted by the IGs spinning their wheels.

By now we hope we've made the point that the qualitative value of an IG's work cannot be evaluated by quantitative measures alone: raw numbers don't convey a lot of meaning. Not only do we want to seek out the quality behind the quantity, we also want to track the trends in numbers rather than raw figures.

The law nevertheless requires IGs to submit lengthy lists of statistics. As already pointed out, these include numbers of audits, investigations opened and closed or referred to prosecutors, and administrative actions. They also include data on some peculiar categories. For those categories, there are, of course, definitions:

- A "questioned cost" is questioned by the OIG because of an alleged violation of law or regulation; a finding that the cost is not supported by adequate documentation; or a finding that the expenditure is unnecessary or unreasonable.
- An "unsupported cost" is not supported by adequate documentation.
- A "disallowed cost" was a questioned cost that management has sustained or agreed should not be charged to the government.
- A "recommendation that funds be put to better use" means the OIG believes funds could be used more efficiently if management took certain actions, including: reductions in outlays; deobligation of funds; or withdrawal of interest subsidy costs on loans.⁴²

We would like to see SARs make these numbers more meaningful by reporting how much of those categories is ever actually recovered or used in a better way, rather than merely projected or anticipated. We would also like to see more IGs reporting only the most significant numbers that convey important information about the activities of the agency involved.

In addition, all IGs would do well to focus in their SARs on a few of the most significant audits, investigations, or evaluations, and briefly summarize others. Statistical tables should be relegated to appendices and the narrative should be readable and comprehensible to the average reader. The SARs should ideally focus on the most pressing issues facing the IG's agency.

It is clear that merely measuring numerical outputs does little to illuminate the actual outcomes of an OIG's efforts, or whether they were valuable. There are, however, a couple of IG products that may be helpful in evaluating their work and in holding them accountable.

OIG Plans and Reports

SARs do not tell the whole story about an IG's performance or how well that OIG fulfills its mission to hold its agency accountable. Several other documents produced by IGs help flesh out the picture of how the OIG views, plans, and performs its mission. First there is the multi-year strategic plan, laying out the IG's vision for what he hopes to accomplish in the next three to five years. Then there are performance plans, or audit plans, usually issued annually, with more

⁴² 1978 IG Act, Sec. 5 (f).

specific plans for activities to be undertaken in the coming year. And sometimes there are performance reports, summarizing and analyzing the OIG's activities for one of those periods, and assessing how well it met its stated goals.

Of the OIGs responding to POGO's questionnaire, most publish a strategic plan at least every three to five years, and post them on their websites. While most of the responding OIGs track their management challenges through, and plan their audits and evaluations/inspections around, their strategic plans, POGO is concerned that a significant minority do not.

There is currently tremendous variation in the types and amounts of information different OIGs offer on their websites regarding their strategic plans and performance or audit plans and reports. In addition, the information supporting these reports is presented and commingled in many different ways. The lack of consistent preparation or content renders it nearly impossible to reach any overall conclusions about these efforts. However, there are good individual examples.

For instance, some strategic plans seem to reveal much that is going on behind the scenes. The USDA OIG's strategic plan informs its SAR, which organizes activity according to the goals found in the plan, making it easy and logical to track both Department and IG progress. Despite our general dislike for lists of numbers, we do appreciate the logic and clarity of this report:

A total of 59.5 percent of our audit or inspection recommendations under Goal 1 resulted in management decisions within 1 year, and 80 percent of our investigative cases had criminal, civil, or administrative action taken. OIG issued six audit reports under Goal 1 during this reporting period. OIG's investigations under Goal 1 yielded 22 indictments, 277 convictions, and about \$1.8 million in monetary results during this reporting period.⁴³

There are also a few OIGs that post on their websites the performance plans or reports, with some measurements and targeted goals. One good example is the Farm Credit Administration OIG, whose Performance Report for Fiscal Years 2006 and 2007 seemed to be an excellent model of matching Goals to Objectives, and of following up on Performance Measures and their Outcomes or Impact.⁴⁴ POGO would like to see the FCA OIG's efforts expanded to the rest of the IG community.⁴⁵ Both strategic plans and performance or audit plans could be informative about the future work and current performance of IGs, and so could be a good tool for accountability.

Washing the Big Windows

When evaluating how an OIG spends its time and scarce resources, we want to know how it determines its focus. In the course of an interview with then-CIA IG John Helgerson, we asked how he was able to set priorities. His response was simple, if eloquent: "We have to wash the big

⁴³ Department of Agriculture, Office of the Inspector General, *Semiannual Report to Congress*, March 2008, p. 1. <http://www.usda.gov/oig/webdocs/sarc080609.pdf> (Downloaded March 18, 2009)

⁴⁴ Farm Credit Administration, Office of Inspector General, *Fiscal Years 2006 & 2007 Performance Report*, February 11, 2008. <http://www.fca.gov/Download/2006-2007OIGPerformanceReport.pdf> (Downloaded March 18, 2009)

⁴⁵ Sparks, p. 6.

windows and ignore the little ones.” Of course, he then added that sometimes the little ones turn out to be really big problems, too. Another IG told us there are so many big things to deal with that he cannot afford, even for a day, to waste his time on anything that’s not truly important.

In our questionnaire, we asked the IGs in a final “bonus” question how they ensure they are both capturing the big, significant issues confronting their agency and avoiding putting too many resources into small and less important issues.

Here is a sampling of the responses we received:

- We develop annual plans based on our strategic plan, which focuses on larger issues. We have criteria for accepting fraud cases based on the potential for identifying systemic issues and larger dollar losses. We are constantly looking at the big picture as we review and investigate complaints. We review issues during the year to determine whether they rise to a management challenge issue. We instill a culture within the OIG to constantly implement our vision as stated in our strategic plan to strive to identify significant issues.
- We conduct a rigorous audit planning process each year during which we review our priorities in light of the changing environment that the agency and OIG operates in. If necessary, resources can be shifted fairly quickly. Also many of the “big picture” issues we identify come as a result of recurring issues that are found in the course of doing our routine audits of grantees. They tell us a lot about the strengths and weaknesses of the agency’s operations. Just as we have to select audits based on risk assessments and other factors, we also have to prioritize the commitment of our investigative resources to cases that we believe will have the greatest impact in resolving significant integrity issues and sending a signal that deters others from wrongdoing.
- An annual risk assessment, including an evaluation of the most significant management challenges facing the Department, helps to focus our resources on critical areas. In formulating the most significant management challenges, we seek input from the Department as a means of better understanding agency concerns as well as those identified through our various audits and inspections. Subsequently, there is extensive coordination and vetting of issues and topic areas reviewed throughout the year. These steps help ensure that OIG resources are appropriately directed.
- Several ways including speaking to Congress and other stakeholders, monitoring the press and other avenues to determine interest among the larger public, e.g., blogs. Also, analyze the complaints we receive to determine if there are issues that are of concern to a broad group of people.
- In some areas, it is easier to find the “big things” that cannot go unexamined—in others, especially investigations, there is much more uncertainty, especially when a small issue is only the tip of a much larger iceberg. Experience helps in differentiating credibility of whistleblowers and investing resources. We use a simple “ABC” rank ordering of cases, but we need to show more flexibility in visiting those assessments.

Interviews were also revealing. One IG said he had been startled upon his arrival at a new office to find how out of touch his staff was with the daily news, including hearings in Congress that could have a direct impact on the work of the OIG. He actually had to order his staff to read the daily newspaper. Others find that it's necessary to do extra outreach to different stakeholders to be prepared for all eventualities.

It is possible to prioritize appropriately. For instance, the DOJ IG seems to know which windows need washing: he conducted significant investigations into the FBI's involvement in interrogations at Guantanamo, and then-Attorney General Alberto Gonzales's mishandling of classified documents.⁴⁶ The OIG also issued three reports on investigations conducted jointly with the Department's Office of Professional Responsibility into allegations of politicized hiring practices and the firing of nine U.S. Attorneys.⁴⁷

Similarly, the now-departing IG at CIA has managed to focus on sensitive and controversial issues—programs whose scrutiny did not win the IG any love from his agency—that go to the agency's fundamental mission and let the American people know what is being done in their name. For instance, the CIA IG investigated the Agency's interrogation methods for alleged terrorists; issued a blistering report on its failure to prevent or warn about the attacks of September 11, 2001; and issued a report on the circumstances surrounding the shoot-down of a U.S. missionary plane over Peru, based on CIA officers' mistaken identification of the aircraft, and the subsequent cover-up.⁴⁸

Sometimes what appear to be small windows are actually indications of a systemic problem. But former NSF IG Boesz cautioned:

Unfortunately IGs must get into "internal issues" when there is a broad management failure. Inappropriate use of computers, postage and other agency resources are symptoms of such management failure. An IG fails when he or she does not use this information to point out the broader issue. Sometimes pebbles turn into boulders—even mountains. It depends on the IG to put the story together.⁴⁹

⁴⁶ Department of Justice, Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, May, 2008.

<http://www.usdoj.gov/oig/special/s0805/final.pdf> (Downloaded March 18, 2009); Department of Justice, Inspector General, *Report of Investigation Regarding Allegations of Mishandling of Classified Documents Attorney General Alberto Gonzales*, September 2008. <http://www.usdoj.gov/oig/special/s0809/final.pdf> (Downloaded March 18, 2009)

⁴⁷ Department of Justice, Office of the Inspector General, *Semiannual Report to Congress*, October 31, 2008. <http://www.usdoj.gov/oig/semiannual/0811/final.pdf> (Downloaded March 18, 2009)

⁴⁸ Central Intelligence Agency, Inspector General, *OIG Report on CIA Accountability With Respect to the 9/11 Attacks: Executive Summary*, June 2005, publicly released April 2007. https://www.cia.gov/library/reports/Executive%20Summary_OIG%20Report.pdf (Downloaded March 18, 2009); Douglas Jehl, "Report Warned C.I.A. on Tactics In Interrogation," *The New York Times*, November 9, 2005. http://www.nytimes.com/2005/11/09/politics/09detain.html?_r=1 (Downloaded March 18, 2009); and Central Intelligence Agency, Inspector General, *Key Unclassified Conclusions from CIA Inspector General Report: "(U)Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995-2001,"* August 25, 2008. http://hoekstra.house.gov/UploadedFiles/Peru_-_Release_-_Key_Unclassified_Conclusions_from_CIA_Inspector_General_Report.pdf (Downloaded March 6, 2009)

⁴⁹ Email to POGO from Dr. Christine Boesz, former IG, National Science Foundation, received March 8, 2009.

However, POGO learned both from interviews and scrutiny of reports that some OIGs do spend a significant amount of time engaged in washing those small windows. POGO was surprised to learn that many OIG employees seem to believe that every allegation that comes into an OIG must be examined, for fear they could find themselves subject to criticism. This kind of risk-averse attitude can drag an IG's office into spending time and resources on pursuing a lot of minor issues at the expense of washing those big windows. It could be that these small-potatoes cases help to keep the numbers up and are easier to deal with than a large complex case that might drag on for months—or longer—before yielding anything.

One IG said when he arrived at his new position, the OIG was not doing big cases but had focused on smaller issues, including employee misuse of public transportation vouchers. Other IGs may focus on misuse of computers, which is a nuisance for all employers and is actually illegal for federal workers. Such misuse involving pornography can be a serious violation. Yet, we cannot help but wonder if chasing these violations is the best use of an Inspector General's scarce funds and personnel, or if this type of investigation is better conducted by the FBI or police. If the OIG is engaged in that kind of police work, who is performing the more difficult mission of addressing the big issues? It may well be that some of the smaller windows just have to be left alone.

At least one OIG is required by Congress to focus on small windows, although that OIG has been more than willing to comply.⁵⁰ The GAO recently leveled criticism at an unusual, indeed unique, focus of the State Department's OIG: the IG's heavy reliance on inspections rather than audits. Whereas most OIGs report a ratio of inspections to audits of about 1 to 10, the State IG reports a ratio of more than 2 to 1.⁵¹ The GAO found, and POGO agrees, that the IG should be more concerned with oversight of high-risk programs and other Department activities that could lead to waste, fraud, abuse or other serious misconduct.⁵²

Since early in the last century the State Department has been required by law to conduct inspections of every diplomatic post at least once every five years. That requirement pre-dated the creation of State's IG office by some 80 years and thus was long seen as a management function.⁵³

One former State Department's OIG official told us that inspections at State are conducted with a check-list; the team looks at exactly the same items and issues at every location. "It's a mile wide and an inch deep," he said. He did add that, if any real problem is discovered, the inspectors recommend more in-depth treatment in an audit or investigation.

⁵⁰ For instance, in a March 2, 2007, letter to the GAO, State IG Howard Krongard wrote: "the Department has come to rely on the deterrent effects and constructive evaluations and recommendations that come from the inspection process." See: Government Accountability Office, *Inspectors General: Activities of the Department of State Office of Inspector General*, March 2007, p. 37. <http://www.gao.gov/highlights/d07138high.pdf> (Downloaded March 19, 2009)

⁵¹ David M. Walker, "Inspectors General: Limitations of IG Oversight at the Department of State," *Testimony before the Subcommittee on International Organizations, Human Rights, and Oversight, Committee on Foreign Affairs, House of Representatives*, October 30, 2007, p. 9. <http://www.gao.gov/new.items/d08135t.pdf> (hereinafter Walker Testimony)

⁵² Walker Testimony, p. 13.

⁵³ Walker Testimony, pp. 1-2.

The State Department IG's clinging to the century-old notion of routine but cursory reviews of each and every office seems an unnecessary relic of the past. It is our understanding that GAO and the House International Organizations Subcommittee intend to pursue this issue further with the State Department's authorization bill.

Focusing on Management Challenges

One way to know if an OIG is washing the big windows is to see if it is focusing on the top management challenges of its agency. Most IGs periodically identify the top challenges facing management at their agencies. IGs should put his or her resources toward addressing these challenges. One long-term IG said if the staff is really focused on the big stuff, then they can be proactive and actually prevent problems rather than just react to them.

Management challenges are best understood when they are expressed in clear and specific terms, and are genuinely focused on the most important issues facing an agency. Some IGs' SARs list challenges that are so general they resemble the recitation of a beauty contest participant longing for world peace. For example, "better grant management," while certainly articulating a laudable goal, does nothing to explain the what/why/how that management must address and the OIG must assess. And some IGs don't list management challenges in their SARs or on their website at all.

Several IGs advised POGO that one good way to evaluate an IG's work is to assess how well that OIG's multi-year strategic plans or annual performance plans match up with the management challenges it identified. One IG said, "We annually develop a comprehensive list of Top Management Challenges facing the Department, and we strive to ensure that at least 80 percent of the audits, inspections, and reviews we open address some aspect of these challenges." Other questions to consider include whether the completed audits as reflected in the IGs' SARs track the priorities earlier identified in the planning process; the IG's recommendations to management reflect the most important challenges facing the agency; the OIG stays on top of those recommendations to ensure that management not only concurs in writing, but actually implements them; and the IG follows up to ensure that the implemented recommendations actually produce the predicted results.

There are a few examples of IGs who clearly tie some of their activity to management challenges, and who present their assessments of management challenges well. The USDA OIG's Semi-Annual Reports list management challenges at the beginning of the report, and each challenge is linked to the OIG program or activity that tracked it elsewhere in the report.⁵⁴ By doing this, the OIG not only makes clear its activities are related to what it thinks the greatest challenges to the Department's managers are, but also makes the connection plain in its reporting. Another good example is the Commerce IG. The new IG sets the tone for his entire SAR by listing the ten significant issues on which he's focusing, and makes clear he was seeking

⁵⁴ For example: Department of Agriculture, Office of Inspector General, *Office of Inspector General Semiannual Report to Congress: FY2007 – 1st Half*, May 2007, p. ii. <http://www.usda.gov/oig/webdocs/sarc070619.pdf> (Downloaded March 19, 2009)

ways to limit problems with upcoming major department challenges, including the census and the digital converter coupon program.⁵⁵

The management challenges listed in the Department of Labor IG's SAR are thoughtful, specific, and meaningful. These include the development of a new departmental position on the IG's labor racketeering authority; unaddressed inaccuracies in the DOL employees' thrift savings accounts; and ensuring the effectiveness of the Job Corps program.⁵⁶ The report is broken down into sections according to each management challenge. On the IG's website, each challenge is given an overview, an explanation of why it's a challenge for the Department, and a description of Departmental progress so far.

Another agency's IG told us that his predecessor always listed 19 recommendations and 10 management challenges. The new IG, however, found the allegiance to a particular number unnecessary and amusing, and was pleased to whittle the challenges down to six that had actual meaning for the department. Yet another IG said when he arrived at his agency the management challenges his staff produced were written in such gobbledygook he couldn't understand them. He told the staff to re-write them so that they were not only clear and understandable but also achievable.

Balancing Focus: Inside vs. Outside

It is obvious that federal government agencies vary considerably in their purpose and mission. What perhaps is not so obvious is that those agencies' internal watchdogs would also vary quite a bit in their focus.

For instance, because a huge part of Department of Health and Human Services' (HHS) mission is Medicare, Medicaid, and other federal healthcare programs, the HHS OIG focuses to a great extent outside the agency on preventing and catching fraud involving program providers. The programs' viability has been important enough to Congress that it has imposed many auditing mandates on the HHS OIG—to the point that 83 percent of the IG's resources are expended on non-discretionary oversight.⁵⁷ Since the Department spends about 85 percent of its own funding on Medicare and Medicaid, the IG focus is in line with that of the Department. That IG office in effect has become almost an external watchdog of the federal dollars flowing out the Department's doors. In fact, in its response to our questionnaire, the HHS OIG said 85 percent of its focus is outward and only 15 percent of its focus is inward. The IG works closely with Department leadership, as well as federal prosecutors, in policing HHS programs.⁵⁸ Data from TRAC supports the analysis that the majority of HHS IG's time is spent focused externally. For example, the data shows that a surprising 26 percent of all lead criminal charges referred for prosecution by HHS IG were of those who "fail to pay legal child support obligations."⁵⁹

⁵⁵ Department of Commerce, Inspector General, *Semiannual Report to Congress*, March 2008, p. 3. <http://www.oig.doc.gov/oig/reports/sar/March%2008%20SAR.pdf> (Downloaded March 19, 2009)

⁵⁶ Department of Labor, Office of Inspector General, *Semiannual Report to Congress: October 1, 2007 - March 31, 2008*, p. 2. <http://www.oig.dol.gov/public/semiannuals/59.pdf> (Downloaded March 19, 2009)

⁵⁷ Department of Health and Human Services, Office of Inspector General, "Performance Appendix Fiscal Year 2009," p. 4. <http://www.oig.hhs.gov/publications/docs/budget/FY2009-OPA.pdf> (Downloaded March 19, 2009). (hereinafter HHS 2009 Performance Index)

⁵⁸ HHS 2009 Performance Index, pp. 2-3.

⁵⁹ TRAC, data compiled March 17, 2009.

The remaining 17 percent of the HHS IG's resources has to be spread very thin to scrutinize the vast areas of FDA, CDC, NIH, and the public health response to disasters or other health emergencies. This would seem to leave very little time to check out any internal shenanigans by the Department's own employees, let alone the big windows.

Given that the OIG has so few unconstrained resources, POGO is concerned that it might not be able to devote as much attention to those areas as necessary. The OIG has done a remarkable job at doing what it can with what it's got. For instance, the OIG found that the FDA had failed in its oversight of clinical investigators' financial interests, jeopardizing data integrity and, potentially, public safety.⁶⁰ However, without the ability to turn more of its focus inward, the OIG very well may miss other such critical matters.

By contrast, the Department of Homeland Security (DHS) OIG is very nearly the opposite in its reported focus: 25 percent outward and 75 percent inward. At the Department, the mission is diffuse: for example, according to the OIG's response to our questionnaire, 20 percent of the Department's mission comprises its law enforcement agencies; 10 percent involves dispensing grants to state and local first responders; and 40 percent involves outside contracting. POGO thought that for a department that spends 50 percent of its resources on outside contractors and grantees, having an OIG that only focused 25 percent of its resources outwardly seemed out of whack. However, the DHS IG told POGO that this was actually an increase in attention outward. He had evaluated what was being done with OIG resources and adjusted its priorities somewhat: whereas his predecessor had "only looked inside ... Katrina taught us we can't turn our backs on grant programs." This sort of reevaluation is exactly what POGO thinks OIGs should do periodically. That said, given the still-vast difference in focus between the agency and the OIG, another reevaluation may be called for.

Yet again, this is one of those issues where there is no absolute formula. However, it is essential that an IG strike the right balance based on the activities of his or her agency, and periodically reevaluate that balance.

Having an Impact

It should go without saying that Inspectors General must have impact. Their reports and actions must be seen to make a real difference to agency programs and activities. Sometimes an agency chief values the OIG's work product, but more often they regard that office as a nuisance. The OIG's mission is to be so valuable a nuisance that it cannot be ignored.

Impact is subjective, but in general it is the sum total of the reactions by agency managers, congressional oversight committees, community stakeholders, and the media. An IG report that demonstrably produces useful change, new efficiencies, or stops a source of fraud or waste has impact. An IG report falling silently in the forest is merely a waste of trees.

⁶⁰ Health and Human Services, Office of Inspector General, *The Food and Drug Administration's Oversight of Clinical Investigators' Financial Information*, January 2009, pp. i, 1. <http://www.oig.hhs.gov/oei/reports/oei-05-07-00730.pdf> (Downloaded March 19, 2009)

There is, however, the wrong kind of impact. We heard very real complaints regarding IGs who want to be showboats, who alert the media to reports before, or at the same time as, they inform agency managers and congressional overseers. IGs must be believed as well as seen and heard. Showboating can undermine the IG's credibility while creating bitterness or tension with agency staff that is to the advantage of no one. Measuring impact is highly subjective, but as Justice Potter Stewart said in quite another context, we know it when we see it.

Timeliness of Reporting

An almost universal complaint is that, as one IG himself admitted, "IG work always takes too long," and even the agencies frequently complain that audits drag on for too long and that IG reports aren't timely. For instance, in its Strategic Plan Results Report for FY 2007, the NASA OIG bravely conducted a "customer feedback survey" for its Office of Audits. One of the results was that only 55 percent of its agency customers found the particular OIG project to have been performed in time to be useful.⁶¹ Further self-analysis by the NASA OIG found that "Supervisors did not always review and approve working papers and supporting documentation in a timely manner."⁶² However, a chart of the average number of days to complete an audit showed that the number had dropped from 358 days in FY 2003 to 280 days in FY 2007, and the target beginning in FY 2008 would be to complete audits in 260 days on average.⁶³ Of course, getting things done in a timely manner should never come at the expense of quality.

Quality of Reporting

To be useful at all, IG reports must be accurate and quality products, as well as timely. Some in the IG community, however, have raised concerns that IG reports are frequently misleading. For instance, seldom does an IG's SAR reveal whether the listed dollar "recoveries" have actually been collected or not. Often these "expected" recoveries are treated as though they are actual dollars in the bank.

A retired but longtime member of the IG community, Hubert Sparks, has also raised the issue of the frequent misuse in SARs of results from "single audit" reports—reports by state or local auditors, or by independent accounting firms hired by grantees.⁶⁴ Often an OIG will include such results and potential recoveries in its SAR as if it deserves the credit for the recovery, thus skewing the office's actual accomplishments. POGO understands the Audit Committee of the IG Council will consider this issue and develop a community-wide approach.

Shouting from the Roof Tops

In addition to being timely and accurate, the reports should be publicly announced and promptly posted on the IG's website. (In fact, the law now requires they be posted on the website within three days of being made public.⁶⁵) Even for OIGs whose work is largely classified, it should be possible for redacted reports to be released.

⁶¹ Office of Inspector General, National Aeronautics and Space Administration, *Strategic Plan Results Report*, Fiscal Year 2007, p. 6. (hereinafter NASA OIG 2007 Strategic Plan Results)

⁶² NASA OIG 2007 Strategic Plan Results, p. 14.

⁶³ NASA OIG 2007 Strategic Plan Results, p. 15.

⁶⁴ Sparks, p. 8.

⁶⁵ 2008 Reform Act, Sec. 13., amendment to 1978 IG Act by insertion of Sec. 8L(b)(1)(A).

Inspectors General cannot compel an agency to undertake any action; the IGs' power is that of persuasion—or public opprobrium. But if congressional offices cannot get through a boring report, or if the public cannot access a significant report, then it hardly matters whether the IG has produced groundbreaking major work. To have impact, the IG's work must be shouted from the rooftops, not hidden modestly behind protestations that “we don't leak,” or “we aren't aiming for headlines,” or even, “IGs don't talk to the press.”

OIGs responding to our questionnaire gave disappointing responses to the questions regarding outreach to the media, stakeholders, and public. Nearly half of those who answered POGO's questionnaire said their web pages did not have a sign-up option so that those interested could instantly receive newly posted reports. Even more said they did not maintain a list of interested parties for call-outs regarding items of interest.

Following Up on Recommendations

A recent congressional report found that more than 13,000 OIG recommendations made since 2001 had not been implemented, resulting in a supposed loss to taxpayers of over \$25 billion.⁶⁶ The numbers were astonishing, and yet we were neither surprised nor completely outraged. First, it was not entirely clear that the expected recoveries were all realistic. Second, there are some in the community who believe the IGs should be considered at least partly responsible for unimplemented recommendations. Why weren't they buzzing at management like mad hornets until senior officials agreed with the recommendations and implemented them?

POGO found that essentially all the IGs responding to our questionnaire said not only do they track their recommendations, but they also attempt to determine if the results were as predicted. If so, it would be interesting to see more of that kind of reporting in the SARs.

This type of reporting can go a long way to evaluate and improve an IG's effectiveness, but it has its weaknesses. For instance, several IGs pointed out that if management routinely concurs with 95 percent of an IG's recommendations, it's probably a good bet that the recommendations are too easy and the IG is only going after the “low-hanging fruit,” including practices involving supervision, training, policies, and procedures. While some such recommendations are necessary to improve agency functions, some in the IG community believe these are relatively easy “auditing 101” ideas and an IG should focus more on recommendations that question sacred agency programs and activities. Audits that actually assess agency performance, as opposed to compliance with technical auditing standards, are much more difficult for managers to countenance and, therefore, to implement. But, once again, outcome matters more than output.

One IG noted that it's all very well for management to *concur* with a recommendation, but it does not mean anything if the recommendation is not implemented. He said some IGs will close a recommendation based on management's concurrence, or even a promise of concurrence. He, however, refuses to close a recommendation until management has both concurred and implemented the recommendation. Every subsequent SAR would show it as still open, thereby demonstrating a continuing difference of opinion between the OIG and management.

⁶⁶ United States House of Representatives, Committee on Oversight and Government Reform, Majority Staff, *Inspectors General: Implementing Thousands of Open Recommendations Could Save Taxpayers Almost \$26 Billion*, January 8, 2009. <http://oversight.house.gov/documents/20090112173007.pdf> (Downloaded March 19, 2009)

Being Proactive: Stopping the Problem Before it Starts

A common concern about IG work is that it tends to discover problems after they occur. But there is movement within the IG community to be more preventive and POGO applauds the proactive thinking that can deter waste and misconduct. For instance, the Interior Department OIG has developed what it calls Critical Point Evaluations (CPEs) to identify potential problems in major programs early enough to prevent the development of serious problems. (Appendix E) Analogous to law enforcement agencies trying to prevent crime before it occurs, CPEs are defined as:

...limited scope evaluations of planned or on-going major projects or initiatives, such as the acquisition of a new financial system, a large construction project, or a new cross-cutting initiative. CPEs can be conducted at the beginning of a project, before major funding has been expended, to ensure that management controls and oversight have been incorporated.... Alternatively, CPEs can be an iterative component of the project, occurring at the major milestones. (Appendix E)

The CPEs use Inspection Standards endorsed by the IG community, and the OIG will work closely with management to help identify the critical decision points.

Another indication that IGs may be trying to be proactive and more accountable is their focus on prevention as they approach the recovery, or stimulus, plan. Congress established the Recovery Accountability and Transparency Board (Recovery Board), with significant input from IGs, to oversee the spending of the massive recovery plan and coordinate with the individual department IGs tasked with overseeing stimulus spending in their own agencies. The Board itself is made up of the ten IGs whose departments are most heavily involved in the stimulus spending plan, and it is perhaps not entirely coincidental that the IG who developed the CPEs, Department of the Interior IG Earl Devaney, has been appointed by President Obama to head it.⁶⁷

This Board seems to be the culmination of a fairly rapid learning process for the IG community. In responding to the Katrina natural disaster of 2005, federal agencies left what is by now a well-documented trail of governmental disaster.⁶⁸ Regrettably, according to one former IG who returned to government to participate in an IG task force on Katrina-related issues, the IGs were part of that problem:

OIGs, like the rest of government, were unprepared for Hurricane Katrina. Despite best intentions and large summary reports about oversight actions and accomplishments, I can say with certitude based on my two years (2006 and 2007) with the DHS-OIG working on Hurricane Katrina related issues that the OIG audit community reaction in this situation was very untimely and not very effective, especially as respects fast reaction to and reporting of problems. Overall coordination, including a Hurricane Katrina

⁶⁷ Honorable Phyllis K. Fong, Inspector General, Department of Agriculture, "Statement of the Honorable Phyllis K. Fong Inspector General," *Testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate*, March 5, 2009, p. 3. (hereinafter Fong Testimony).

⁶⁸ For more information, see: Project On Government Oversight, *Federal Contracting: Lessons Learned From Hurricane Katrina*, August 28, 2006. <http://www.pogo.org/pogo-files/reports/contract-oversight/federal-contracting-katrina>

Roundtable, emphasized show-and-tell presentations about individual OIG efforts, rather than coordinated efforts in areas such as resource availability, pooling and/or reallocation of resources, cross-agency reviews of topics such as FEMA funds provided to other agencies and housing programs, priority issue or review areas, and inclusion of state oversight organizations from impacted states. The overall result was widely varying actions as respects the timeliness, results and depth of Hurricane Katrina reviews.⁶⁹

Thus POGO views with some relief the forward-thinking nature of the Recovery Board. According to testimony by USDA IG Phyllis K. Fong, Chair of the IG Council, who testified that, for the IGs at the agencies receiving the Recovery Act funds:

Our emphasis is on taking proactive measures to make sure the vast public funds involved are properly expended and utilized.⁷⁰

Fong indicated that the IG Council had created an IG Stimulus Working Group, made up of the 23 IGs whose parent agencies receive Recovery Act funds.

I believe this Stimulus Working Group can serve as an excellent forum for IGs directly responsible for stimulus oversight to discuss and share strategies, best practices, and other proactive measures to provide rigorous oversight of stimulus activities.⁷¹

Fong had surveyed the IGs in the working group and asked them to supply responses to three aspects of their planning for Recovery Act oversight: examples of preventive and proactive measures being taken; examples of longer-term stimulus measures being planned; and challenges faced in overseeing stimulus spending. The responses she cited emphasized forward thinking and planning by the OIGs in partnership with their agency officials to reduce the risk of fraud, waste, error, and misuse.⁷²

Once again, POGO applauds the proactive preventive thinking of the IG community in this regard. We will be watching to see if the preventive nature of their planning seems to make a difference in coming months and years.

Working with Whistleblowers

*We should be celebrating whistleblowers, we should be thanking whistleblowers, and, by all means, we should be protecting whistleblowers.*⁷³

Some of the most important abuses in government, some of the most significant investigations of misconduct, and some of the most stirring stories of public service, have come from the actions of the brave souls known as whistleblowers—those who see something wrong and are so

⁶⁹ Sparks, p. 3.

⁷⁰ Fong Testimony, p. 1.

⁷¹ Fong Testimony, p. 6.

⁷² Fong Testimony, pp. 7-8.

⁷³ Senator Claire McCaskill, "Senate Approves Overhaul of Consumer Safety Agency: Includes McCaskill Provision Protecting Industry Whistleblowers," March 6, 2008.

<http://mccaskill.senate.gov/newsroom/record.cfm?id=294406> (Downloaded March 19, 2009)

troubled they cannot rest until they do something about it.⁷⁴ This alone makes whistleblowers one of the most important stakeholder groups for IGs.

For thirty years the Inspector General Law has included provisions that specifically authorize an IG to receive and investigate complaints from an employee of the agency concerning any mismanagement, violations of law or rules, or “gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.”⁷⁵ The law further states that the IG shall not disclose the identity of the complainant without his or her consent, unless such disclosure becomes unavoidable. Finally, the law specifically forbids any action against the employee “as a reprisal for making a complaint or disclosing information to an Inspector General.”⁷⁶

The 2008 IG Reform Act added further provisions to aid whistleblowers and other complainants in bringing information to the attention of OIGs, by requiring a direct link on the homepage of the OIG’s website for reporting waste, fraud, and abuse.⁷⁷

In addition, the Recovery Act of 2009 includes even more responsibilities for OIGs of those agencies responsible for the stimulus spending. It requires the appropriate IG to carry out an investigation of the whistleblower’s complaint (although it also gives IGs the discretion not to⁷⁸) and submit a report of findings to the complainant and his or her employer, as well as to the Recovery Board and the agency head. The law also explicitly states that IGs must protect state and local government and contractor whistleblowers (although federal whistleblowers are yet again left unprotected).⁷⁹

Laws continue to give IGs the responsibility of working with whistleblowers because Members of Congress generally believe—mistakenly—that the Inspector General community is actively working with whistleblowers and investigating their disclosures.

Despite the continuing statutory emphasis given to this issue, POGO learned that the two councils of IGs that preceded the current IG Council had not, in anyone’s recent memory, ever held any discussions regarding whistleblower issues. In addition, POGO has found over the years that IGs—in utter defiance of logic—ignore the complaints of whistleblowers. Even when complainants are not outright ignored, they often receive short shrift from OIG employees.

Of the many whistleblower cases revealing waste, misconduct, fraud, and outright criminality that have been revealed through congressional investigations or through the media over the years, Inspectors Generals often played no role whatsoever in the case, were of no help if they did play a role, or only helped after Congress pushed them to do so.

⁷⁴ Unless otherwise specified, we use the term “whistleblower” broadly to include every type of complainant or tipster, whether from inside or outside an agency.

⁷⁵ 1978 IG Act, Sec. 7(a).

⁷⁶ 1978 IG Act, Sec. 7(a)-(c).

⁷⁷ 2008 Reform Act, Sec. 13 (b)(2).

⁷⁸ If the IG chooses not to investigate, he or she must submit to the whistleblower and the employer a report stating the IG’s reasons for rejecting the request. Recovery and Transparency Act, Sec. 1553 (b)(1).

⁷⁹ Recovery and Transparency Act, Sec. 1553 (a)-(b).

Michael German was a 14-year FBI Special Agent who had worked undercover infiltrating neo-Nazi groups. In 2002, he attempted to report, through the designated channels, irregularities in a counterterrorism investigation. Unfortunately, he was met by his supervisors with stonewalling regarding his complaint and with retaliation for his actions. He then reported both the underlying matter and the reprisals to the Justice Department OIG. Regrettably, although the OIG did not at that time begin an investigation, German's allegations were soon reported to the FBI officials who were the targets of his charges. Finally, after German had approached Members of the Senate Judiciary Committee the OIG apparently felt compelled to act. In January 2006, the IG issued a report about the allegations and retaliation with a finding that the FBI had in fact retaliated against German in return for his reporting official misconduct.⁸⁰

In another case, former Securities and Exchange Commission (SEC) IG Walter Stachnik was strongly criticized in a Senate Finance Committee minority staff report for his failure to pursue allegations raised by a then-SEC attorney, Gary Aguirre, who had alleged that senior SEC Enforcement officials had blocked him from pursuing an investigation of insider trading at Pequot Capital Management, on the grounds that the target had "powerful political connections."⁸¹ IG Stachnik "merely interviewed [Aguirre's] supervisors informally on the telephone, accepted their statements at face value, and closed the case without obtaining key evidence."⁸²

Subsequently, at the request of Senator Charles Grassley (R-IA) the new SEC IG H. David Kotz reopened the case, and in October 2008 issued a scathing report questioning "the impartiality and fairness of the Pequot investigation."⁸³ Kotz's report substantially validated the allegations of the whistleblower, including that of retaliation.

Even when IGs think they are working well with whistleblowers, they may not be. Responses to our questionnaire indicate that the majority of the respondents conduct in-house training for staff about sensitivity to whistleblowers' concerns, and have staff dedicated to keeping track of whistleblower concerns. Yet it has long been POGO's experience, as well as that of many whistleblower attorneys contacted by POGO, that generally IGs are at best irrelevant to whistleblowers and at worst are part of the problem.

POGO met with one IG who said whistleblowers were very important to his operation, and confidentiality of their information was "sacred." Yet, over the past several years POGO has received a number of complaints about his office's treatment of whistleblowers. Even allowing

⁸⁰ Michael German, "The FBI Whistleblowers: Corruption and Retaliation Inside the Bureau," *Testimony of Michael German, Policy Counsel, American Civil Liberties Union, Former Agent, Federal Bureau of Investigations before the Subcommittee on Crime, Terrorism, and Homeland Security, House Judiciary Committee*, May 21, 2008, pp. 2-3. http://www.aclu.org/images/general/asset_upload_file419_35426.pdf (Downloaded March 19, 2009); Senator Charles E. Grassley, "Statement of The Honorable Charles Grassley: Opening Statement of Senator Charles Grassley, FBI Oversight Hearing, U.S. Senate Judiciary Committee," May 2, 2008. http://judiciary.senate.gov/hearings/testimony.cfm?id=1858&wit_id=1011 (Downloaded March 19, 2009)

⁸¹ POGO IG Report I, p. 6, citing Minority Staff of the Committee on Finance, U.S. Senate, and the Committee on the Judiciary, U.S. Senate, *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management*, August 2007 (hereinafter Senate SEC Report), p.1.

⁸² Senate SEC Report, p. 6.

⁸³ Walt Bogdanich, "Impartiality of S.E.C. Is Questioned," *The New York Times*, October 6, 2008. <http://www.nytimes.com/2008/10/07/business/07pequot.html> (Downloaded March 19, 2009)

for whistleblowers' tendency toward persistence and tunnel vision, there seemed to be a disconnect between the IG's perception and that of the whistleblowers who contacted his office. This disconnect seems to be remarkably common across the IG community. But why?

One IG pointed out that in many respects it is the law that lets the whistleblowers down. He said that even if the OIG finds retaliation against a complainant, the IG does not have authority to force the agency to take any corrective action. Further, the employee does not have a right of action based on the IG's finding. The Recovery Act of 2009 does create such a mechanism for corrective action when a contractor or state or local government retaliates against an employee.

Whistleblower's First Approach to IG: Websites

Given that a whistleblower's first interaction with an IG's office is likely to be the moment he or she checks the website, it is essential that it is informative and honest about what an IG can and cannot do to help the whistleblower. Yet, an unscientific survey of agency websites, and their links to their IGs' pages and/or hotline contacts revealed a wide disparity in the treatment of information that could be vital to a whistleblower being able to make a disclosure of wrongdoing to an IG. (Appendix F)

It is surprising and rather disappointing that some of the largest departments have only the tiniest, faintest link to their IG's homepage, while several very small and frankly obscure agencies have easily found links that jump off the agency homepage, and even have attractive graphics or a useful icon. The 2008 IG Reform Act required agency web pages to have a "direct link" to their respective IGs' web pages that should be "obvious and facilitate accessibility" to the IGs' sites.⁸⁴

Not all the sites do a good job of explaining what kind of information is an appropriate area for an OIG to explore. There is also a wide variation in the information made available regarding the rights of whistleblowers. Quite a number of IG sites do not inform potential whistleblowers that retaliation against them is illegal and they are protected by law from reprisal. One site that does do a good job is that of the Corporation for National and Community Service's OIG. There are good links from the agency homepage, and the OIG page is well-managed, easy to read and negotiate, and includes good information for whistleblowers, almost showering the site visitor with information on waste, fraud, and abuse, and how to report violations.⁸⁵ The HUD OIG's website is also a good example. The site provides good information about the OIG Hotline, with just one click from the agency website, and the OIG homepage includes easily understood definitions of fraud, waste, abuse, and serious mismanagement.⁸⁶ And the DoD OIG website could hardly be better. Although it is not the clearest link from the Department homepage, once one arrives at the OIG site the information is plentiful and well organized. We found the "fraud indicators" to be useful and the scenarios illustrative; helpful definitions of waste, fraud, and

⁸⁴ 2008 Reform Act, Sec. 13 (a).

⁸⁵ Corporation for National and Community Service, <http://www.nationalservice.org> (Downloaded March 19, 2009); Corporation for National and Community Service, "Your Guide to The Office of the Inspector General," http://www.cnscsig.gov/PDF/OIGHandbook_18Oct05.pdf (March 19, 2009)

⁸⁶ Department of Housing and Urban Development, Office of Inspector General, "OIG Hotline," <http://www.hud.gov/offices/oig/hotline/index.cfm> (Downloaded March 19, 2009)

abuse were offered; and a page on the site specifically informs whistleblowers of their rights, including information about reprisals and the protections available.⁸⁷

Whistleblower's Next Approach to IG: Hotlines

The next step a whistleblower takes is typically calling or emailing the hotline, or the “initial intake.” Despite this being a singularly important function for IGs, several agencies have outsourced the initial intake of whistleblower complaints to a private firm started by former HHS IG Richard Kusserow.⁸⁸ Kusserow was quoted about how carefully his employees have been trained in their debriefing skills when answering hotline calls:

There are a lot of dynamics behind hotline calls. Don't jump to conclusions when hotline calls first come in Often you find people don't give you all the information right away. They give it in small doses as they develop confidence and rapport with the hotline [staffer]. Sometimes it's like peeling an onion.

A substantial percentage of callers beat around the bush. They start talking, but aren't providing a lot of information. So [some] hotline staffers figure they are wasting their time, and that skepticism comes through in their voices.⁸⁹

However good this advice is, his company was sold to another several years ago,⁹⁰ and there is no guarantee that the new company is as careful in training its employees. Furthermore, outsourcing the whistleblower hotline to a private firm removes the IG's ability to have any supervision of the hotline operators or quality control of their work. When POGO called the hotline numbers for the DHS OIG and the DOT OIG, we discovered that the same person—who told us he knew nothing about either agency or their programs—was taking the calls. The hotline operators—local college students, according to one IG who uses the service—also simultaneously handle the hotlines for several private companies.

When one dials the Hotline number for the DHS OIG, there may be a long wait before the call is answered. Then the caller is treated to a five-minute recording directing one to other numbers for information about FEMA or illegal immigration. Finally the caller is connected to the operator (who admitted to knowing nothing about DHS or its programs or activities). The operator then asks the caller for contact important information, but if the caller wants to remain anonymous, there is no way for any DHS official to follow up on the lead. If anonymous callers ever call

⁸⁷ Department of Defense, Inspector General, “United States Department of Defense Office of the Inspector General.” <http://www.dodig.mil> (Downloaded March 19, 2009). (hereinafter DoD OIG Website)

⁸⁸ Allegiance, Inc., “Allegiance Acquires National Hotline Services to Create Ethics Reporting Powerhouse,” November 14, 2006, p. 1. https://www.allegiance.com/documents/Allegiance-NHS_NR_FINAL.pdf (Downloaded March 19, 2009)

⁸⁹ Allegiance Enterprise Feedback Management, “Hotline Callers May Talk Trivia but Have Bombshells; ‘Debriefing’ Skills Essential,” p. 1. http://www.allegiance.com/NHS_Temp/press/NR_hotline_operators.pdf (Downloaded March 19, 2009)

⁹⁰ National Hotlines Services, “Allegiance Acquires National Hotline Services to Create Ethics Reporting Powerhouse,” November 14, 2006. http://www.hotlines.com/NR_allegiance_acquires_nhs.php (Downloaded March 19, 2009)

back to find out what happened to their complaints, they are informed that they can file a Freedom of Information Act request with the Department.

Although the DOT uses the same service, a significant improvement is that they do give the caller a case number through which the whistleblower can both follow the case as well as call back to provide follow-up information.

POGO is troubled by the outsourcing of what should be an inherently governmental function. We at POGO have long experience receiving disclosures from whistleblowers, and know how difficult it is to elicit the information from a caller. Furthermore, the person receiving the call needs not only to be experienced in working with whistleblowers, but also needs to be familiar enough with the subject matter or agency to ask the right questions to get meaningful answers. Finally, and perhaps most importantly, if the whistleblower wishes to remain anonymous there *must* be a way for the investigator charged with looking into the disclosure to hear back from the whistleblower so that the investigator can ask follow-up questions. It is a system that is designed to fail if the whistleblower cannot somehow help inform the investigator during his or her work.

But even if an OIG keeps the hotline operations in-house, it doesn't ensure it will function effectively.

DoD OIG Hotline

There are other Hotlines for other DoD components, but the OIG's is considered "the" Hotline for the Department. The Hotline has had the same director for many years, and he oversees a staff of about 15. Generally, if a complaint is deemed legitimate, it is referred back to the component within the Department that manages the program or activity at issue. The component's IG or other internal affairs unit then investigates the complaint.

The fundamental problem with this is that these units are not independent of their chiefs or commanding officers. POGO has significant concerns about the protection of whistleblowers when their complaints are returned to the very agency whose managers are at issue. We understand that the DoD's Acting IG has undertaken a review of the Hotline's operations and we are hopeful he will address these shortcomings.

Information obtained by POGO from the DoD OIG about its Hotline revealed that the Hotline received 13,748 contacts via telephone, U.S. mail, email, and the internet in FY 2008. The contacts covered a wide range of issues from requests for assistance and information to allegations regarding DoD programs and operations. Only 3,401 of these contacts were deemed substantive allegations, resulting in the initiation of 1,956 Hotline cases. The remaining 1,445 allegations that received consideration were found to be inappropriate for further DoD Hotline action.⁹¹ The number of cases investigated in FY 2008 is similar to those of the past three fiscal years: 1,499 in FY 2005; 1,704 in FY 2006; and 1,612 in FY 2007.⁹²

⁹¹ Information supplied to POGO by DoD/OIG in response to questionnaire; permission to use was granted by email on March 9, 2009.

⁹² DoD OIG Website, "Hotline Cases by Category," <http://www.dodig.osd.mil/Inspections/APO/fraud/HotlineStat.pdf> (Downloaded March 19, 2009)

POGO found those numbers surprisingly small considering the size of the Department and the numbers and amounts of contracts it handles. According to the White House website, the DoD has more than 1.3 million on active duty in the military, 1.1 million citizens serving either in the National Guard or the Reserve, and 700,000 civilians.⁹³ Yet all those potential complainants yield fewer than 2,000 cases per year? It seems fairly clear that this system somehow does not encourage whistleblowers.

Protecting Whistleblowers

POGO knows of only two IG offices (DoD and DOI) that have units specifically dedicated to whistleblower protection, although in response to our questionnaire other OIGs told POGO they have employees assigned to handle whistleblower issues. Of the two, only the Defense Department OIG has offices charged with investigating cases of retaliation against whistleblowers, and, as seen below, there are serious problems with those offices.

DoD's Whistleblower Reprisal Offices

The DoD OIG has suffered significant failings in its handling of both the initial complaints from and the protection of whistleblowers. A 2002 review by an independent outside contractor for the DoD OIG found, in language that we still find shocking and disturbing:

The culture of the OIG DoD has been, and continues to be, hostile to internal whistleblowers. All too often, OIG employees who have endeavored to identify mismanagement or violations of law have been punished by their chain of command. At the same time, the underlying issue has gone ignored. These incidents have had a chilling effect on good faith dissent that continues to impair free and open discussions between the staff and management. This result is both ironic and lamentable for an agency created to cultivate and safeguard whistleblowers. The Assessment Team also found minimal evidence that the OIG DoD has played a substantial role in protecting external whistleblowers in civilian DoD jobs, in uniform, or in the employ of military contractors. As a result, festering waste, fraud and abuse within civilian and military DoD components may be placing lives and taxpayer dollars at risk.⁹⁴

The report further pointed out that “Legitimate whistleblowers are better viewed as a resource, not an inconvenience. Their messages can save lives and tax dollars.”⁹⁵

These issues arise from both the structure and mindset of the DoD OIG offices that deal with whistleblower retaliation. The Acting IG for DoD is reviewing some of the problems noted above, and has recently taken several actions to address them. These include creating an Office of Professional Responsibility to conduct independent professional investigations into allegations of employee misconduct, an OIG Ombudsman to serve as an impartial resource for informal and

⁹³ White House, “The Executive Branch,” http://www.whitehouse.gov/our_government/executive_branch/ (Downloaded March 19, 2009)

⁹⁴ Department of Defense, Office of Inspector General, “2002 Military Reprisal Investigation Study,” *Obtained by Nick Schwellenbach through Freedom of Information Act*, p. 6. <http://www.publicintegrity.org/assets/pdf/OIG%20Assessment.pdf> (Downloaded March 19, 2009). (hereinafter MPRI Study)

⁹⁵ MPRI Study, p. 81.

confidential dispute resolution for employees, and a Human Capital Advisory Committee to advise the IG on larger cultural issues arising within the office.⁹⁶

The two DoD offices that handle retaliation claims are the Office of Military Reprisal Investigations (MRI) and the Office of Civilian Reprisal Investigations (CRI).

The general process with the DoD OIG's Office of Military Reprisal Investigations (MRI) is for the military service IG to notify MRI that it has received an allegation from a whistleblower that he or she has suffered retaliation for having made a protected disclosure. Generally it is the service IG that conducts a preliminary investigation, with the MRI providing either ongoing oversight, or, more often, a review of the completed investigation.

However, MRI investigators conduct some preliminary inquiries for credible complaints submitted directly to the DoD OIG. Recently, MRI also began conducting preliminary inquiries of reprisal complaints submitted by Army members, as the Army investigative office was suffering from under-staffing.⁹⁷

MRI has a staff of about 16. They are required by the military whistleblower statute to ensure that the complainant's underlying allegations have been adequately investigated.⁹⁸ Once the component has carried out the preliminary investigation, MRI takes only those cases that have been found to merit a full investigation. The MRI investigator, working with a team leader, reviews every piece of information available and produces a detailed chronology along with a comprehensive analysis. Those documents are then reviewed by a Complaint Review Committee, which discusses the results of preliminary inquiries and decides whether to proceed to full investigation or close the complaint without further action.⁹⁹

POGO has received numerous complaints about this process over the years, and one recurring issue is the failure of investigators to keep whistleblowers informed as to the status of their cases. MRI used to be required to give a status report to the complainant every 90 days, but in the mid-1990s, Congress relieved them of that requirement. POGO believes that at a minimum complainants should be informed whether or not their cases are still active.

MRI policy requires investigators to provide their contact information to complainants, and if an investigation is conducted, the complainant is sent a copy of the report. If an investigation is not initiated, the individual should be sent an explanation.¹⁰⁰

⁹⁶ Department of Defense, Office of Inspector General, "Response to Issues Raised in the Draft POGO Report," March 17, 2009, p.1. (hereinafter DoD OIG Response to POGO)

⁹⁷ DoD OIG 2009 Response to POGO Report, p. 3, and interview with POGO source.

⁹⁸ 10 USC 1034 and DoD Directive 7050.06 allow whistleblowers to appeal to their service Board for Correction of Military Records.

⁹⁹ Thomas F. Gimble, "Statement of Mr. Thomas F. Gimble, Acting Inspector General Department of Defense, before the Committee on National Security, Emerging Threats, and International Relations, House Committee on Government Reform on National Security Whistleblower Protection," February 14, 2006, pp. 8-9. http://www.dodig.mil/IGInformation/PressReleases/DODIG_Testimony_Final_0206.pdf (Downloaded March 19, 2009)

¹⁰⁰ DoD OIG Response to POGO, p. 3.

POGO found that there is very little a whistleblower can do to appeal an MRI decision. Generally speaking, no higher-ranking officials in DoD OIG review the unit's rulings. There is a theoretical right of appeal to the Board for Correction of Military Records of each military department,¹⁰¹ which may correct any military record if the Secretary of that department considers it necessary to correct an error or remove an injustice. Also, there are provisions for the Correction Boards to recommend disciplinary or administrative action against any official who committed an act of reprisal.¹⁰² POGO has been told the Boards are almost never used to hear whistleblower appeals of adverse MRI findings.

Senator Grassley has been particularly concerned about a case that raised serious questions about MRI procedures, that of Navy Lieutenant Jason Hudson. When Hudson challenged a recruiting policy that he alleged favored whites over minorities, he was removed from his job and he received a negative evaluation. Even though the Navy changed its policy after his disclosure, it denied that he had suffered retaliation for his whistleblowing. According to an AP account of the case:

In early 2003, Hudson asked the Pentagon inspector general for help. More than five years later, nothing has been done to challenge or reverse the Navy's decision. ...

Sen. Charles Grassley, R-Iowa, a longtime advocate for whistle-blowers, conducted his own inquiry into Hudson's case over the past year and found serious problems.

"The evidence seems to indicate that your office did not ask the Navy one single substantive question about the way the Hudson investigation was being conducted," Grassley wrote in an Oct. 23 (2008) letter to Gordon Heddell, who was named acting Pentagon inspector general in July.

...Military reprisal complaints are supposed to be settled within 180 days.¹⁰³

DoD Acting IG Gordon Heddell has requested that the DOJ IG review MRI procedures, particularly its handling of the case of Lt. Hudson; at this writing, that review is ongoing.¹⁰⁴

Unlike MRI, which was created by statute, the Office of Civilian Reprisals Investigations (CRI) came into being following congressional criticism of the DoD OIG's handling of civilian whistleblowers' disclosures and retaliation allegations.¹⁰⁵

However, the CRI has, at least until recently, only three employees including its director, despite original plans for six to eight investigators. Thus, it lacks the capacity to undertake many

¹⁰¹ 10 USC 1552.

¹⁰² 10 USC 1034 and DoD Directive 7050.06 allow whistleblowers to appeal to their service Board for Correction of Military Records.

¹⁰³ Richard Lardner, "Whistle-blowers Get Little Help if Punished," *Associated Press*, printed in *USA Today*, October 31, 2008. http://www.usatoday.com/news/washington/2008-10-31-784544259_x.htm (Downloaded March 19, 2009)

¹⁰⁴ DoD OIG Response to POGO, p. 4.

¹⁰⁵ DoD OIG Website, "DoD IG Growth Plan for Increasing Audit and Investigative Capabilities Fiscal Years 2008 – 2015." http://www.dodig.osd.mil/IGInformation/dodGrowthPlan_08-15/inv.html (Downloaded March 19, 2009)

investigations on its own and is forced to refer most to the Office of Special Counsel (OSC), the executive branch agency set up to protect whistleblowers.¹⁰⁶ The unit was given the dual mission of both counseling whistleblowers and investigating their complaints, but the lack of resources means that there has been no way to isolate the investigative from the counseling function. That dual mission is problematic, as Kenneth Pedeleose's case makes clear.

This case is a classic study of how good intentions can go bad in the worst way. Pedeleose is an industrial engineer employed by the Defense Contract Management Agency (DCMA) at a Lockheed Martin Marietta plant. Pedeleose had already been a whistleblower with protected status when he became involved in a complicated series of events, including an internal DCMA investigation that concluded with his being suspended for 30 days. Along the way, the CRI director was in touch with DCMA about which questions they could pose to witnesses.¹⁰⁷

Pedeleose's whistleblowing activities had already resulted in a July 2004 IG report that confirmed his allegations about safety problems with the C-130J aircraft.¹⁰⁸ A May 2005 follow-up report to the IG by Pedeleose and other DCMA employees was being prepared when a rumor swept the plant that several employees were targeted for termination. One of them decided to retire rather than be fired, and revealed the rumor to the commanding officer. The commander then launched an investigation to determine the source of the rumor.¹⁰⁹

When Pedeleose was approached by the DCMA investigator charged by the commander with looking into the rumor, he refused to cooperate; possibly due to anxiety based on his earlier whistleblowing experiences, he merely stated that the requested information had already been provided to the CRI. Pedeleose did not understand the extent to which Daniel Meyer, the head of CRI, had been in contact with DCMA about proposed questions for him.¹¹⁰ When Pedeleose

¹⁰⁶ POGO has long been concerned about the operations of the Office of Special Counsel (OSC), the agency to which whistleblowers in the federal government must turn for help in disclosing wrongdoing and reporting reprisal for whistleblowing. The OSC lacks the independence it needs to truly be successful: it is a small, weak institution located in the executive branch; its head is a presidential appointee that is expected to carry out the President's agenda. The OSC faces the challenge of having to rely on a Merit Systems Protection Board (MSPB) with a track record of decisions against whistleblowers. In addition to recent lapses in true leadership, there are also a number of systemic and structural problems at the OSC that date back to its founding. See POGO report: *Breaking the Sound Barrier: Experiences of Air Marshals Confirm Need for Reform at the OSC*, November 25, 2008.

<http://www.pogo.org/pogo-files/reports/homeland-security/breaking-the-sound-barrier/hs-as-20081125.html>

¹⁰⁷ Merit Systems Protection Board, "Kenneth M. Pedeleose, Appellant, v. Department of Defense, Agency, and Office of Personnel Management" (Docket No. AT-0752-06-0350-R-1), February 12, 2009, pp. 2, 6.

<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=395283&version=396134&application=ACROBAT> (Downloaded March 19, 2009)

¹⁰⁸ Department of Defense, Office of the Inspector General, "Acquisition: Contracting for and Performance of the C-130J Aircraft (D-2004-102)," July 23, 2004. <http://www.dodig.mil/Audit/reports/fy04/04-102.pdf> (Downloaded March 19, 2009)

¹⁰⁹ Merit Systems Protection Board, "Kenneth M. Pedeleose, Appellant, v. Department of Defense, Agency, and Office of Personnel Management" (Docket No. AT-0752-06-0350-R-1), February 12, 2009, pp. 2, 6.

<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=395283&version=396134&application=ACROBAT> (Downloaded March 19, 2009)

¹¹⁰ Initially the Merit Systems Protection Board, in a rare ruling in favor of a whistleblower, found that the agency had failed to prove its charges against Pedeleose and in fact had engaged in retaliation against him for his earlier whistleblowing. Regrettably, in responding to a petition from the Office of Personnel Management for reconsideration, the Board executed a 180 degree turn. In its new Opinion, released February 13, 2009, the Board

complained to CRI about the inquiry, Meyer advised him to cooperate with a lawful investigation.

Among the twists and turns of the case, the OIG of the National Security Agency (NSA) was tasked with a review of the Pedeleose matter, and conducted a deposition of CRI chief Meyer.¹¹¹ Just a few of Meyer's responses illustrate the crossing of lines and confusion of roles that POGO believes helped lead to Mr. Pedeleose's suspension. The NSA OIG investigator made his disapproval of CRI's dual role plain:

Do you believe that such interaction with legal representatives of DCMA who are actually working for the organization ... do you think that that is an appropriate thing to do ...?¹¹²

But in his responses it was clear that Meyer perceived no conflict:

... I really saw that issue [the DCMA investigation] as something that he had disclosed to the Hotline, the Hotline could refer it to wherever it had to go and if there was a reprisal matter involved with that I told him, I told the Hill, I told the IG at this point, it's going to OSC.¹¹³

You need to do both because your value added to the DOD is in helping people understand when they actually have an issue or a concern.... It's important to have bright lines and I find now that I step back from situations that I may not have stepped back from even a year ago but I'm also very reluctant to entertain the thought that that separation, that function, needs to go outside of my Directorate.¹¹⁴

Asked at the end if there is anything he could have done better or differently, Meyer replied:

I probably would have moved Mr. Pedeleose over to OSC a lot earlier. I don't know how I would have been able to do that and keep our stakeholders on the Hill happy, that was the challenge there.¹¹⁵

He concluded:

I just want to underscore once again that, what four years after his disclosure the complainant is still employed by DoD and working productively away and I regard his intake as a success of not only my office but the Inspector General.¹¹⁶

has now found that Pedeleose was required to cooperate with the agency's investigation and should have done so. See: Merit Systems Protection Board, *Case Report*, February 13, 2009, pp. 3-4.

¹¹¹ Daniel P. Meyer, Interview conducted by Assistant NSA OIG, W. Rod Biggs, June 28, 2006, tape transcription. (hereinafter Daniel P. Meyer Interview)

¹¹² Daniel P. Meyer Interview, pp. 24-25.

¹¹³ Daniel P. Meyer Interview, p. 26.

¹¹⁴ Daniel P. Meyer Interview, pp. 63-64.

¹¹⁵ Daniel P. Meyer Interview, pp. 68-69.

¹¹⁶ Daniel P. Meyer Interview, p. 72.

Meyer did not know at the time that the general counsel in the OIG had also discussed the case with DCMA, creating an “appearance of loss of impartiality,” according to yet another investigation.¹¹⁷ After the NSA OIG reviewed CRI’s handling of the Pedeleose matter, the CRI mandate was changed. No longer would it be investigating and counseling; rather, counseling was replaced with providing information. POGO agrees that there must be a separation between the roles of counselor and investigator. We further commend the fact that both MRI and CRI are scheduled for an “imminent and significant plus-up in manpower.”¹¹⁸

Interior OIG

The Department of the Interior’s Associate IG for Whistleblower Protection, Richard Trinidad, told POGO that his current assignment began a few years ago when he said to Interior IG Earl Devaney, “We don’t pay enough attention to the people who have the guts to step forward and tell us stuff.” In his position, Trinidad is a proselytizer to Department managers and employees on whistleblower issues. He has addressed groups of employees so often that some whistleblowers will now call him directly. He also participates in the weekly meetings of OIG’s senior investigators, including the head of the Hotline unit, to sort through the intake.

The Hotline operation is situated within the Office of Investigations. It is headed by a federal law enforcement agent who oversees a staff of three: another federal investigator and two analysts. It is that experienced, trained staff who answer the Hotline and provide that vital initial intake from callers. On Fridays, a Case Review Committee meets to consider the week’s intake and decide how to deal with each matter. A case is opened if there is “any possibility” of a criminal or integrity issue. Only the clearly frivolous cases are discarded.

Trinidad was asked about outsourcing the Hotline intake and—perhaps not surprisingly—said he believes that is a big mistake. There is too great a possibility of missing important information if untrained intake staff don’t have experience they can refer to. He said intake staff should be “dedicated and enthused” about their mission. He believes it’s a mistake either to put inexperienced or uninterested staff on the Hotline, or for the manager not to be close by and able to be called upon if there’s any question or confusion about a call.

Trinidad recalled one hesitant caller who wasn’t even quite sure why he was calling, but turned out to be an auditor who had tried to report irregularities up the chain of command only to be disciplined in increasingly harsh ways. Trinidad said the auditor had been subjected to “progressive discipline,” and it was clear to the trained listener that his managers were attempting to build a case against him so he could be dismissed. An inexperienced intake operator very well may have missed this, or not drawn out the right information that made clear what was being done by the Department to the auditor.

Although POGO has encountered some problems in practice, POGO applauds the concept and design of the Interior OIG’s whistleblower protection office and believes it could serve as a good model for other OIGs.

¹¹⁷ Department of the Interior, Office of Inspector General, *Report of Investigation, case title Uldric Fiore*, June 5, 2008, p. 29.

¹¹⁸ DoD OIG Response to POGO, p. 5.

Who Holds IGs Accountable?

Congress

Congress as a whole tends to have a sort of Jekyll and Hyde attitude toward Inspectors General. On the one hand, Congress created this unique tool thirty years ago to serve as its eyes and ears inside federal agencies. IGs appear to be among the most favored and frequent witnesses before congressional oversight committees. On the other hand, so often the Semi-Annual Reports to Congress, over which IGs are forced by law to labor, end up doing nothing but catching dust, unread. Also too often a special report issued by an IG, or even testimony especially requested of an IG, underscores a failure that Congress could and should address and yet Congress does nothing. If an IG fails when they identify a problem but do not create a ruckus about it, so too does Congress fail in its duty if it fails to act when an IG has shown the way. It is also lamentable when a mediocre IG has not challenged his agency sufficiently and is not himself held to account by the responsible committees.

POGO was therefore quite pleased when, at the beginning of the current Congress, a change to House Rules was introduced that requires committees to hold hearings regarding waste, fraud, abuse, or mismanagement by the agencies they oversee. In early 2009, the House passed H. Res. 40, introduced by Representative John Tanner (D-TN), requiring each committee to hold at least three oversight hearings each year. POGO submitted a letter of support for the rules change, and applauds Congress's re-commitment to the concept of oversight and wishes only that the Senate could compel its committees to follow suit.¹¹⁹

During POGO's investigation, it became clear that the most successful OIGs are those that have frequent and informal contacts with congressional staff, and don't just sit waiting for an invitation to testify. A number of IGs interviewed maintained that a good back-and-forth with congressional staffers is one of the best signs of an effective IG. Former DOT IG Mead suggested several ways to help determine if the IG is doing his or her job well: Is their work incorporated in congressional committee reports or legislation? Does OIG staff know committee members and staff on a first-name basis? Does the IG rely solely on his or her SARs to communicate with the Hill?

Through our questionnaire, we attempted to probe IGs' relationships with Congress. (Appendix C) Of the offices responding, the majority said they meet with congressional staff regularly, and seek to brief congressional offices "periodically." Most said they felt free to contact congressional offices if faced with problems from agency managers, seven said the issue had not arisen, one OIG expressed concern about the possibility of management retaliation, and another bemoaned the lack of response from their congressional oversight committee.

We were struck by the fact that one respondent believed meeting only once a year with congressional staff was meeting on "a regular basis." Another OIG, one covering a large

¹¹⁹House of Representatives, "House Resolution 40: Amending the Rules of the House of Representatives to require each standing committee to hold periodic hearings on the topic of waste, fraud, abuse, or mismanagement in Government programs which that committee may authorize, and for other purposes," January 9, 2009. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:hr40ih.txt.pdf (Downloaded March 19, 2009); see also: Project On Government Oversight, "Nice Beginning for a New Congress," <http://pogoblog.typepad.com/pogo/2009/01/nice-beginning-for-a-new-congress.html>

department, responded that it never sought to brief staff, but rather, “only brief[s] upon request.” Yet this same IG complained in his SAR about a lack of resources, so that some planned audits had to be put on hold. The IG further blamed the increasing number of congressionally mandated tasks and other congressional assignments. It seems rather obvious that a concerted initiative to improve communications with congressional staffers could better inform Congress of the OIG’s needs, possibly resulting in a higher budget and fewer mandates.

While it is essential for IGs to be responsive to Congress, it is important for Congress to be mindful that each of its additional requests—particularly ongoing mandates—means something else will be dropped or back-burnered. Although about half of our respondents said they try to plan for unexpected requests from Capitol Hill, the majority said that their plans were adversely affected by unexpected demands. One IG who felt particularly burdened by multiple congressional mandates had to drop planned audits. He explained that he didn’t mind responding to the requests, but if this were to be the prevailing trend, that he would need additional resources.

Agency Heads

The Inspector General law was unique in creating the IGs as “dual-hatted” entities who report both to Congress and to their agency heads. This dual reporting feature has not always been appreciated—or even understood—by administrations, and Congress itself has not always paid due respect to the reports of the entity it created. According to former DOT IG Mead, some senior executive officials suffered “a lack of recognition of the very fundamental obligation of the law.” But most IGs take this responsibility very seriously and believe it endows them with the independence they require. Mead believes it is “a beautiful provision of law,” and that the best IGs, the ones who make a difference, tend to be those who give meaning to the dual reporting provision.

And the balance is a delicate one. IGs are meant to be independent of department heads, and yet they also must report to them. They do not have to literally straddle a barbed-wire fence to realize their position is often no-win. There is a broad spectrum of possible relations between IGs and agency chiefs, ranging from antagonism to cronyism. If an IG is not annoying many of his colleagues most of the time, then he is probably not doing his job. Yet, if an IG is extremely adversarial, the walls go up and the day-to-day communication ceases. This would not serve the public interest any more than a totally compliant IG.

One IG explained to POGO how he handles the balance. If, for instance, a Member of Congress requests a copy of a draft report, this IG makes sure the request is in writing and then makes clear he will give his agency chief a heads-up. At least 24 hours before the draft goes up to the Hill, the IG provides the agency chief a chance to review it. The IG said he would never agree to change the facts or conclusions in response to an agency complaint, but—somewhat to POGO’s concern—he said he might change the tone of a report. The IG also added that if a Member requests a briefing, he’s happy to comply after first making clear that he will offer the briefing to Members of both political parties.

An example of a productive IG-agency relationship may be DOJ IG Glenn Fine. A former Deputy Attorney General declared that Fine adds value to overall management of the

Department in that he is “not so adversarial that we can’t communicate or benefit.” Despite his often hard-hitting reports, he does not seem to believe he needs to be antagonistic toward the Department to get the job done. Yet Fine did not hesitate to go directly to Congress seeking authority his own Department has denied him.¹²⁰

Former Transportation Secretary Norman Mineta told POGO he’d had an excellent relationship with the IG at his Department, but that there was always a fine line they both had to walk: the IG’s job was to point out shortcomings and to make remedial suggestions. If the IG is always looking for “gotchas,” Mineta said, not only will the mechanics of the department not be improved, but unnecessary friction will be created. There should always be an adversarial (rather than antagonistic) tension between the two, without its destroying the relationship. The then-DOT IG Mead was neither in the Secretary’s hip pocket nor running roughshod over the Department. Mineta said he would have the IG and his deputy attend senior staff meetings where they were free to raise any issue of concern.

Mineta added that there’s nothing worse for an agency chief than to learn about a department problem “above the fold on the front page of *The Washington Post*.” A good IG will at least give the agency chief a heads-up before springing bad news on him.

One IG at a smaller commission told us that IGs “don’t have much of a career path, and they never win popularity contests.” He said that whenever he shows up at a meeting, everybody groans because they know they’re going to hear something they don’t like, or will have to take actions they don’t want to take. He added, when you leave the job, you can’t expect any nice letters of referral. Yet that same IG told us there was a time when his agency chief suggested they host a joint holiday party, and the IG said he actually considered it briefly before deciding not to. A few months later he found himself launching an investigation into alleged conflicts of interest by that same official, and was glad they hadn’t become cozy party planners.

Another IG, who has since announced his retirement, told POGO that his general job advice is: be an IG as your last government assignment.

Peer Reviews

If impact, visibility, and good writing are highly subjective measures, one metric that is almost completely objective is the peer review. Unfortunately, while IGs try to hold each other accountable through peer reviews, the reviews are of limited value.

Until very recently, peer reviews were performed only on the audit sections of OIGs. But about ten years ago according to Social Security Administration IG Patrick O’Carroll, who also chairs the IG Council’s Investigations Committee, some of the larger IGs started doing quality assurance reviews on a tri-annual basis of investigative sections of OIGs.

Audit peer reviews are coordinated through the IG Council and are conducted every three years,¹²¹ with one OIG reviewing another’s work. They are largely checklist operations and the

¹²⁰ POGO IG Report Part I, p. 25.

¹²¹ Government Auditing Standards (GAGAS), Sections 4.(b)(1), 8.(c)(6), and 8.(c)(7) of 1978 IG Act, as amended. See: Department of Defense, Office of Inspector General, “Office of the Deputy Inspector General for Policy and

protocol is standard, basically consisting of a week-long scrutiny of the IG's work papers to ensure they provide proper back-up for each audit.

According to the IG Council's Audit Committee:

The objective of the external peer review is to determine whether the reviewed audit organization's internal quality control system was adequate and complied with to provide reasonable assurance that applicable auditing standards, policies, and procedures were met.¹²²

But audit peer reviews do not reveal any real performance problems. They do not look at the quality or impact of audits. And they do not reveal anything about the IG's impact on the department's programs and mission. The review instead consists of the visiting IG team examining a sample of reports and back-up work papers. If the work papers back up the report, and if they were maintained according to the GAO's Government Auditing Standards, known as "The Yellow Book" standards, then the IG passes. The Yellow Book provides crucial standards for accurate accounting practices, but it is not adequate for evaluating an IG's overall performance.

The limitations of audit peer reviews are vividly illustrated in the recent scathing GAO report on the NASA OIG.¹²³ GAO concluded that the NASA IG had failed to address the economy and efficiency of agency operations, despite the clear mandate of the IG law to do so. Yet, two external peer reviews of the NASA OIG had concluded that the office's quality control system "provided reasonable assurance of material compliance with professional auditing standards." That is: they passed.¹²⁴ Clearly, compliance with technical audit standards is not enough to evaluate IGs' work.

With the passage of an amendment to the IG law contained in the Homeland Security Act of 2002, a number of the larger OIGs were granted statutory law enforcement authority, but in return they had to follow certain guidelines of the Attorney General, including investigative peer reviews.¹²⁵ According to the Inspector General Act, these reviews should occur "no less often than once every 3 years."¹²⁶ The stated purpose is to "ascertain whether adequate internal safeguards and management procedures exist" to ensure that the law enforcement powers granted are being properly exercised.¹²⁷

The investigative peer reviews are also largely checklist operations that include quality control on document retention, segregation of grand jury materials, and making sure investigators have stayed up to date on their firing range qualifications, which include quarterly tests. O'Carroll said

Oversight – Audit Policy and Oversight." <http://www.dodig.osd.mil/inspections/APO/externalreview.htm> (Downloaded March 19, 2009)

¹²² John Higgins, Chair, Audit Committee, "Audit Committee Policy Statement on Internal Quality Control Systems and External Peer Review Programs," p. 2. <http://www.ignet.gov/pande/audit/eprps05.pdf> (Downloaded March 19, 2009)

¹²³ GAO Report on NASA IG.

¹²⁴ GAO Report on NASA IG, p. 6.

¹²⁵ Pub. L. No. 107-296, § 812, 116 Stat. 2135, 2223 (Nov. 25, 2002), see: GAO Report on NASA IG, p. 22, fn 12.

¹²⁶ 1978 IG Act, as amended, Sec. 6 (e)(7).

¹²⁷ Attorney General Guidelines, p. 10.

these peer reviews have often yielded a “letter of observations” issued to the reviewed OIG. This letter often includes suggested best practices, areas for improvement, or recommendations for increased efficiency or effectiveness. O’Carroll said he was not aware of any OIG having received a negative peer review. Another IG said his impression was that investigative peer reviews do not attempt to judge the quality of any individual investigation, and were not as rigorous as audit peer reviews.

While we understand there may be some value in peer reviews, they should not be confused with a serious analysis of the quality of an IGs work.

CONCLUSION

Determining how to hold an Inspector General accountable was a much harder question to answer than how to ensure adequate independence for them, the subject of POGO's first report. It is, of course, essential to hold these independent watchdogs accountable for their conduct, but doing so shouldn't be as complicated as it has become. The repeated failure to hold IGs accountable for misconduct is caused both by flaws in the Integrity Committee's structure and its practices. The good news is that these weaknesses are relatively easy to remedy through the implementation of the recommendations that follow.

It is also essential to hold IGs accountable for the quality of their work. We concluded that there is no single formula with which to measure that work. Instead, what is essential is to make sure the IGs periodically re-evaluate the many balances they must maintain, balances not limited to the "dual-hattedness" of reporting to both Congress and the agency heads. Instead, there are many balances IGs must strike in order to do their jobs well, and an IG needs to regularly re-evaluate that balance. Is the OIG adequately focusing on the big issues rather than the smaller problems? Is the office too outwardly or inwardly focused given the mission of the agency and given the significance of areas that may be missed because of that focus? Is the office focusing too much on raw numbers as a measure of its work, rather than recognizing that some of the most important work will not show up in data? Is the IG's work tracking the agency's management challenges, without succumbing to the temptation of limiting those challenges to the easy low-hanging fruit?

One area where balance is not the issue is the general failure of IGs to work effectively with whistleblowers. Congress believes IGs are both diligently investigating whistleblower disclosures and aggressively protecting them from retaliation. But in the vast majority of cases, they are not. Seriously addressing this disconnect will require attention both by the IG community and Congress.

In the end, it is important to remember that because Inspectors General are accorded extraordinary independence in order to do their jobs, they must also be held to the highest levels of accountability. Holding IGs accountable is a job that needs to be embraced more thoughtfully by Congress, and accomplished more effectively by their peers through the IG Council's Integrity Committee. It is a mistake to leave this task largely to agency heads, given their natural incentive to muzzle their IGs. Watching the watchdogs is an essential factor in keeping this vital system in balance.

RECOMMENDATIONS

IGs and Their Mission

- All IGs should be cognizant of their impact, and focus more on outcomes than outputs.
- IGs should regularly review their focus to determine if they are appropriately balancing their programs and activities based on the most significant issues facing their agencies.
 - Is the OIG adequately focusing on the big issues rather than the smaller problems?
 - Is the office too outwardly or inwardly focused given the mission of the agency and given the significance of areas that may be missed because of that focus?
 - Is the office focusing too much on raw numbers as a measure of its work, rather than recognizing that some of the most important work will not show up in data?
 - Is the IG's work tracking the agency's management challenges, without succumbing to the temptation of limiting those challenges to the easy low-hanging fruit?
- All IGs should review their programs of outreach to both Congress and the public and be sure they are doing as much of each as possible.

IG Reports

- Congress should consider revamping the reporting requirements of the Inspector General Law so that Semi-Annual Reports (SARs) are more meaningful and reflective of the information that Congress and the agencies actually need and use.
- Even in the absence of a change in the law, IGs should focus their SARs on the most significant audits, investigations, and inspections or evaluations, while briefly summarizing the others. Statistical tables should be placed at the end of the report in appendix documents, and the narrative should be readable and comprehensible to the average reader.
- The SARs should display management challenges and explain how the OIG's strategic plan tracks those challenges. The SARs should further explain how the annual audit plans track both challenges and strategy. There should also be easily understood performance measures presented on the IG's website and referenced in the SARs.
- IGs should report whether their recommendations were implemented and if they achieved the predicted results.
- IGs should report how much of "questioned costs" and "funds to be put to better use" are actually recovered or put to a better use.
- All OIG reports should be made public as soon as possible and should be posted on the website as soon as possible. If an IG report contains classified, proprietary, or Privacy Act-protected material, every effort should be made to redact that material and publish

what remains. If redaction would render the report unreadable, the IG should release a summary of the report.

IG's and Whistleblowers

- The entire IG community should engage in a review of how it treats whistleblowers, including how it handles hotline callers. All Inspectors General need to re-dedicate their offices to the recognition that whistleblowers are important and their complaints must be handled effectively. This means having a well-trained and experienced unit dedicated to conducting thoughtful examinations of both the disclosures made and of any allegations of retaliation.
- All OIGs need to institute mandatory procedures for keeping whistleblowers informed as to the status of their complaints.
- All OIGs need to ensure that their hotlines are staffed by well-trained federal employees familiar with both the law and federal rules, with the respective agencies' missions and programs, and with the often delicate emotional states of complainants.
- All but the smallest IGs should create an Ombudsman for whistleblower protection. That position should be separate from hotline operators and the investigators of whistleblowers' complaints.
- All IGs should carefully review hotline procedures to ensure a complaint is *not* being returned for investigation to the management of the office about which the complaint was made.

IGs and Congress

- Congressional offices should carefully reconsider the impact of mandates, such as the State Department IG's mandated embassy inspections, on the ability of OIGs to perform their missions. Such measures can prevent the OIG from putting its resources into the areas of highest risk to his or her agency.
- At the same time, congressional committees should conduct strenuous oversight of OIG operations and hold them to the highest standards of accountability and effectiveness.

Integrity Committee

- The Integrity Committee should become more transparent—both in its processes and its findings.
- The Committee should make explicit recommendations at the end of an investigation conducted under its auspices.
- The Committee should not be chaired by the FBI's designee to the IG Council. That FBI official should instead be an advisor to the Integrity Committee. The Chair of the Committee should be an Inspector General with experience in investigating sensitive matters.

- Membership on the Integrity Committee should be rotated.
- The Chair of the Committee should assign investigations to IGs who have been determined to possess the expertise needed for the particular inquiry, and sufficient resources to proceed in an expeditious manner.
- The Chair of the Committee should work with the Chair of the IG Council to ensure that sufficient resources and experienced staff are available for all of the Committee's necessary activities.

Although not addressed in the text, the following recommendations should also be implemented:

Personnel and Pay Issues

- Congress should exempt OIGs from the penalties associated with the rehiring of federal retirees or annuitants. Experienced auditors and investigators who wish to serve their country again should not have to sacrifice their pensions to do so.
- Especially for the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and those OIGs involved in overseeing the Recovery Act, these temporary offices particularly need the ability to ramp up quickly and hire experienced staff immediately. Thus, waiver of some Civil Service procedures pursuant to 5 USC 3161 for at least the first six months of an office is also helpful.
- Finally, Congress should consider allowing these special and temporary offices to offer higher salaries to attract more experienced auditors and investigators. POGO believes that contracting out some of these vital and inherent governmental functions is a poor substitute for these other measures.

ACRONYMS AND GLOSSARY

CDC	Center for Disease Control
CIA	Central Intelligence Agency
CIGIE	Council of the Inspectors General on Integrity and Efficiency
CPE	Critical Point Evaluations
CRI	Civilian Reprisal Investigations
CRS	Congressional Research Service
DCMA	Defense Contract Management Agency
DFE	Designated Federal Entity
DHS	Department of Homeland Security
DOD	Department of Defense
DOI	Department of Interior
DOJ	Department of Justice
DOL	Department of Labor
FBI	Federal Bureau of Investigations
FDA	Food and Drug Administration
GAO	Government Accountability Office
HUD	Housing and Urban Development
HHS	Health and Human Services
IC	Integrity Committee
IG	Inspector General
MRI	Military Reprisal Investigations
NASA	National Aeronautics and Space Administration

NIH	National Institutes of Health
NSA	National Security Agency
NSF	National Science Foundation
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSC	Office of Special Counsel
SAR	Semi-Annual Reports
SIGTARP	Special Inspector General for the Troubled Asset Relief Program
USDA	United States Department of Agriculture

Civilian Reprisal Investigations

Office within the Department of Defense Office of the Inspector General that deals with cases of possible retaliation against whistleblowers from the civilian workforce within the DoD.

Congressional Research Service

The public policy research arm of Congress. As a legislative branch agency within the Library of Congress, CRS works exclusively and directly for Members of Congress, and their committees and staff on a confidential, nonpartisan basis.

Council of the Inspectors General on Integrity and Efficiency

A council that coordinates and enhances governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in federal programs. The CIGIE comprises all IGs.

Critical Point Evaluations

An evaluation that is used to identify potential problems in major programs early enough to prevent the development of serious problems.

Declination Rate

The rate of referrals for prosecution declined by the Department of Justice.

Designated Federal Entity

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

Director of National Intelligence

Serves as the head of the Intelligence Community. The DNI also acts as the principal advisor to the President; the National Security Council and the Homeland Security Council for intelligence

matters related to the national security; and oversees and directs the implementation of the National Intelligence Program.

General Services Administration

An independent agency of the federal government that helps manage and support the basic functioning of federal agencies. GSA supplies products and communications for U.S. government offices, provides transportation and office space to federal employees, and develops government-wide cost-minimizing policies, among other management tasks.

Government Auditing Standards

Standards that all Inspectors General are required to follow when conducting an audit. Also known as The Yellow Book standards.

Government Performance and Results Act

Legislation passed in 1993 that requires agencies to produce strategic plans to serve as the framework for annual performance plans that would be based on budgetary resources for each year.

Integrity Committee

An interagency committee that receives, reviews, and investigates administrative allegations against an IG or senior staff member.

Merit Systems Protection Board

An independent, bipartisan board that protects the federal merit systems and the rights of all of those who work under those systems.

Military Reprisal Investigations

Office within the Department of Defense Inspector General's Office that deals with cases of possible retaliation against whistleblowers from the military workforce within the DoD.

National Security Agency

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

Office of Management and Budget

A cabinet-level office that is the largest office within the Executive Office of the President. OMB is tasked with giving expert advice to senior White House officials on a range of topics relating to federal policy, management, legislative, regulatory, and budgetary issues.

Office of Professional Responsibility

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

Recovery Accountability and Transparency Board

A board that comprises Inspectors General that will work with agencies responsible for spending Recovery Act money to ensure that funds are awarded and distributed in a prompt, fair, and reasonable manner.

Semi-Annual Report

A report given to Congress from Inspectors General every six months.

Special Inspector General for the Troubled Asset Relief Program

A special Inspector General appointed by the President and confirmed by the Senate, given the responsibility to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets under the Troubled Asset Relief Program.

Appendix A

Project On Government Oversight,
“Inspector General Independence Recommendations
and Their Status”

Inspector General Independence Recommendations and Their Status

In POGO's first IG report, *Inspectors General: Many Lack Sufficient Tools for Independence*, dated February 29, 2008, POGO made a number of recommendations, both general and specific. The following is the list of those recommendations, with their current status.

GENERAL RECOMMENDATIONS FOR ALL IGS

- 1. Combine the PCIE and ECIE into one Council of all IGS.** The creation of a statutory Council of all IGS will strengthen the concept of an IG community, increase the sharing of resources, and enhance their abilities to coordinate programs across agencies and to train a professional class of IG employees.

Passed as law through the IG Reform Act of 2008.
- 2. Remove the Deputy Director of OMB as the Chair of the combined Council of IGS.** Removing the Deputy OMB Director as Chair and replacing him with an IG is a necessary step in continuing the professionalization of the IG workforce. The Deputy OMB Director would serve as a figurehead Executive Chair, presiding over Council meetings and serving as liaison to the White House.

Passed as law through the IG Reform Act of 2008.
- 3. Create a resource pool of professional employees for smaller IG offices.** The new Council of IGS should be given sufficient budget to cover its own administrative needs and the establishment of a pool of dedicated professionals to assist IGS when the need arises. A resource pool for IG offices, which would provide trained government auditors, investigators, information technology experts, and lawyers, would be both more efficient and more effective, particularly for the smaller DFE IGS.

Has not yet been implemented, although additional funding streams have been made available to the new Council of IGS.
- 4. Extend the language for PCIE IG qualifications to DFE IGS.** The language mandating that presidentially-appointed IGS should be appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations" must be extended to cover agency-appointed IGS as well.

Passed as law through the IG Reform Act of 2008.
- 5. Revive the IG candidate selection committee.** The selection committee should be established in the Council of IGS. Nobody understands the work required of an IG office better than an IG. Having a slate of well-qualified candidates from which to choose will not encroach on executive powers, as the president or agency head would not be forced to

choose one of the recommended candidates. However, Congressional and public opinion would surely force the appointing authority to explain why he or she would ignore such a recommendation.

Passed as law through the IG Reform Act of 2008.

- 6. Set fixed terms of office for PCIE IGs.** Presidentially-appointed IGs should be appointed for fixed terms of seven years, with the possibility of reappointment. POGO has concluded that fixed terms for the DFE IGs, however, would be unwise and unnecessary. Most DFE IGs are career civil servants and are already protected from being fired by Civil Service or Senior Executive Service provisions. But forcing them to leave their positions at the end of a seven-year term could create real hardships for the dedicated public servant. POGO was further persuaded that longevity in office can be a positive force in the offices of agency-appointed IGs. The value of a career DFE IG's institutional memory is particularly important in small offices without a large cadre of long-time employees.

Not included in IG Reform Act of 2008, but POGO still favors.

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

Although administrations have traditionally balked at what they consider such a limitation on executive power, POGO is persuaded by the analysis of the Congressional Research Service that ample precedent exists for statutory limits on the president's authority to remove officials appointed with the advice and consent of the Senate.¹

Not included in IG Reform Act of 2008, although the law requires President to give 30 days' notice of intent to remove or transfer an IG. POGO still favors removal only for cause.

- 8. Establish separate budget authority and transparent public budgets for all IGs.** Like the presidentially-appointed IGs, the agency-appointed ones also need to have an actual line item in the president's budget submission to the Congress. Further, agencies must be required to submit a separate statement comparing the IG's request with the agency's request, and with the president's final submission to Congress.

Although separate budget authority was not granted, several improvements were passed as law through the IG Reform Act of 2008, including the separate IG statement being sent to Congress.

¹ Statutory Inspectors General: Legislative Developments and Legal Issues, pp. 3-8. See also its appendix of select statutes that provide similar limits on the president's authority, pp. 17-18.

9. **Clarify the law so that once an IG's budget has been approved, expenditures can be made without further approval.** IGs must be able to control the expenditure of their own budgets once the amount has been approved. Agencies should not be allowed to delay hiring or other expenditures by an IG – delays that sometimes amount to denials.
Not included in IG Reform Act of 2008, but POGO still favors.

10. **Forbid IGs to receive cash awards or bonuses, but raise their pay.** Regardless of the various pay schedules that apply to the different IGs, steps should be taken so that IGs are paid commensurate with the total compensation received by senior staff at their agency.
Passed as law through the IG Reform Act of 2008.

11. **Require IG offices either to have their own counsel or to use another IG's counsel.** It is essential that every IG have access to independent legal advice, either in-house or from other IGs, and in no case should an IG be allowed or required to use the agency's general counsel for legal advice. In the case of IG offices that are too small to support a full-time staff attorney, the IG should be able to share counsel with another IG or to seek assistance from attorneys employed by the joint council of IGs.
Passed as law through the IG Reform Act of 2008.

12. **Make clear that IGs should rely on their own in-house counsel for advice about how FOIA applies to IG reports.** Information that is generated within the IG's office and from its own investigation—such as the IG's recommendations and agency responses to those recommendations—should not be subject to redaction by the agency general counsel.
Not included in IG Reform Act of 2008, but POGO still favors.

13. **Ensure direct and clear links to the IG's web page, and provide IGs autonomy over the content on the web page.** All IGs' web pages must be easily accessed directly from their agencies' home pages. IGs must have absolute autonomy over their own websites, and must be required to post promptly all public reports in a form easily and directly accessible, printable, and downloadable. Information about the IG office's operations, including how to file complaints or use the hotline, must be easily accessible.
Passed as law through the IG Reform Act of 2008.

14. **Expand IGs' subpoena power.** All IGs need to have their subpoena power specifically broadened to include electronic documents, tangible records, and the power to compel formal depositions, interviews, and other informal assistance.
Partially adopted in IG Reform Act of 2008; IGs granted power to subpoena electronic documents and tangible records, but not to compel testimony, interviews, or other informal assistance. POGO still favors.

15. **Amend the Program Fraud Civil Remedies Act to apply to DFE IGs.** The agency-appointed IGs must be granted the authority to recover administratively the smaller but still significant sums defrauded from U.S. government programs. This authority must be granted to the IGs and not just to their agencies.

Passed as law through the IG Reform Act of 2008.

16. **Refrain for now from consolidating any of the smaller IG offices.** If all of the preceding recommendations are adopted, it may well be that the smaller agency-appointed IG offices will gain sufficient independence and resources that they will be able to function effectively and accomplish their missions.

No consolidation has occurred.

SPECIFIC AGENCY RECOMMENDATIONS

1. **Enact legislation to make clear that all provisions of law aimed at enhancing the independence of statutory IGs should equally apply to the three legislative Inspectors General.** Congress has either ignored or forgotten the three IGs in its own backyard by failing to include them in proposed legislation. These IGs need the same tools as other IGs in order to perform their mission. The fact that they are included within the ECIE makes clear there is no overwhelming issue of separation of powers that should prevent their being granted the same powers and authorities as all other statutory IGs.

Partially adopted in IG Reform Act of 2008.

2. **The Peace Corps IG should be excepted from that agency's five-year limit.** It may be desirable for most Peace Corps employees to serve only for five years, with the possibility of two extensions for a total of eight and a half years at the agency. However, POGO believes that limitation is deleterious to the mission of the Peace Corps IG's office. The Peace Corps IG should be exempted from this limit, and the IG should have the same terms of service as do most of his colleagues in the DFE IG community.

Not included in IG Reform Act of 2008, but POGO still favors.

3. **Justice Department IG and the DOJ Office of Professional Responsibility should compromise.** POGO was persuaded that the special situation at the Justice Department and the history of the OPR allow for some continuing authority of the OPR in investigating allegations of improper professional conduct. However, because the Counsel of OPR reports to the Attorney General and the Deputy Attorney General, POGO supports a compromise whereby the IG would have the authority to investigate any allegations of professional misconduct involving the offices of the Attorney General or the Deputy Attorney General. All such accusations against any other Justice Department attorneys would still be referred to the OPR for investigation. DOJ should ensure that OPR informs the IG of all cases it opens.

Not included in IG Reform Act of 2008, but POGO still supports this compromise.

4. **Boost the budget of the State Department OIG.** While most IG offices are underfunded, the State Department OIG is under-resourced to the point of crisis. It is unacceptable that, in the past five years, the State Department's budget has soared by 55 percent, while that of its IG has actually declined in real dollars by 6 percent.

Budget has been increased recently, but State IG still lacks the resources it needs to accomplish its mission.

5. **Require the State Department Bureau of Diplomatic Security and the Office of Inspector General to execute a formal written Memorandum of Understanding.** The MOU should delineate the respective areas of responsibility, making clear that the IG should have unfettered investigative authority over all matters of waste, fraud, abuse, and misconduct concerning any Department employee. Consideration should also be given to including provisions allowing for DS to share resources with the IG as and when necessary.

POGO has been told the MOU still does not exist. POGO still favors.

6. **Require the Department of Defense Inspector General to employ its own general counsel.** The Defense Legal Services Agency, which reports to the DOD General Counsel, fails to address the essential fact that the DOD IG must have permanent access to his or her own in-house counsel.

This was implemented administratively by the DOD as two separate pieces of legislation requiring the change (IG Reform Act of 2008 and the FY08 National Defense Authorization Act) were in the process of passing.

7. **GAO should conduct an extensive investigation of the military and intelligence non-statutory IGs.** The current situation in which literally hundreds of military "inspectors general" lack independence and answer to their agency chiefs is unacceptable. The same applies to the Department of Defense intelligence agencies that still do not have statutory IGs.

This has not occurred; POGO still recommends.

8. **Congress must reconsider the current mish-mash of IGs serving the civilian intelligence community.** Pending legislation would substitute a presidentially-appointed IG to oversee the entire intelligence community for the agency-appointed IG serving under parallel authority in the Office of the Director of National Intelligence. The CIA OIG is presidentially-appointed, but also serves under authority parallel to the IG Act. While POGO agrees that this vital community should have an IG subject to both presidential appointment and Senate confirmation, the question of how the IG for the entire intelligence community will relate to other IGs in the community, whether PCIE, DFE, or non-statutory, is troubling and needs to be clarified.

This has not occurred; POGO still recommends.

Appendix B

Project On Government Oversight,
“Major Provisions of the Inspector General Reform Act of 2008”

Major Provisions of the Inspector General Reform Act of 2008

The Inspector General Reform Act of 2008¹ includes significant provisions to improve both the independence and accountability of Inspectors General. While, unfortunately, there were a few provisions that either were not included or were watered down through the sausage-making process of legislating, many new provisions of law are worth noting:

- The pay of IGs—which in some cases had fallen so low that some IGs were earning tens of thousands of dollars less than some of their subordinates²—was raised in such a way that they would receive the same total compensation as the average received by other senior level executives of their agencies. However, IGs are forbidden to receive any cash award or bonus (Secs. 4 and 5).
- Each IG shall “obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General” (Sec. 6).
- Establishment of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). This statutory Council of all IGs replaced the two separate councils that had been created by Executive Order—the President’s Council on Integrity and Efficiency for presidentially-appointed IGs, and the Executive Council on Integrity and Efficiency for agency-appointed ones (Sec. 7).

Important new provisions relating to the CIGIE outlined in Section 7 include:

- The Chair of the Council is an IG elected by the member Inspectors General, a decided improvement over the prior system in which the Chair was the Deputy Director for Management of OMB. The Chairperson appoints his or her deputy from among the other type of statutory IGs (for example, the current Chair, USDA IG Phyllis Fong, who is presidentially appointed, chose as her deputy the IG of the Farm Credit Administration, Carl Clinefelter, who is agency-appointed). OMB’s Deputy Director for Management now serves as Executive Chair of the Council, but most of the real powers of the CIGIE reside in the Chairperson.

Functions and duties of CIGIE include:

- To “continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, and abuse.”
- To “develop plans for coordinated, Governmentwide activities that address these problems . . . including interagency and interentity audit, investigation, inspection, and evaluation programs.”

¹ Inspector General Reform Act of 2008, Pub. L. No. 110-409, October 14, 2008.

² Project On Government Oversight, *Inspectors General: Many Lack Essential Tools for Independence*, February 26, 2008, p. 15, <http://pogoarchives.org/m/go/ig/report-20080226.pdf>.

- To maintain “a corps of well-trained and highly skilled Office of Inspector General personnel,” a website for all IGs; one or more academies “for the professional training of auditors, investigators, inspectors, evaluators, and other personnel of the various offices of the Inspector General.”
 - Establishment under CIGIE of an Integrity Committee, “which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members.”
- IGs will include in their budget requests to their agency heads the amount of funds needed for operations, training, and to support the Council. The agency chiefs must submit to the President the aggregate request of the IG plus any comments of the IG regarding the agency request. The President will include in his budget to the Congress a separate statement of the IG’s budget estimate, along with the amount requested by the President for the IG, and any comments of the IG if he or she concludes that the President’s budget “would substantially inhibit the Inspector General from performing the duties of the office” (Sec. 8).
- IGs received additional subpoena power (Sec. 9) and authority under the Program Fraud Civil Remedies Act (Sec. 10), as well as law enforcement authority for those IGs who had previously lacked it (Sec. 11).
- Each federal agency is required to establish and maintain on its homepage a direct link to the website of the OIG that “shall be obvious and facilitate accessibility” to the OIG’s website. The IGs must establish and maintain a direct link for individuals to report fraud, waste, and abuse, and shall not disclose the identity of such individuals without their consent (Sec 13).

Appendix C

Project On Government Oversight,
“Questionnaire and Summary of Responses,”

2008

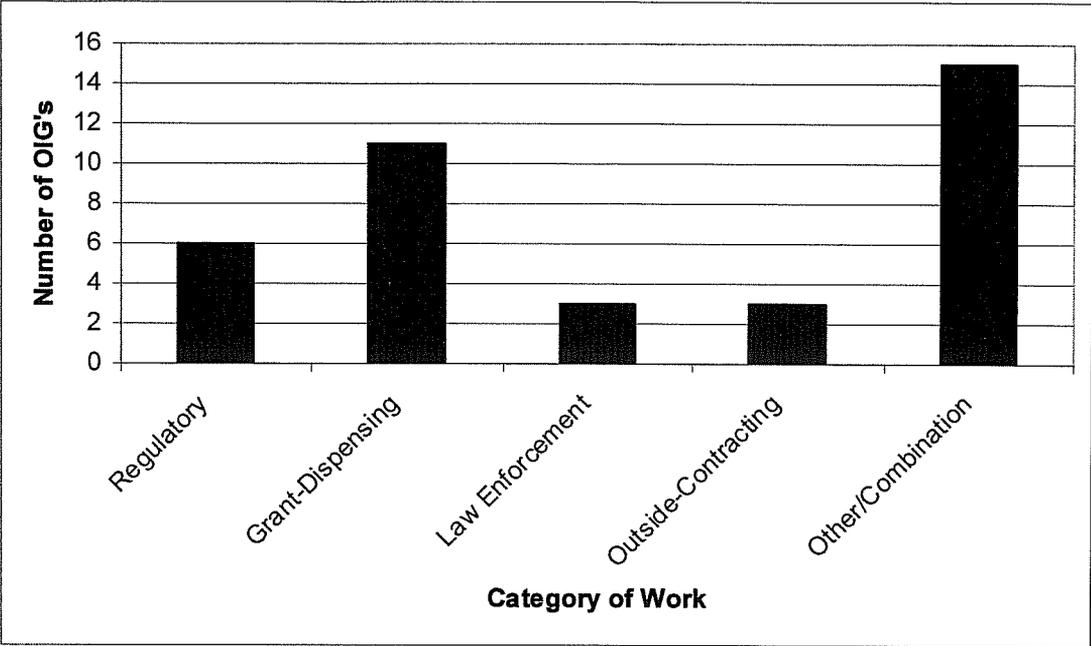
Methodology

In July 2008, we distributed a non-scientific questionnaire to 64 OIGs,¹ 38 of which responded. The questionnaire consisted of fifteen questions, many of which also included sub-questions. While the majority of questions were intended to be close-ended, the format of the questionnaire was such that OIGs were able to expand upon their responses. Many of the responding OIGs chose to do so.

In order to present responses to our questionnaire, we categorized them to the best of our ability. The intent of our categorization was twofold: (1) to present the responses in a consistent and comparable manner, and (2) to ensure that responses would remain anonymous. To provide a more complete depiction of the responses, we also included a selection of notable responses verbatim. Because our questionnaire was non-scientific, we do not contend that the responses presented in this appendix or report are empirically representative of the entire population of OIGs. Nonetheless, the responses provide an illuminating window into the IG community.

¹ At the time of POGO's questionnaire, there were 64 statutory IGs; at this writing there are 67.

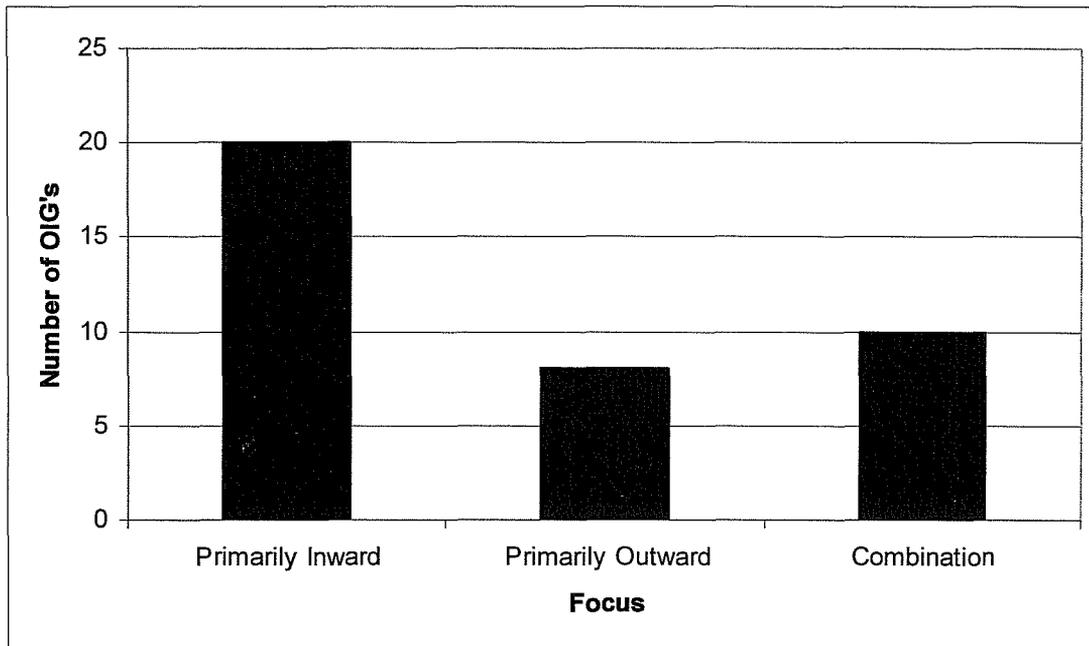
Question 1: What type of work is your agency primarily engaged in?



Notable Responses:

- “1% Regulatory; 10% Grant-Dispensing 20%; Law Enforcement; 40% Outside-Contracting; 29% Other/Combination”
- “100% Grant-Dispensing”
- “10% Regulatory; 20% Grant-Dispensing; 70% Law Enforcement”

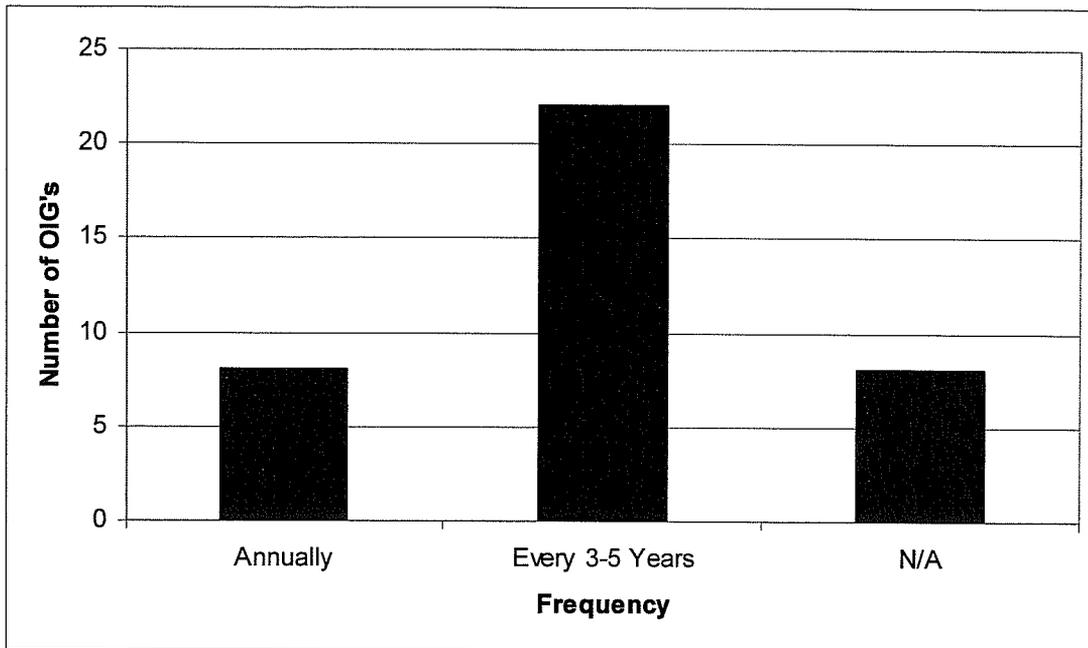
Question 2: What is your focus as IG?



Notable Responses:

- “The majority of our audit & investigative resources are focused on the effectiveness and integrity of [Agency] programs and operations.”
- “Our work mostly deals with the agency but on rare occasions we have issues that deal with individuals or businesses that are involved in wrongdoing against the agency.”
- “90% Outward; 10% Inward”
- “100% inward to agency employees and economy, efficiencies, etc.”

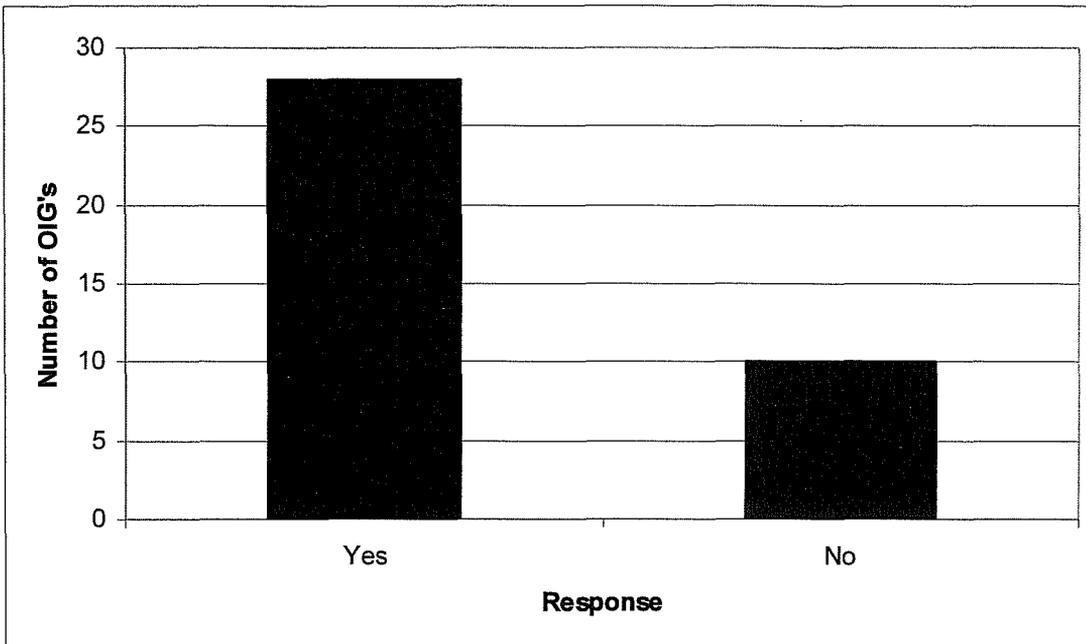
Question 3a: How often do you publish a strategic plan for your office?



Notable Responses:

- “OIG publishes a strategic plan every three years. Each plan covers a 5-year span.”
- “[Agency] OIG prepares a strategic plan every five years. The current plan runs through 2011.”
- “OIG’s last strategic plan was published in CY 1997. OIG is currently developing an updated and revised strategic plan and accompanying Performance Plan. Both will be completed and implemented during FY 2009.”
- “To my knowledge, this office has never issued a strategic plan. Because we are a small organization, we do some proactive work in audits and mostly reactive work in investigations. Half of my audit work is legislatively mandated. Our work does track to some degree to the management challenges. Depending on resources available.”
- “It will be included in our next semi-annual report”
- “The [Agency] OIG Strategic Plan was published in FY 2005. The plan sets forth short and long-term goals over the next five years along with objectives designed to support [Agency] in achieving its mission. In addition to the plan, we also publish a Strategic Plan Results Report annually to measure our activities and to ensure the efficient and effective management of our resources.”

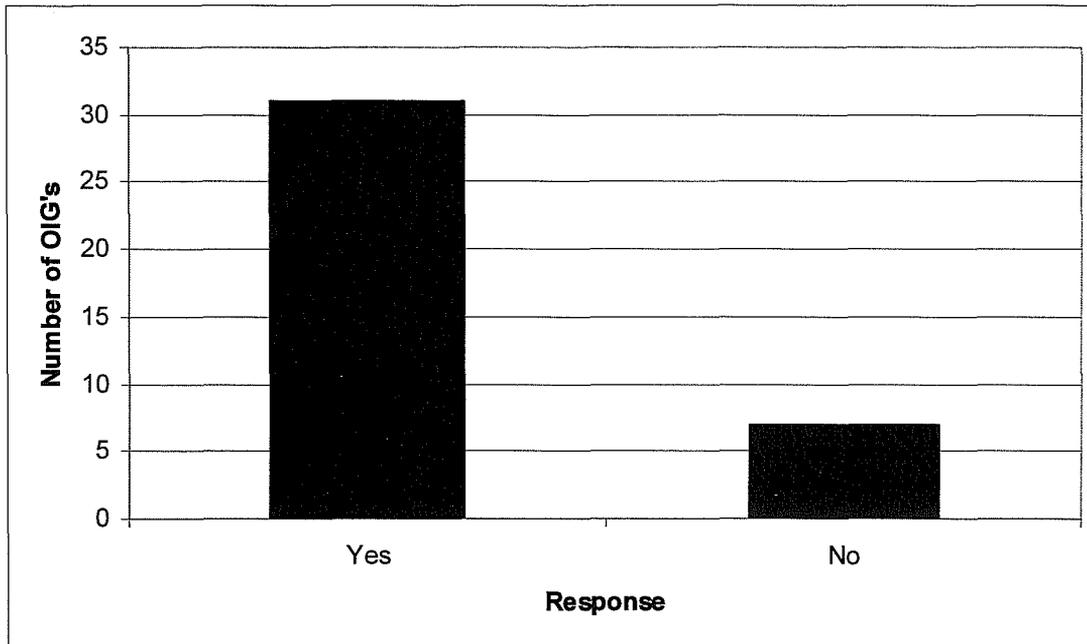
Question 3b: Is your strategic plan easily accessible on your web page?



Notable Responses:

- “YES. There is a link to our strategic plan on the navigation bar of our front page”
- “No – the plan is an internal document”
- “We are designing a new website that will enable us to make it available”

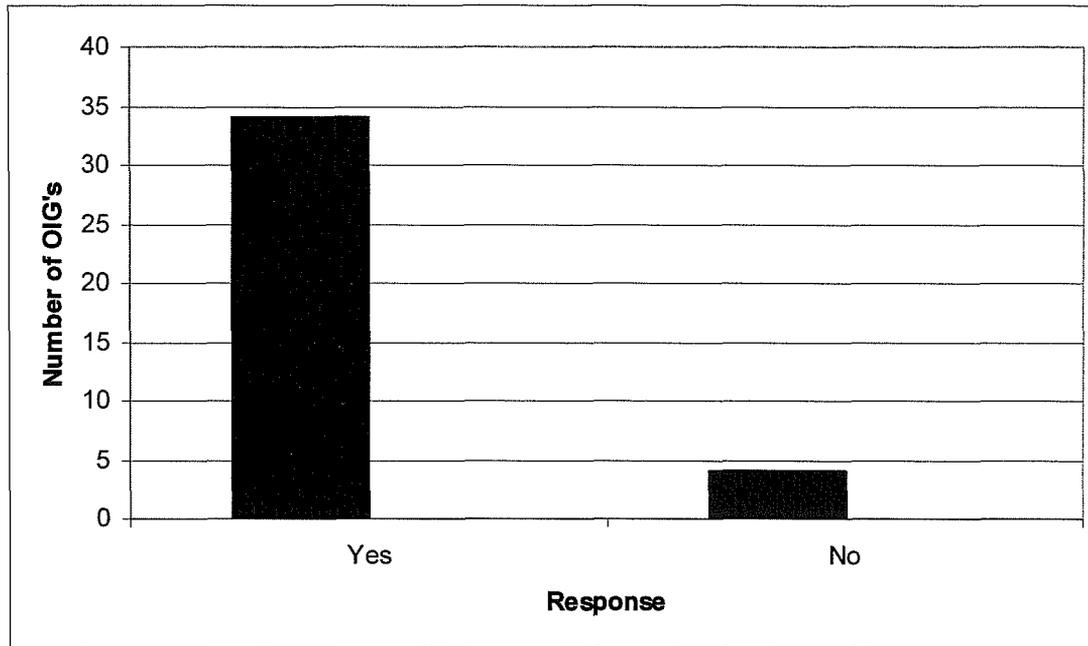
Question 3c: Does your strategic plan track the management challenges?



Notable Responses:

- “N/A. OIG gathers information annually to assess and report on management challenges”
- “YES, as well as Department and Administration strategic priorities, and the GAO High-Risk Series, as shown in the appendix to our strategic plan.”
- “The current plan does not track management challenges, but the challenges are tracked in our Annual Plan.”
- “The plan ensures that at least 80 percent of our audits, inspections, and reviews examine [Agency] top management challenges”
- “The plan tracks risks to our agency and OIG functions, which is broader than tracking challenges. (If it only tracked the challenges, it could hinder the OIG’s identification of new challenges.) To the extent that the challenges reflect agency risks, the challenges are certainly reflected in it.”
- “No, but our SAR does. However, the OIG Strategic plan does align with the Agency Strategic Plan”
- “We do not have any direct tracking or linking to the management challenges, but we take into consideration the management challenges”

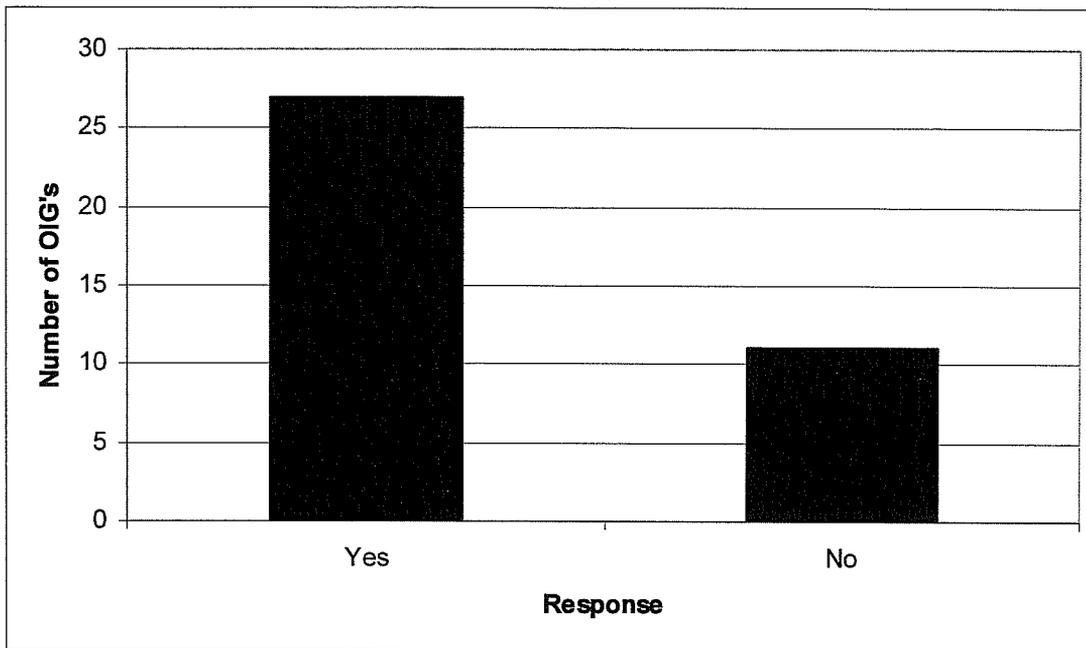
Question 3d: Are your audits and inspections/evaluations planned so as to implement your strategic plan?



Notable Responses:

- “N/A. OIG issues planning guidance for the development of audit and inspection proposals that consider [Agency] strategic plans, items of Congressional interest, work requested by Agency managers, and the risk and resources associated with various programs.”
- “There are several considerations. The plan is an important consideration.”
- “OIG annual planning is designed to implement the goals set out in the strategic plan.”

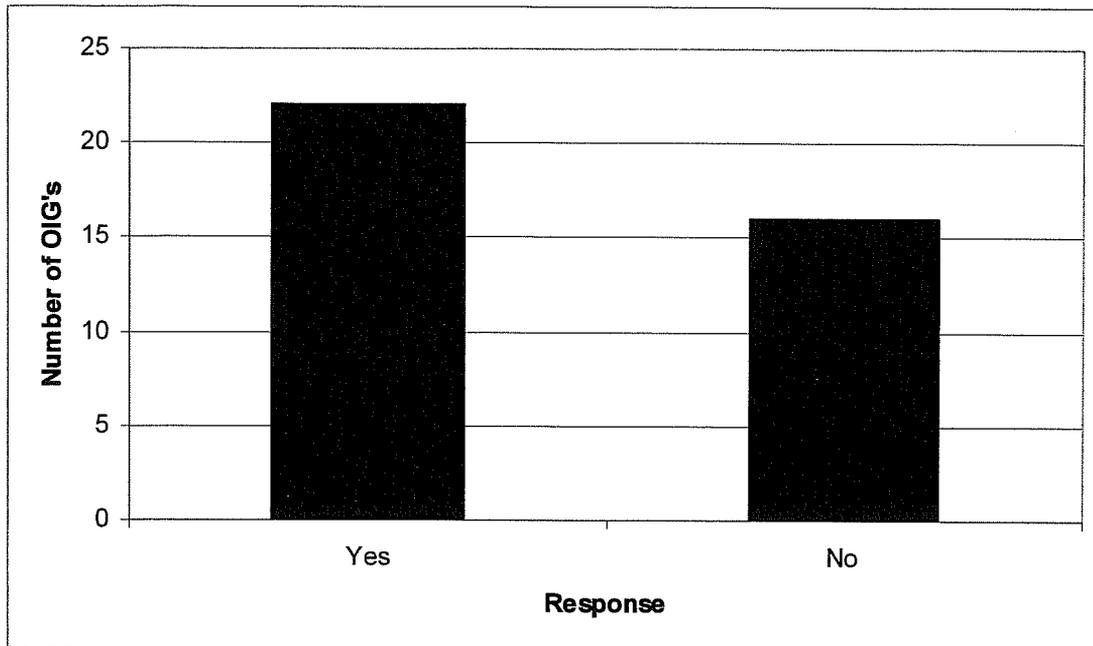
Question 4a: Do you plan resources so as to be able to respond to unexpected intake from whistleblowers, the public or the press?



Notable Responses:

- “Yes, to some extent. Most OIG audits, investigations, and inspections are based on our planning process, which involves analyses of [Agency’s] management challenges, past practices and problems, trend analyses, discussions with [Agency] officials and Congress, and results of past audits, inspections and investigations. It is difficult to plan an identifiable amount of resources to set aside for unexpected requests from any source.”
- “Annual work plan and resources are reprioritized when unanticipated work arises.”
- “YES. In our planning we expect that resources will need to be reallocated to respond to unanticipated intake and changing priorities. We also have established offices dedicated to accepting and responding to intake from whistleblowers, the public, and the press.”
- “No. we divert resources from lower priorities”
- “OIG plans its work to maximize available resources. As much of our work is assigned to current issues and program priorities as well as requests from Congress, the Board of Directors and the public, our planning is dynamic.”

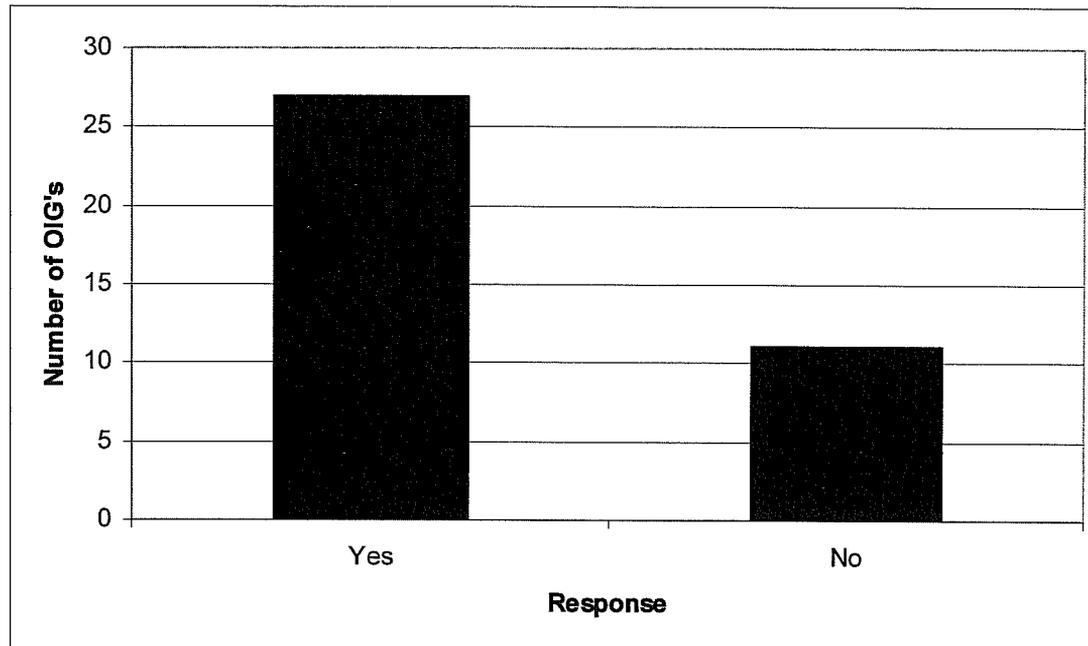
Question 4b: Do you plan for unexpected requests from Capitol Hill?



Notable Responses:

- “Makes adjustments to the annual work plan to accommodate unexpected Congressional requests when they arise.”
- “YES. In our planning we expect that resources will need to be reallocated to respond to unexpected requests. We also have a Congressional Liaison Office dedicated to managing such requests and inquiries from Congress.”
- “While we do not formally plan for unexpected requests from the Congress or any other source, our operating plan is flexible enough to accommodate emergencies or unexpected requests as they occur.”
- “How can you “plan” for the unexpected? We may re-prioritize due to unexpected requests.”
- “We maintain contact with the Hill staff and members to keep them informed of our concerns and activities and to help us anticipate their needs. We also make every effort to address any significant requests, whether expected or not, as promptly as possible.”

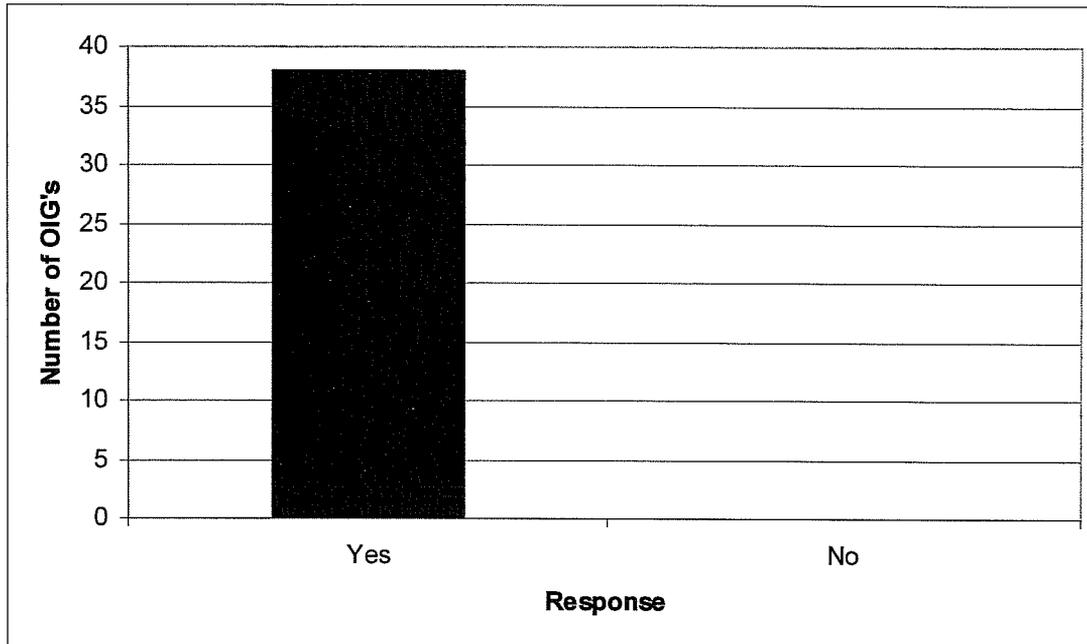
Question 4c: Do you find that your plans are adversely affected by unexpected demands?



Notable Responses:

- “To some extent. Planned audits can be affected by unexpected demands. This may require us to redirect resources from our planned or ongoing audits, inspections and investigations.”
- “No, however there is an increasing amount of work mandated by law that reduces the discretionary resources available to OIGs.”
- “We are flexible and able to respond to unexpected and emerging issues.”
- “Yes. This often leaves us without sufficient resources to complete all of the assignments presented in our annual work plan”
- “Yes. Because OIG has limited resources, staff must constantly reassess and prioritize which oversight activities we conduct. This is particularly important when OIG is asked to accommodate specific requests from Congressional stakeholders.”
- “Planned audits may have to be delayed by unforeseen requests, but we welcome the input. The new information or request may reflect a higher priority than other work we had planned, so the input keeps us focused on the most important jobs to be done and helps ensure that we meet the needs of our primary stakeholders.”

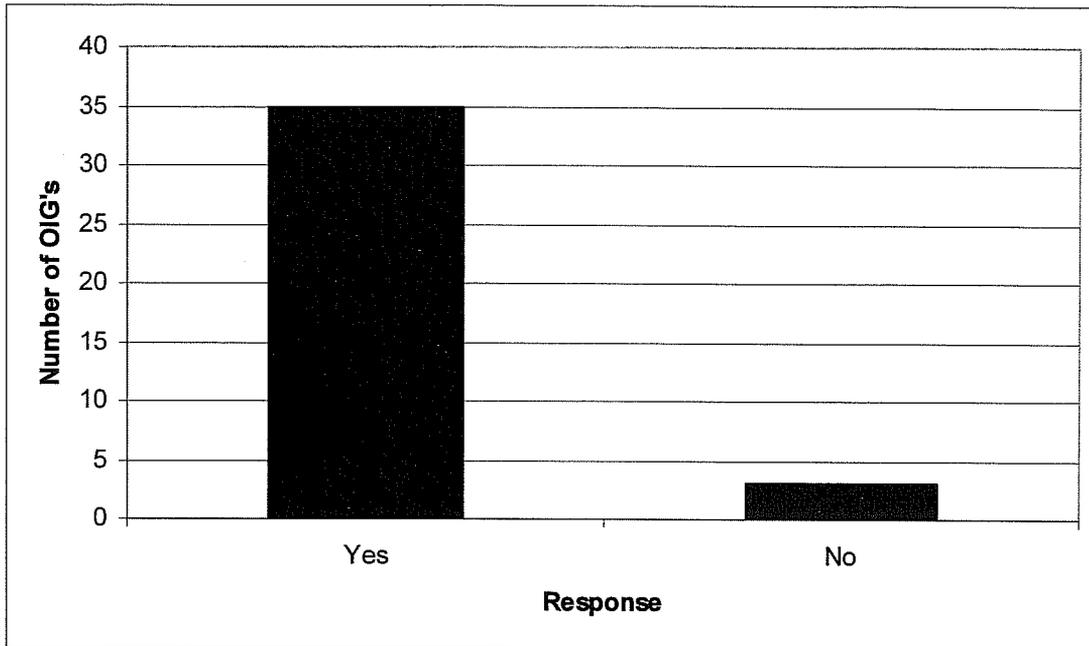
Question 5: Did you routinely keep track of your recommendations and whether the agency has implemented them prior to Chairman Waxman's December 2007 request?



Notable Responses:

- “OIG routinely did and still does keep track of its recommendations. Those recommendations and the agency responses are captured in the Semiannual Report that [Agency] OIG prepares for distribution every six months. Unless those recommendations are significant and recurrent, however, [Agency] OIG does not keep track of them for seven years as Mr. Waxman’s letter requested.”
- “We have an automated system for tracking completion.”
- “Yes, the OIG routinely tracks the status of recommendations to ensure they have been implemented, which has been our practice since the OIG was created. The Inspector General Act of 1978, as amended, requires each Inspector General to semiannually report to Congress significant audit recommendations that the Agency has not acted on as of the end of the reporting period. ”
- “Yes, with regard to more significant recommendations, but we are implementing new IT programs that will enable us to track all of our recommendations.”
- “Yes, this information is reported in our SAR. The request from Chairman Waxman was redundant and time consuming and required a reallocation of personnel to respond. We basically had to provide the same information that we communicate to congress two times per year, but were required to do so in a different format. I did not find the exercise to be a very productive use of resources.”

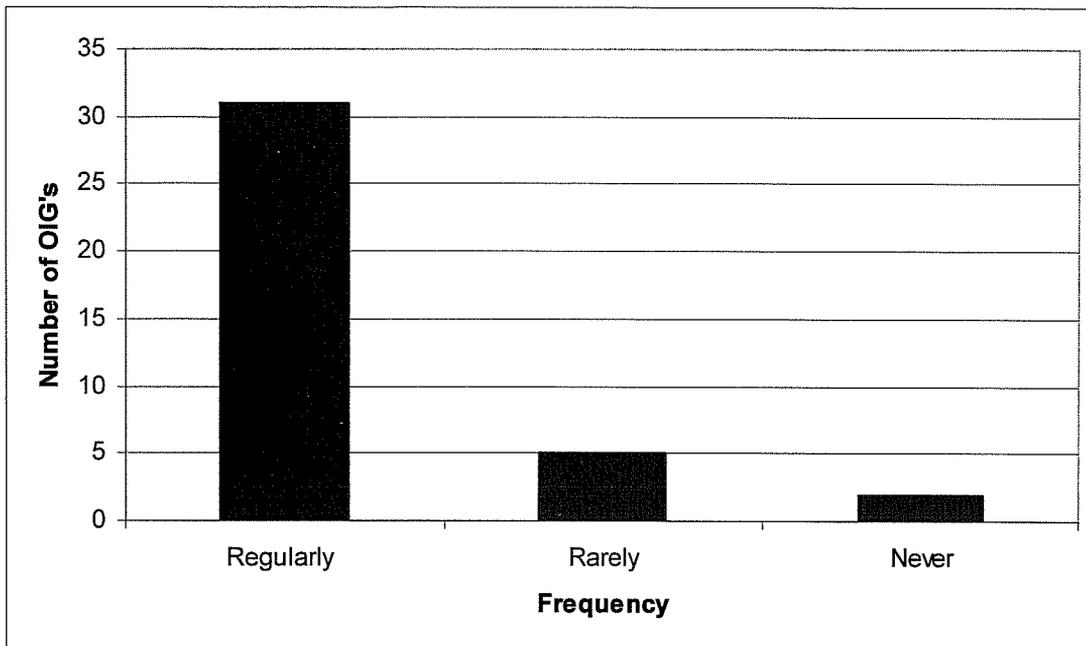
Question 6: After your agency has implemented your recommendations, do you keep track to determine if they produced the predicted results?



Notable Responses:

- “We periodically perform follow-up audits to determine the effectiveness of our recommendations.”
- “Yes; often follow-up audits or inspections are needed to assess the full impact of any changes.”
- “After all recommendations are closed, we check on agency implementation by conducting follow-up audits, inspections, or reviews of some of the most critical recommendations.”
- “We attempt to conduct follow-up audit work however given the volume of work and staffing levels this is not always achievable.”
- “Rarely”

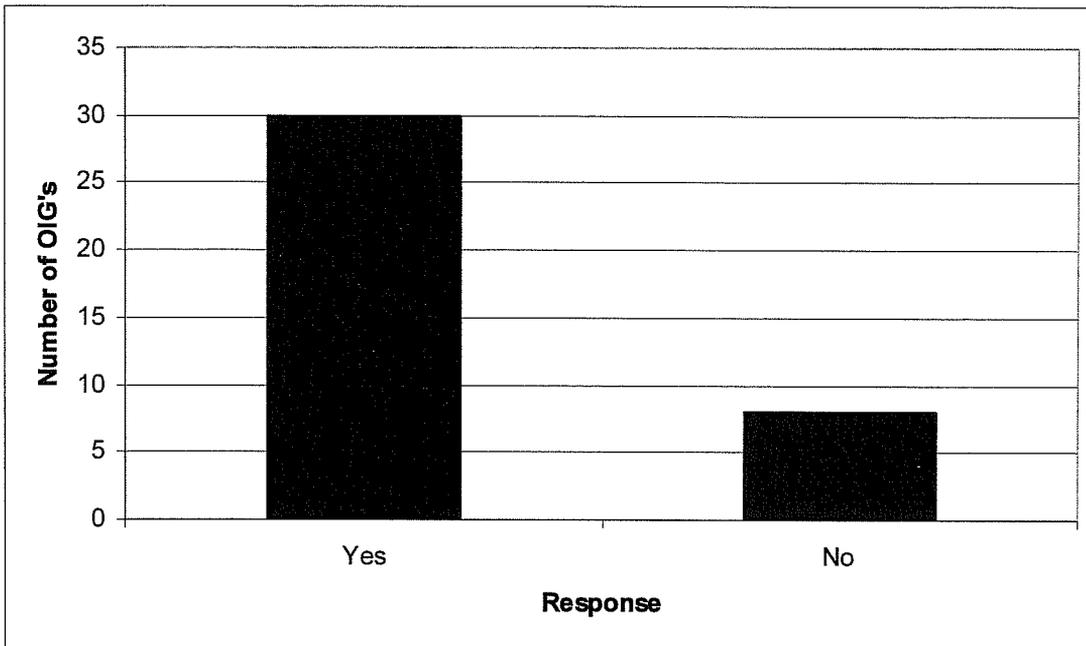
Question 7a: Concerning your relations with Congress: How often do you meet with staff or members of your Congressional oversight committees (aside from formal hearings)?



Notable Responses:

- “We meet with congressional staff on a regular basis. We meet with staff each year to discuss OIG’s planned and ongoing work on various priority issues, discuss our findings on specific, high profile issues that may arise, and discuss OIG’s work on an issue or subject as requested by a Member(s) or committee. OIG also meets with congressional staff each year to discuss the President’s budget request for OIG.”
- “As needed or requested, which is typically 2-3 times per week (146 meetings in FY 2008).”
- “2 times a year. Not enough.”
- “Never”
- “As needed during the year. Each August we attempt to meet in person or set up telephone conference calls to discuss the plan for upcoming fiscal year.”

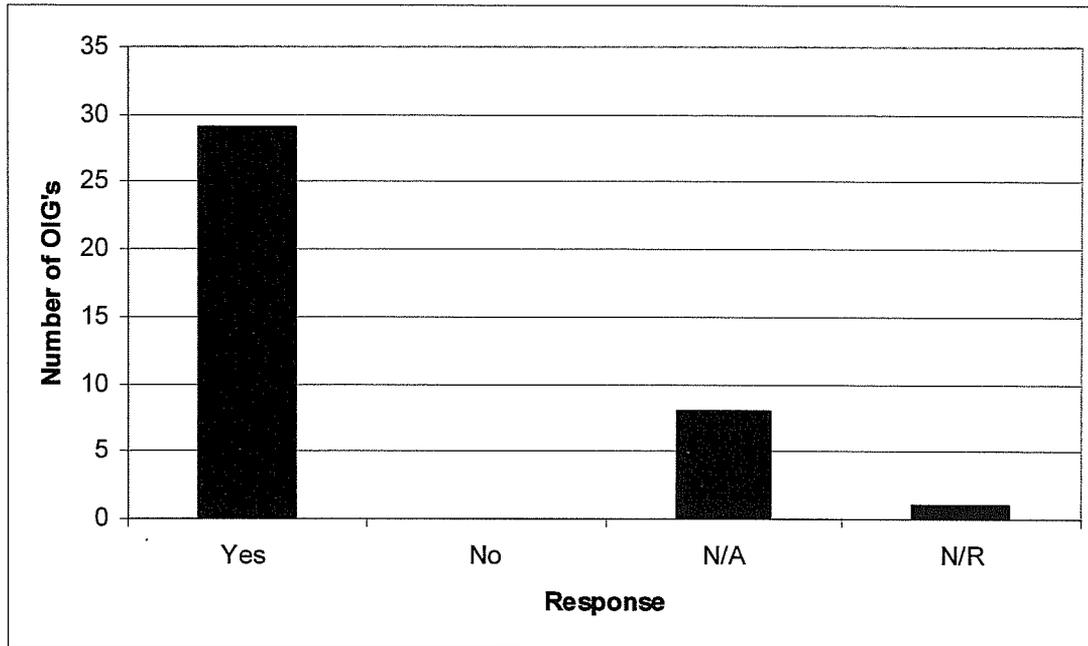
Question 7b: Concerning your relations with Congress: Do you seek to brief them periodically?



Notable Responses:

- “YES, regarding the results of work products initiated at their request. We also alert staff to significant future work products in which they may have an interest.”
- “When some new major vulnerability is identified.”
- “I used to, but now I wait for them to contact me.”
- “Attempt to meet with them on a quarterly basis or as matters dictate and provide briefings”
- “Occasionally, such as when we issue a Semiannual Report, or if we have a special concern to raise. More often they request briefings as needed.”

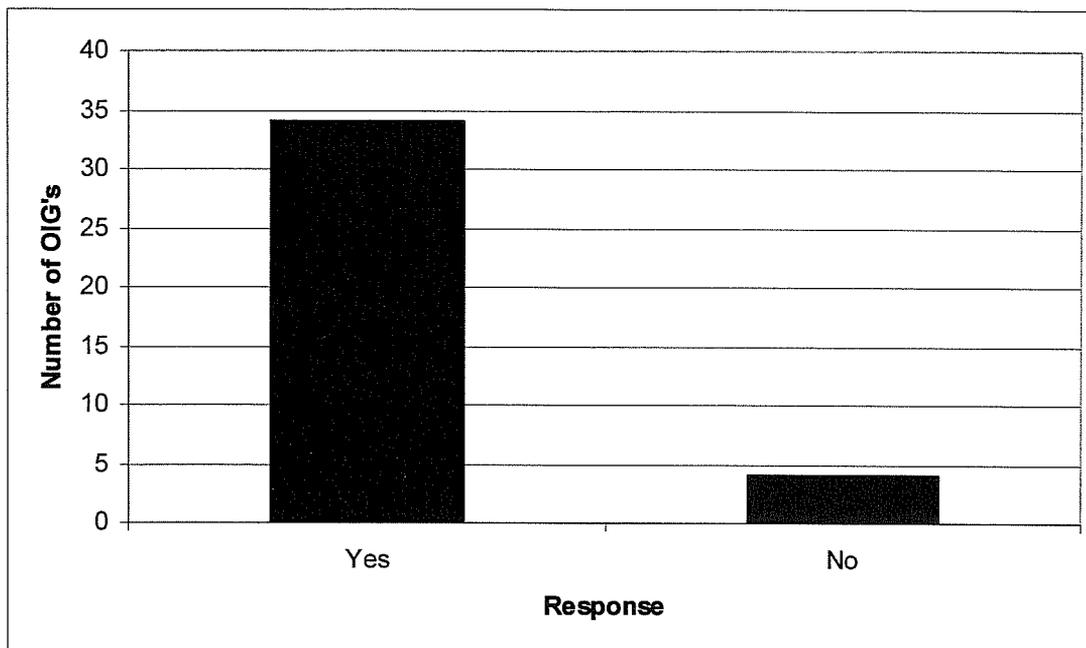
Question 7c: Concerning your relations with Congress: Do you feel free to contact them when faced with problems from agency managers?



Notable Responses:

- “This has not been an issue.”
- “Access is unfettered.”
- “Yes but we have always been able to resolve ‘problems’ with agency managers without going outside of our agency.”
- “Yes, however, do not receive any response.”
- “I feel free to contact them but understand risk factors exist and that until the OIG bill is updated to further define and support independence this can be problematic.”

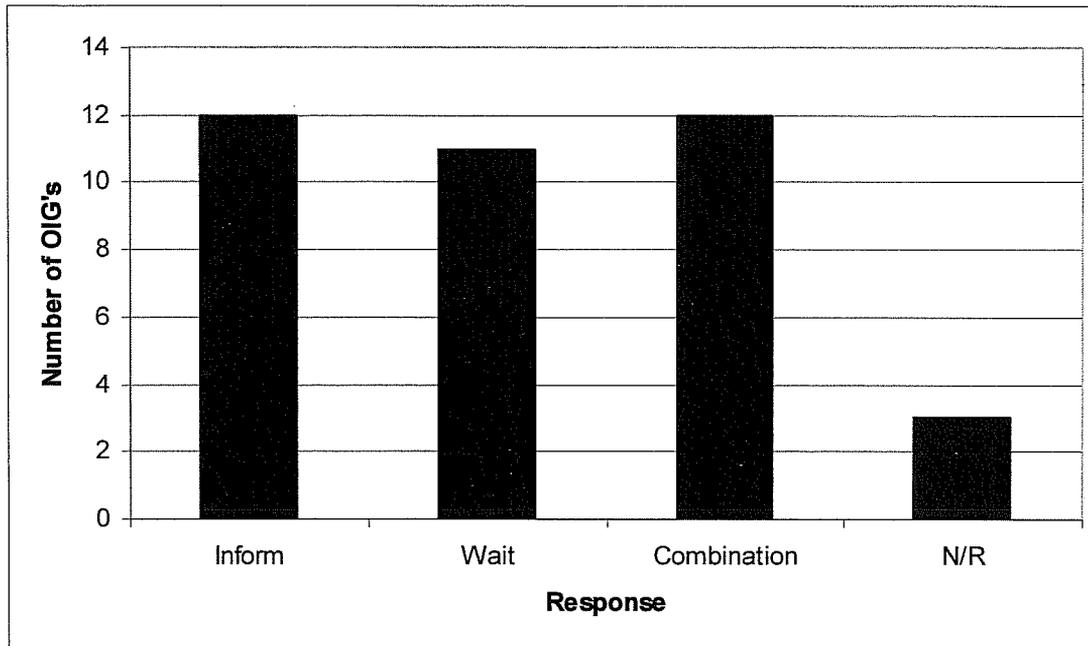
Question 7d: Concerning your relations with Congress: Do you periodically alert your oversight committee staff about reports you have issued?



Notable Responses:

- “Our procedure is to provide reports when they are issued. We provide all of our audit and inspection reports to our oversight committee staff. If a report contains information that is determined not to be appropriate for public release, such as a report detailing potential security weaknesses in [Agency’s] IT systems, OIG would brief committee staff about our findings and recommendations.”
- “They are informed of all reports through our semiannual reports and to specific reports when a report is issued on a subject that committee staff or members have shown a particular interest in.”
- “YES, regarding the results of work products initiated at their request. We also alert staff to significant future work products in which they may have an interest.”
- “Systematically alert of final reports via email, sending a brief synopsis and a copy.”
- “If issue is sufficiently important.”

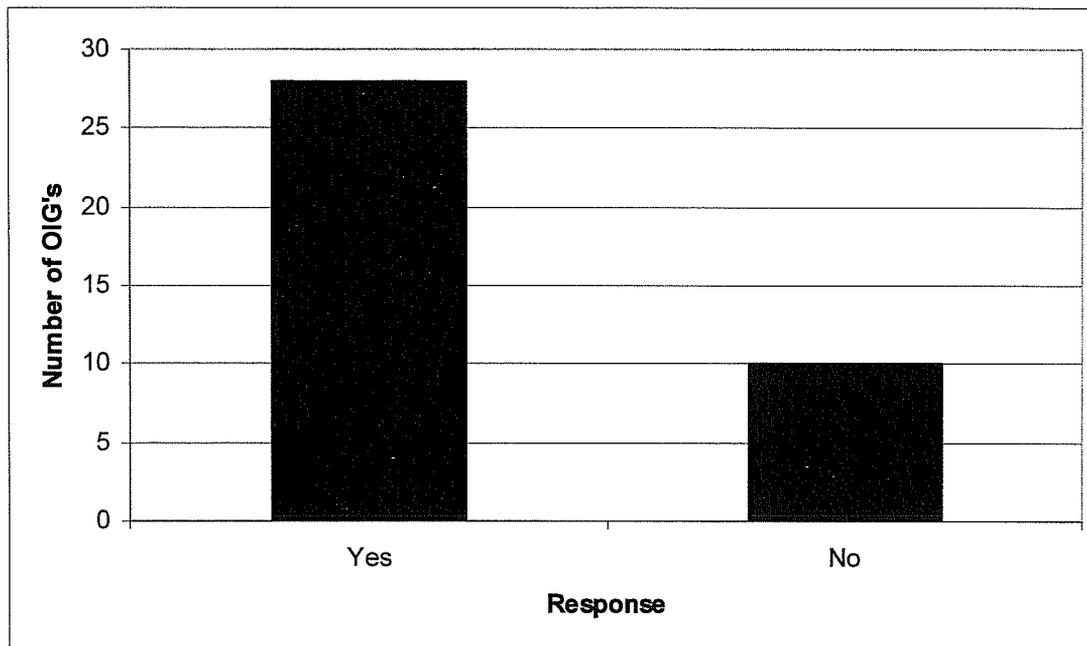
Question 7e: Concerning your relations with Congress: Do you keep them informed of ongoing work, or wait until it is completed?



Notable Responses:

- “This is determined on case by case basis.”
- “We prefer to keep them informed of general direction and status of audits, and provide the final report after it is issued.”
- “We operate with little to no ongoing contact with Congress.”
- “Generally wait until completed; however, if there has been ongoing interest from our oversight committee on a particular matter, we may provide periodic update.”

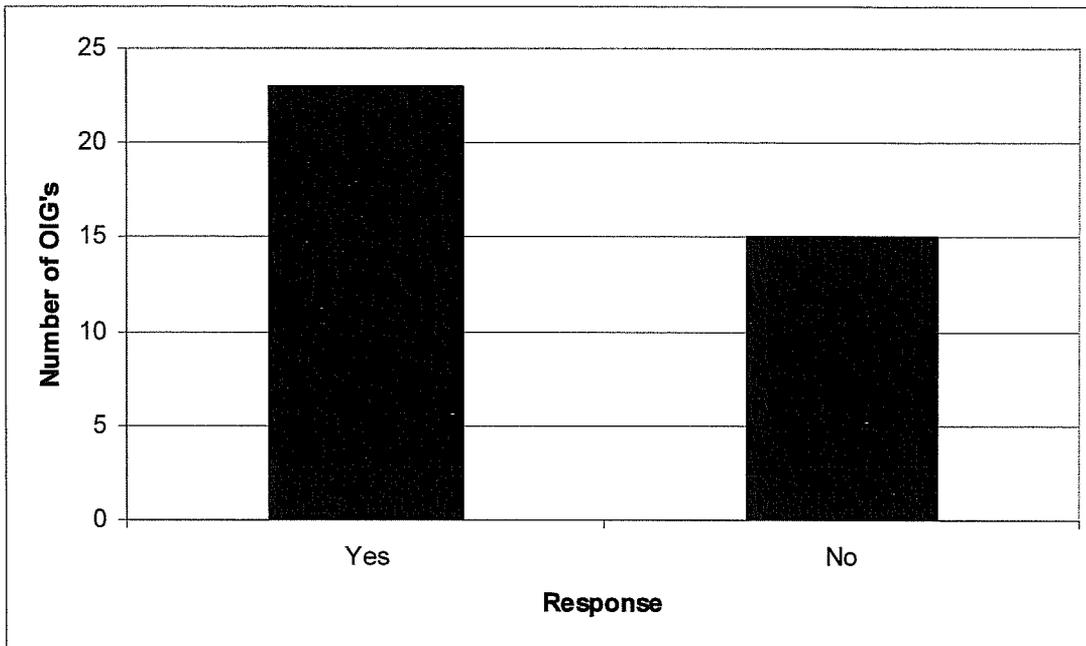
Question 8: Do you meet periodically with GAO officials to share information, ideas, ongoing projects, best practices, etc.?



Notable Responses:

- “YES. We have a GAO Liaison and Audit Follow-up Office dedicated to serve as the liaison between GAO and the Department that coordinates with GAO in regards to all GAO work products within [Agency]. This office, along with our Audit staff, communicates regularly with GAO to share ideas and information, and coordinate projects.”
- “Annually, but they provide no information to us.”
- “Yes, we have a productive dialogue with GAO and our frequency of formal meeting varies by topic area.”
- “To avoid audit duplication, the Office of Audit’s Annual Audit Plan is made available to the GAO”
- “Yes, but GAO does not reach out to us.”
- “I meet with GAO as appropriate. I have no hard and fast rule. I do note that GAO has chronically and habitually failed on their end to inform me of work they are planning and executing in my agency. They seem to be unapologetic about this and fail to live up to the policies that were defined by David Walker on any number of occasions to the IG community.”
- “Ongoing communication to include training initiatives & vetting of key lessons learned products.”

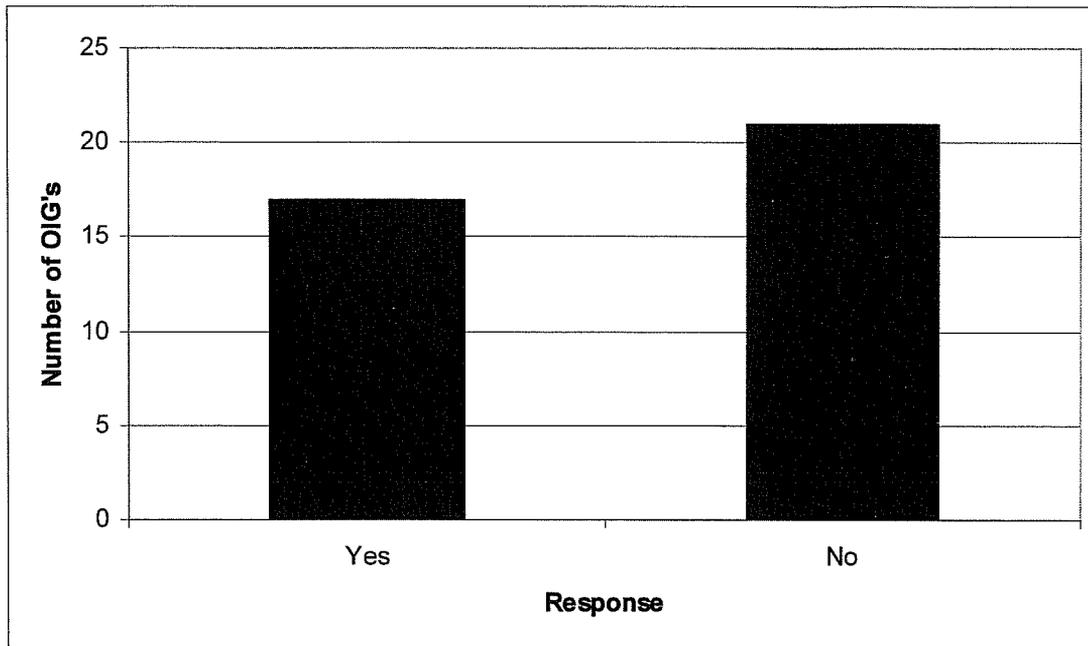
Question 9a: Concerning your outreach to the media and the public: Does your web page offer a sign-up option so that reporters or others can be automatically notified when you post a new report?



Notable Responses:

- “Currently, more than 14,000 individuals are signed up on the OIG ListServ to receive our e-mail notices that link directly to the reports and other information on our web site.”
- “No because there does not appear to be a need. We know from experience that many reporters routinely check our website for new audits and semiannual reports, both of which can be readily identified.”
- “Yes, our website has an RSS feed so media and the public can be notified of any new posting on our website.”

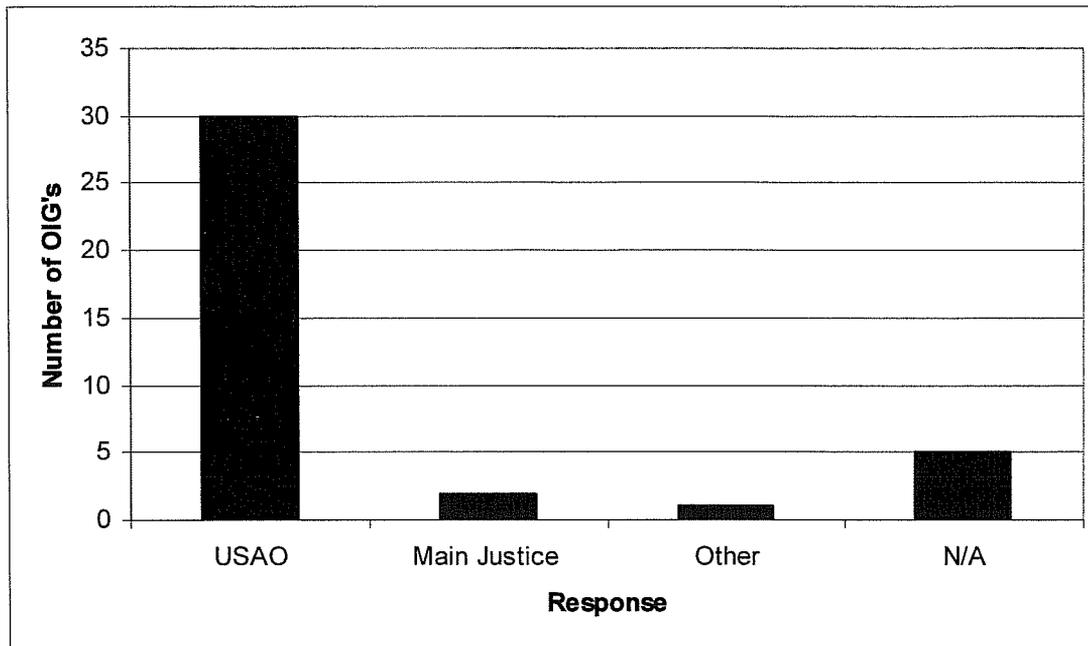
Question 9b: Concerning your outreach to the media and the public: Do you maintain a list of interested stakeholders, including reporters, to call with items of interest?



Notable Responses:

- “As noted [in the previous response], we advise all relevant Members of Congress and staffers of any OIG reports or reviews that may be of interest to them. Also as already noted, we keep a media list and advise reporters on that list as we place reports, reviews, and investigative summaries on our website. Audits are usually posted on a monthly basis and investigative summaries are posted as appropriate.”
- “YES. We maintain several lists of stakeholders . . . as well as press and media contacts.”
- “We do not seek out reporters with items of interest, but try to be responsive when we receive calls/emails from them. Before we implemented RSS feeds, we maintained media distribution lists and when the report/testimony was released to the public (posted on our website) we would email a summary of the report and the report to those interested.”
- “Our list would be those that have registered on our list-serve on our website. We notify this list-serve each time we post to our website.”
- “No official list, but I keep it in mind.”

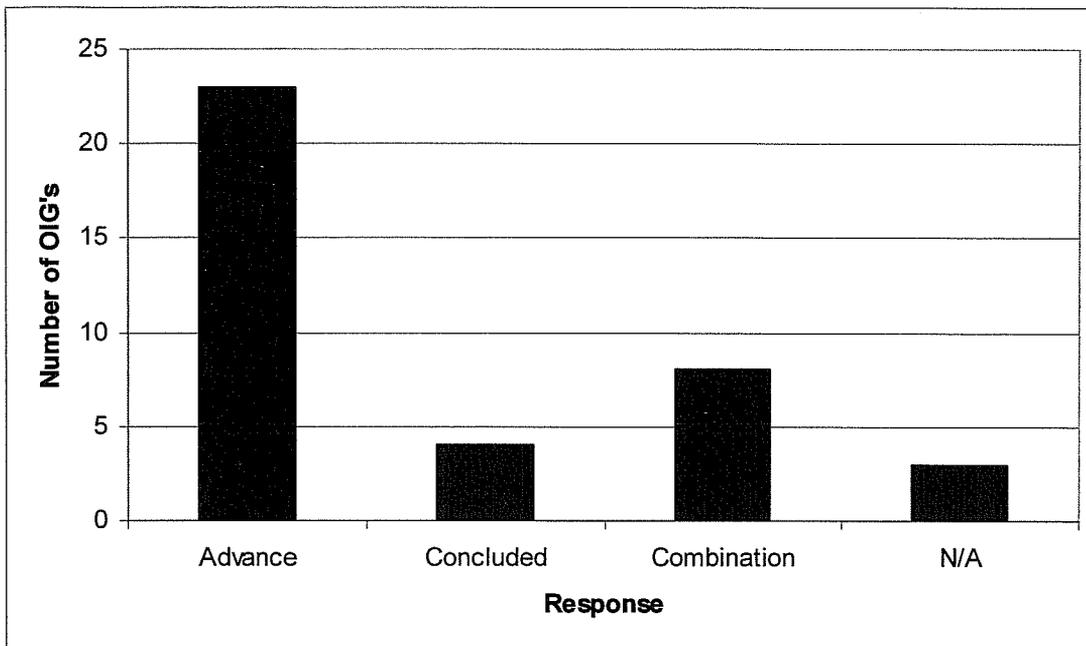
Question 10a: Concerning referrals to the Justice Department or U.S. Attorneys offices: Do most of your referrals go to a [U.S. Attorneys Office (USAO)] or to Main Justice?



Notable Responses:

- “The majority of our cases are referred to the appropriate U.S. Attorney’s Office covering each respective area of operation. Cases which involve a specific statute (for example, potential violations of antitrust laws) are referred to Main Justice. Although the majority of our cases are referred to the USAO, we are unable to provide a specific percentage because our database does not distinguish between the two.”
- “This is difficult to answer as a measurable number of our cases are referred to state or local prosecutors when there are established USAO thresholds that the cases do not meet in those districts, or when state and local prosecutors seek our assistance on investigations related to our programs.”
- “Historically, we have not tracked this; however, we have a new case management system that will allow us to capture this information in the future.”
- “Almost all our referrals are made to the USAOs. Our investigative database does not currently track the percentage of referrals made to USAOs versus Main Justice but, anecdotally the percentage of cases referred to USAOs is either 100% or close to it, with some cases involving referrals and discussions with Main Justice as well.”
- “No referrals to date.”
- “100% USAO”

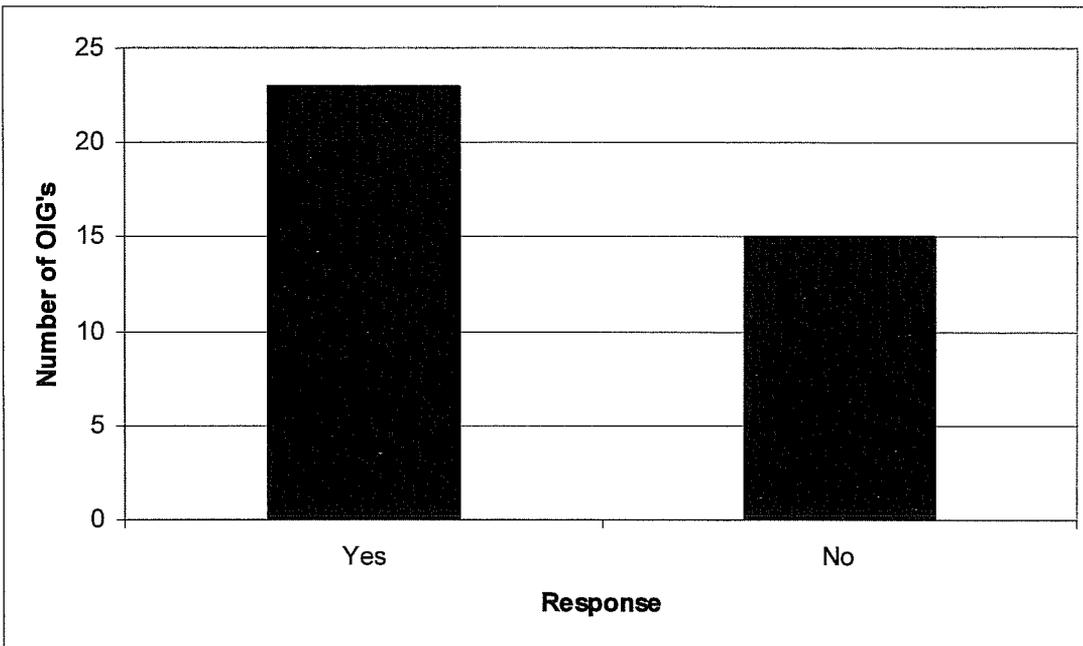
Question 10b: Concerning referrals to the Justice Department or U.S. Attorneys offices: Do you consult with prosecutors in advance of sending over a referral, or do you wait until your investigation has been largely concluded?



Notable Responses:

- “As a general rule, we always consult with prosecutors in advance of sending a referral.”
- “AG guidelines for OIGs with statutory law enforcement require early consultation and we do it.”
- “In keeping with AG guidelines of 2003 for OIGs, we consult with prosecutors early in criminal investigations.”
- “Depends on significance of case.”
- “100% wait until OIG case is mostly finished”
- “100% consult early”

Question 10c: Concerning referrals to the Justice Department or U.S. Attorneys offices: Do you keep track of your declination rate?



Notable Responses:

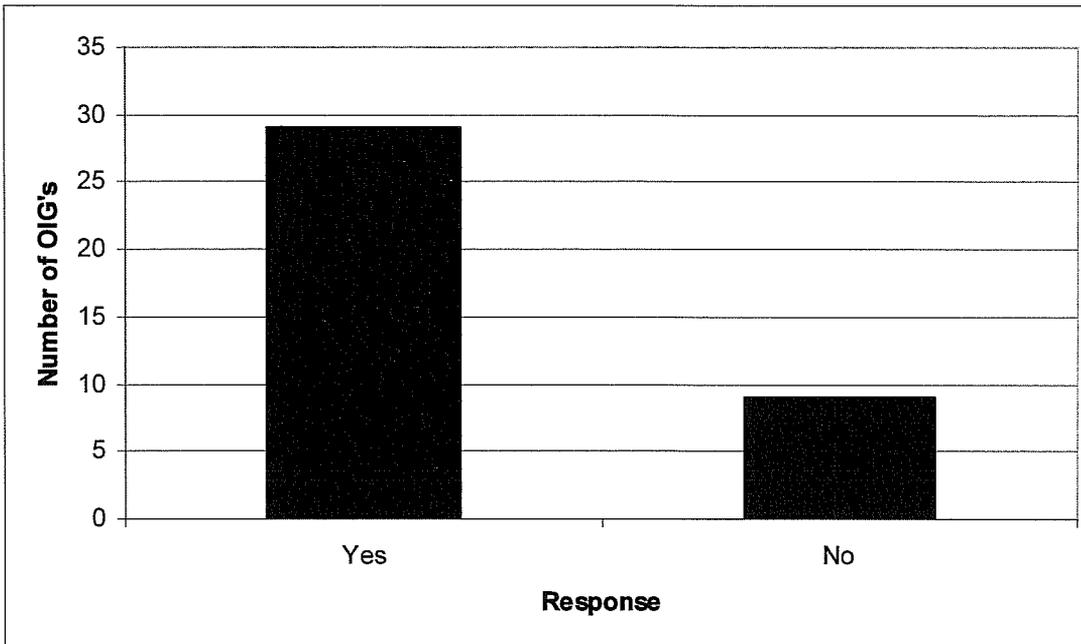
- “We keep track of the number of cases accepted for prosecution. Our acceptance rate has been consistent over the last five years. Additional information related to investigative statistics can be found in our Semiannual Reports.”
- “Historically, we have not tracked this; however, we have a new case management system that will allow us to capture this information in the future.”
- “Record individual declinations but do not calculate declination rates.”
- “No. And, again, it would not be a useful statistic. There are times when we want declinations, because that gives us certain advantages in the investigation regarding witness immunity.”

Question 11a: Regarding Whistleblowers: Approximately how many cases on average do you receive from whistleblowers, hotline tips, or other complaints from outside your office?

Notable Responses:

- “In calendar year 2007, our Hotline received 122 complaints.”
- “We receive over 1,000 complaints annually.”
- “During FY 2007 we received 25 such complaints. Not all were actionable.”
- “The Hotline typically processes over 1,200 complaints annually.”
- “800 incoming although not all turn into Hotline cases.”
- “The OIG received 9,664 total complaints in FY 2007 and 7,290 complaints received as of June 30, 2008.”
- “Our hotline receives approximately 500 complaints a month. Without further definition of what you mean by “whistleblower,” our ability to answer this question is limited. Your question also refers to “cases” received from outside the office. Not all complaints result in actively investigated cases.”

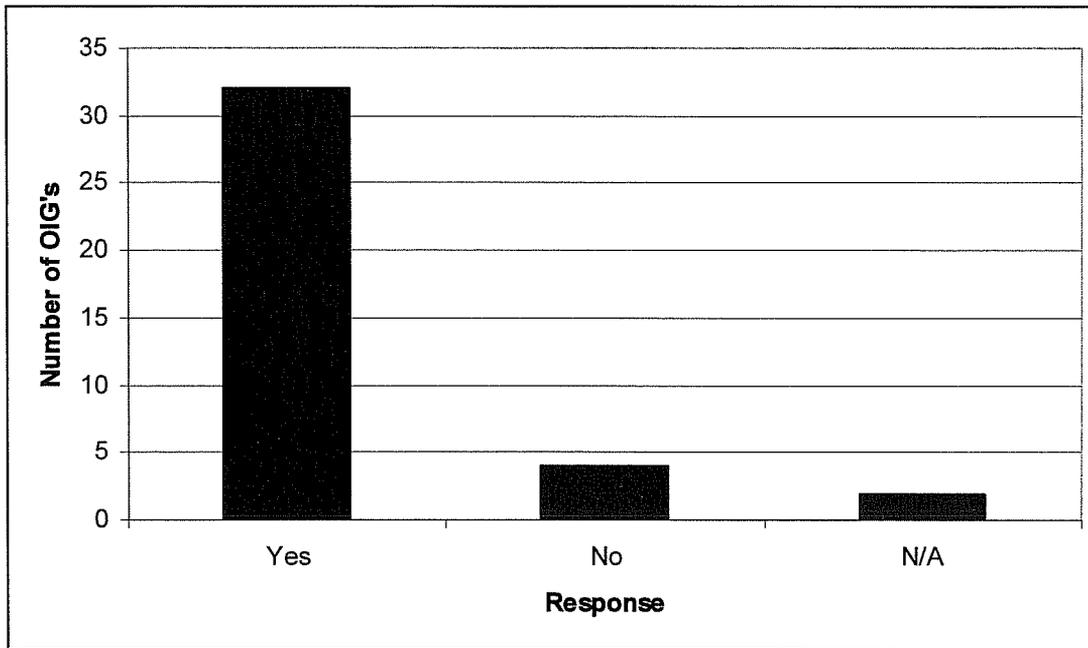
Question 11b: Regarding Whistleblowers: Is anyone in your office specifically tasked with keeping track of whistleblowers issues and concerns?



Notable Responses:

- “YES. All new employees receive whistleblower training, and OIG supervisors and managers attend leadership whistleblower training a minimum of every three years to understand their responsibilities under the program. Additionally, we have prominent links from our internal website’s front page to provide our employees with information regarding whistleblower protection and rights.”
- “We have dedicated Federal staff assigned to the Hotline, and we have a system for tracking complaints and their disposition.”
- “No one individual on the Hotline staff is specifically tasked with tracking these complaints. All complaints are entered and tracked in the Hotline database.”

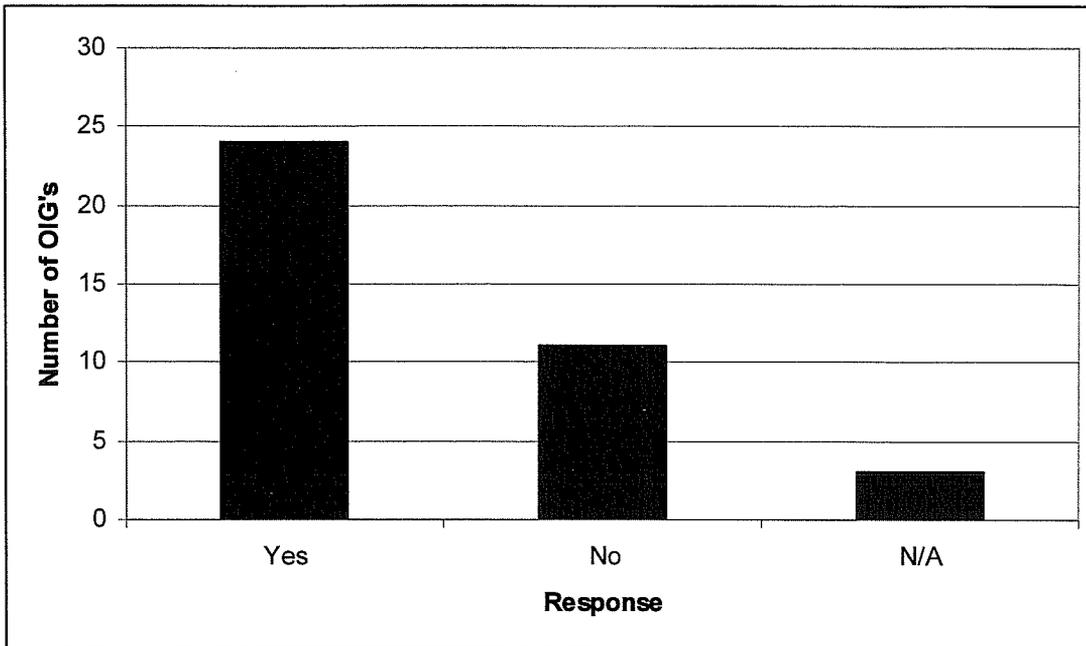
Question 11c: Regarding Whistleblowers: Does your in-house training for staff include sensitivity to whistleblowers concerns?



Notable Responses:

- “YES. All new employees receive whistleblower training, and OIG supervisors and managers attend leadership whistleblower training a minimum of every three years to understand their responsibilities under the program. Additionally, we have prominent links from our internal website’s front page to provide our employees with information regarding whistleblower protection and rights.”
- “Yes. As part of initial training staff members are instructed on appropriate handling of whistleblower complaints. Instructions and guidelines are included in the Hotline standard operating procedures.”
- “Informal meetings, not training. Our staff, including myself, consists of five people.”

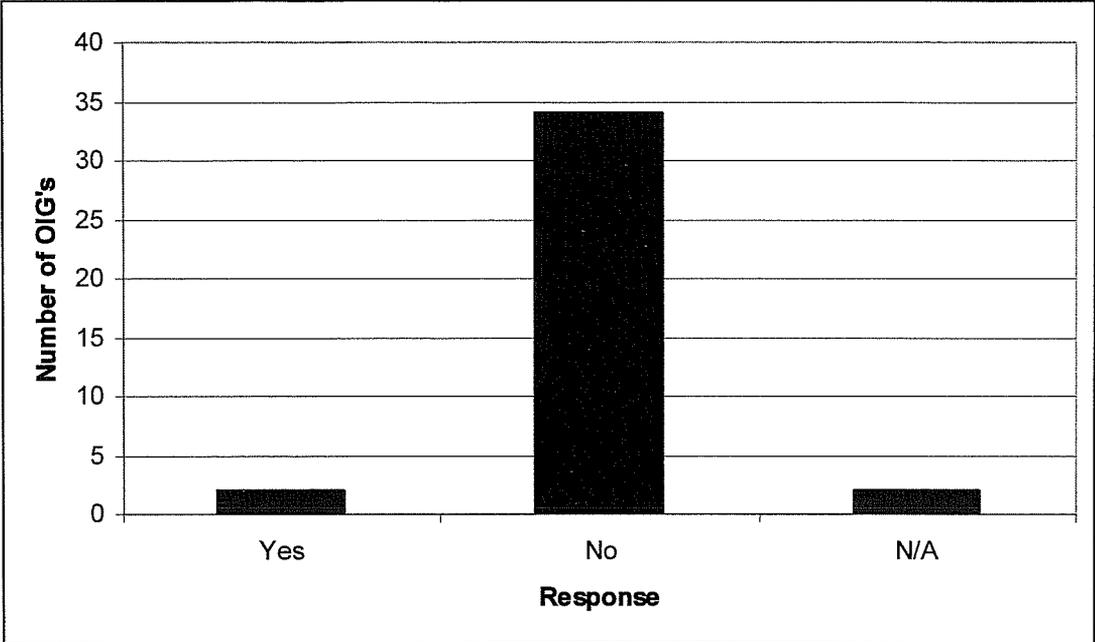
Question 11d: Regarding Whistleblowers: Does your web page specifically set forth procedures for whistleblowers, including how they should contact you and the laws protecting them, etc.?



Notable Responses:

- “The Web site provides three means to contact our office. We list the telephone numbers, a Hotline e-mail address, and a message box that allows an individual to contact our office without revealing his or her identity or any contact information.”
- “Our web page provides general information about complaint processing and addresses mailing, telephoning, emailing, and faxing complaints to the Office of Inspector General.”
- “YES, extensive information is available on our Hotline web pages and our internal website to assist whistleblowers and inform them of their rights, including a page dedicated to reprisal complaints and whistleblower protection information.”

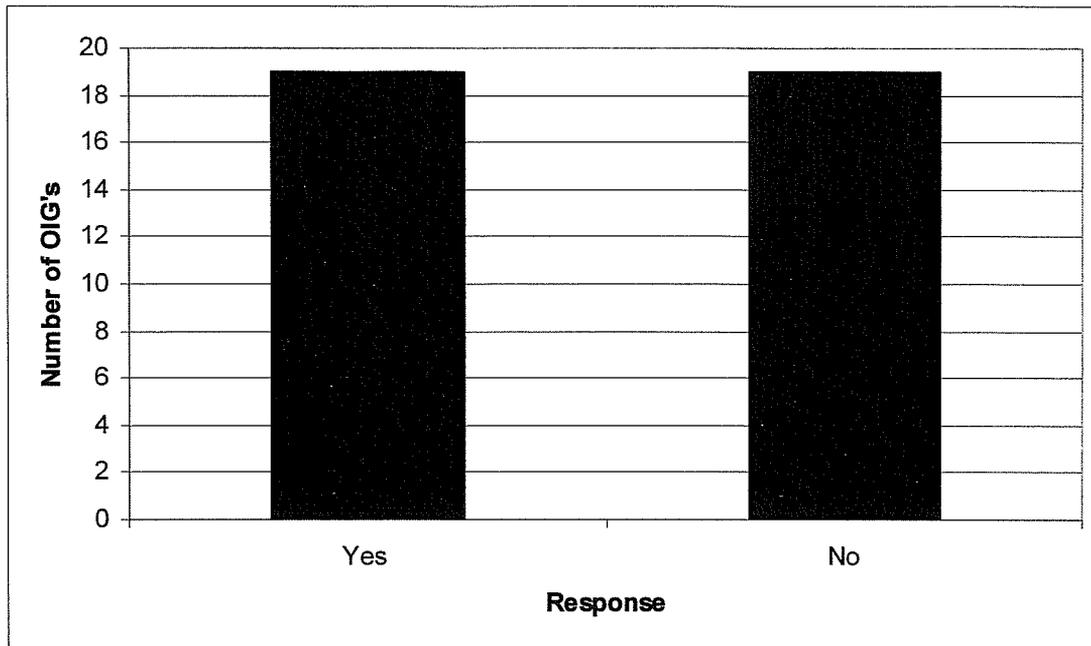
Question 11e: Regarding Whistleblowers: Have you outsourced your procedures for whistleblower intake?



Notable Responses:

- “The Hotline staff is composed of contractors and OIG employees. The contract staff performs a triage function on calls to the hotline. Under established protocol, all calls from or about Departmental employees are referred to OIG hotline staff for appropriate action. The same guidelines apply to Internet, Facsimile and Mail received.”

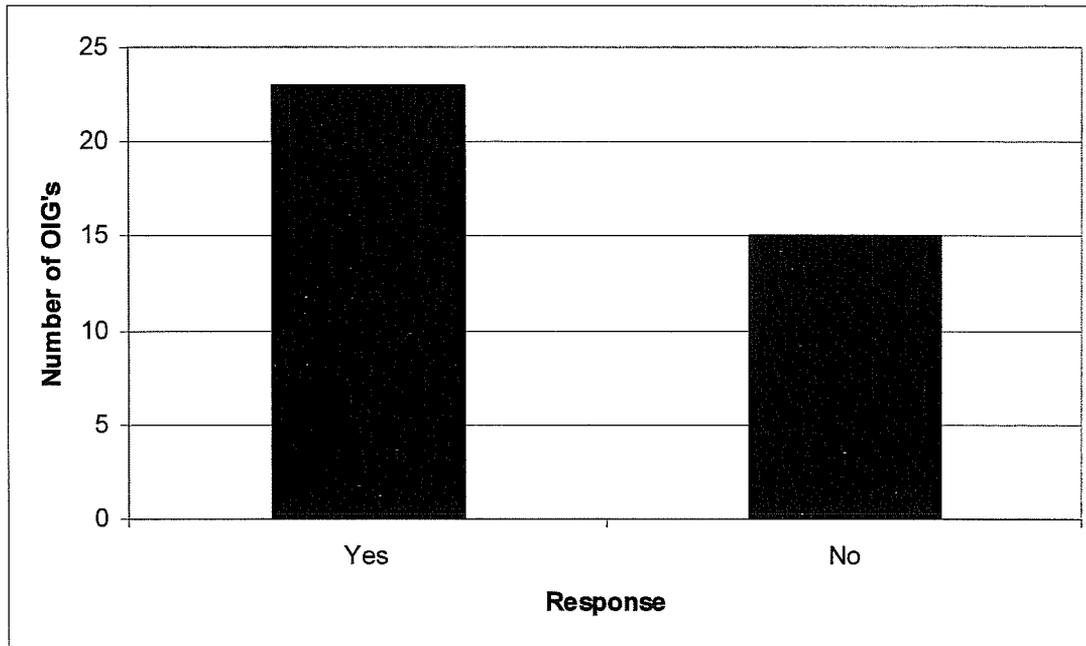
Question 12a: Do you publish a performance plan?



Notable Responses:

- “No, OIG does not currently have a stand-alone Performance Plan. However, OIG senior staff and managers are currently in the process of creating an agency Performance Plan. The completed performance plan will become publicly available during FY 2009.”
- “Yes, now required as part of budget process.”
- “Yes, tied to annual plan.”
- “No. We are too small and a plan would not be meaningful in the sense that we react to many of the issues we look at.”
- “Performance plan is internal.”

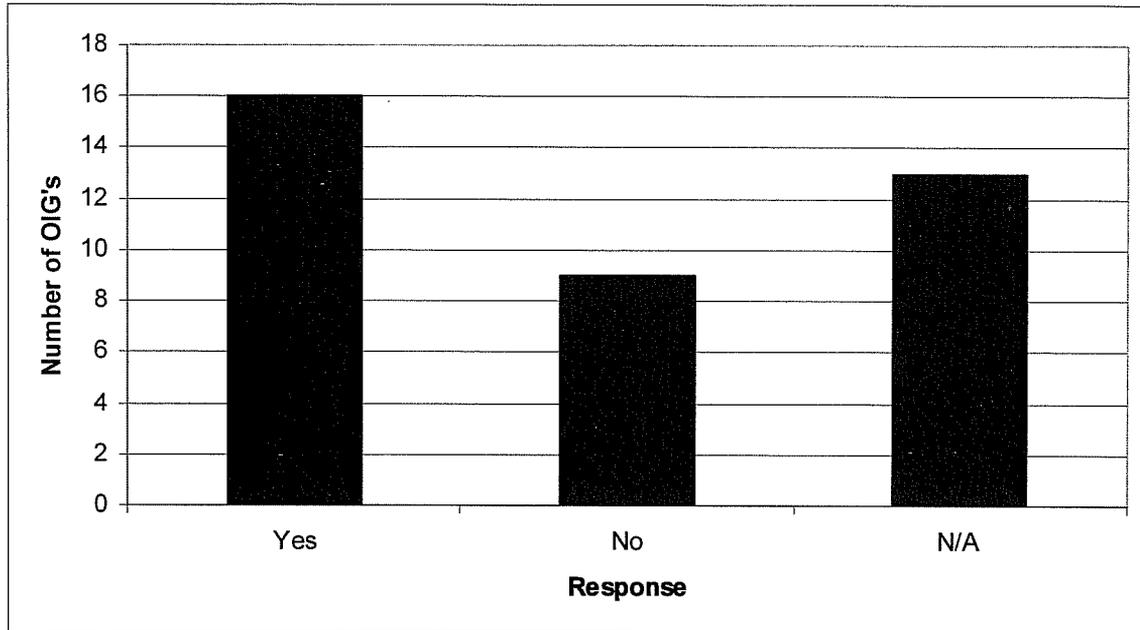
Question 12b: Do you attempt to rate yourself using performance measures other than those statutorily required?



Notable Responses:

- “YES. We rate ourselves through self-imposed quarterly and annual performance assessments that measure elements of performance such as: timeliness, coverage of key strategic areas, return on investment, external/stakeholder engagement, and resource management.”
- “Yes. OIG presents performance measures, that are not statutorily required, in the annual Justification of Estimates to Appropriations Committees (President’s Budget), which is available through the [Agency] Office of Budget website, or on OIG’s website in the Publications section. The annual budget justification is required to be in a “performance-budget” format that integrates principles of both budget and performance management into the agency’s long-term planning and budget formulation activities.”
- “We do not attempt to rate ourselves via performance measures.”

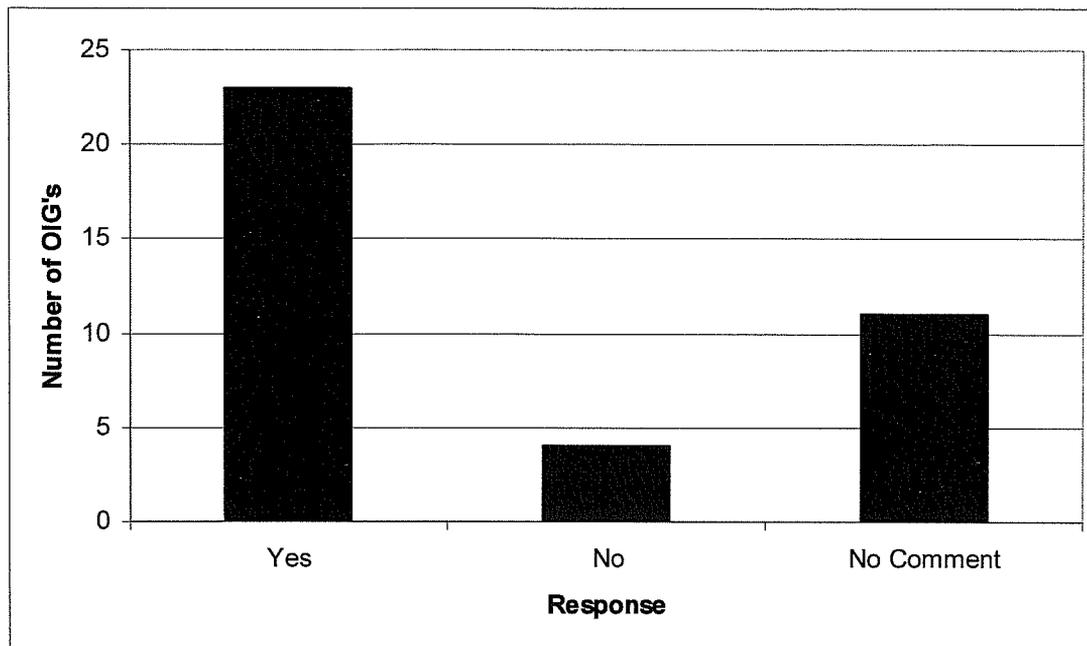
Question 12c: Is your performance plan easily accessible on your web page?



Notable Responses:

- “Our performance budget is accessible on the web, which includes our performance measures.”
- “On website as part of budget submission.”
- “We are designing a new website that will enable us to make it accessible.”

Question 13a: Do you believe the current system and procedures of the Integrity Committee works to maintain IG integrity and accountability?



Notable Responses:

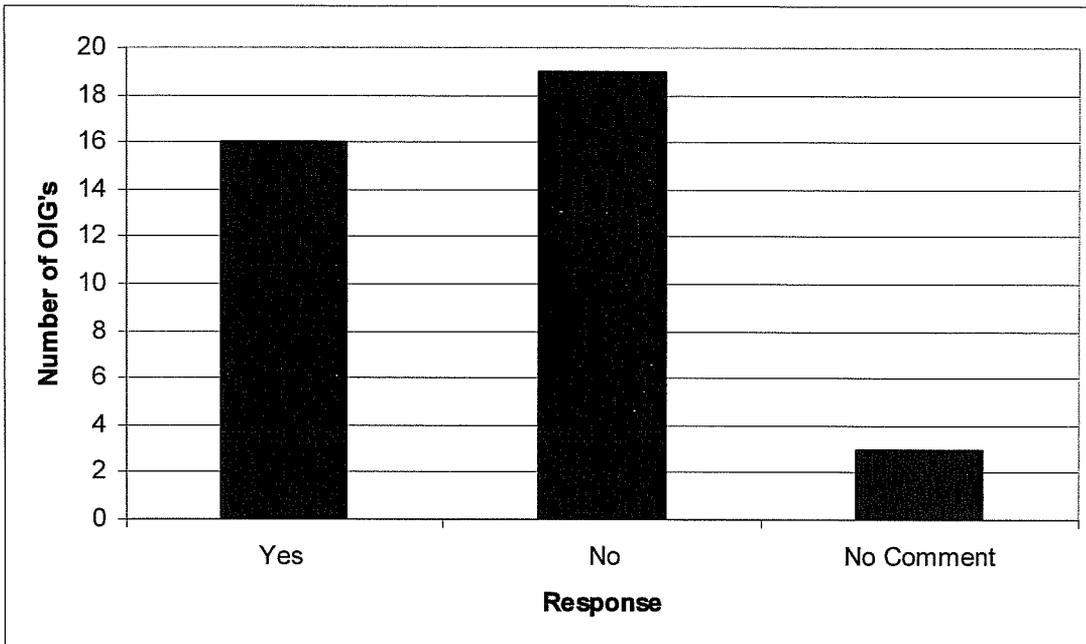
- “Has worked fairly effectively.”
- “IC provides valuable resource for resolving allegations against senior level OIG officials.”
- “Not entirely. Unfortunately, the IC can only make recommendations, which may or may not be accepted by the appointing authority.”
- “Generally, yes. It is merely an advisory body and does not have, and should not have, the authority to make disciplinary decisions. While we may like for OMB or others to take the recommendations more seriously, that is something that is beyond the control of the Integrity committee at this point.”
- “If one is not on the Committee, you really do not know how cases are determined to be worthy of an inquiry or investigation. I would assume that the policy and procedures established are followed.”
- “It is chaired and staffed by an independent third party (the FBI) and appears to be meeting the basic need, but the process could be improved.”

Question 13b: If you do not believe the current system and procedures of the Integrity Committee works to maintain IG integrity, do you have any suggestions for improvement?

Notable Responses:

- “We agree with changes suggested by the IG Reform Act.”
- “Yes, two primary suggestions, which are: 1) Terms of service for IG members of the IC. To promote accountability and prevent the IC from becoming entrenched without the benefit of new perspectives, terms of service should be specified for IG members of the IC. (The best scenario would be for the terms to be staggered to place a new IG member on the IC every one to two years.) Periods of IG service to the IC should not exceed five years. 2) Funding source for IC investigations. Currently, IG offices under an investigation fund the IC’s investigation (although EO 12993 states it should be the head of the agency of the IG to be investigated that should provide the funding.) Having the office that is under investigation fund the investigation forecloses that Office’s ability to question expenses associated with the investigation because of perceived conflicts. Also, unless an IG conducting an investigation hires temporary staff to conduct the investigation, the receipt of funds by that IG supplements that IG’s funding – conducting the IG investigation is a moneymaker for the party conducting the investigation. Either a funded PCIE council, OMB, or the investigating IG, should pay for it (with actual expenses for travel and the like reimbursed.)
- “More transparency is required for the process.”
- “The codification of the IC in the IG Reform Act may help.”
- “The problem, if it is a problem, is the perception by Congress and others outside the PCIE/ECIE. Therefore, the work of the Committee needs more transparency regarding the items brought to the Committee and an explanation of the outcome. This does not mean that the IG involved has to be named. For example, Case 101 allegation is XXXXX, our reviewed determined XXXXX for these reasons. If an investigation was conducted, the outcome and an explanation for the outcome.”

Question 14a: Do you believe that current requirements of reporting the numbers of audits, investigations, inspections, etc., in semi-annual reports to Congress and your agency chief adequately reflect the appropriate measures of IG success?



Notable Responses:

- “We believe it is important to report this information as it does reflect our output and thus a portion of our success.”
- “No, the statutory measures are outputs – not outcomes”
- “The reporting of the number of audits, investigations, and inspections in the semiannual was not designed to measure IG ‘success.’ The primary purpose of the semiannual is to summarize OIG activities for the 6-month period, and reflect management actions rather than to be a performance document.”
- “By themselves they are not adequate measures, but we report other stats to add to the picture including recs issued, agreed to by mgmt, dollar accomplishments, indictments, conviction and sentencing stats, debarments etc.”
- “This process gets to the heart of what an OIG does and I believe is a fair representation of the OIG’s effectiveness. However, another way an IG can effect change is through education and persuasion of the head of the Agency. This presupposes there is a good working relationship between the two and the IG has the ear of the Agency head. While this can be very effective, it is not easy to capture this in a semi-annual report.”

Question 14b: If you do not believe that the current requirements of reporting the numbers of audits, investigations, inspections, etc., in semi-annual reports to Congress and your agency chief adequately reflect the appropriate measures of IG success, do you have any suggestions for improvement?

Notable Responses:

- “Our success goes beyond the numbers; thus we also report significant activity & results achieved during the semi-annual period in accordance with our annual & strategic plans.”
- “Yes, use a balanced scorecard approach that measures and compares inputs to outputs, outcomes (intermediate and long term), monetary return on investment and sustain rates, quality and customer service ratings. Production statistics are practically useless if you don’t measure the value or benefit added.”
- “Emphasis should be placed on improvements/changes made over past year as a result of OIG work.”
- “Articulate how IG products have impacted the department.”
- “Reporting should be characterized in terms of impact (financial, deterrent, improved service, etc.)”
- “Perhaps mandated reporting in the semi-annual reports on follow-up activities would drive more OIGs to regularly conduct such activities.”
- “It is clearly an output measure. If reports were annual, I might spend more time discussing qualitative aspects and outcomes.”
- “Virtually all other IGs supplement these numerical requirements with narrative material that does serve to give a fuller account of the IG’s contributions. It is also important to recognize that a ‘successful outcome’ can include an investigation that clears an individual – won’t result in additional statistical results but can represent a very important contribution by the OIG.”

EXTRA CREDIT ESSAY QUESTION!

Question 15: How do you ensure you are capturing the big, significant issues confronting your agency, and avoiding putting too many resources into small and less important issues?

Notable Responses:

- “Several ways including speaking to Congress and other stakeholders, monitoring the press and other avenues to determine interest among the larger public, e.g., blogs. Also, analyze the complaints we receive to determine if there are issues that are of concern to a broad group of people.”
- “We annually develop a comprehensive list of Top Management Challenges facing the [Agency], and we strive to ensure that at least 80 percent of the audits, inspections, and reviews we open address some aspect of these challenges.”
- “The OIG senior management team meets twice annually with agency senior leadership and senior business unit leaders to discuss ongoing activity, concerns, and the issues that keep them up at night. We also reach out to other stakeholders, including our oversight committee for input. We compile the information and make additions and changes to the OIG workplan in accordance with those issues that are most significant to agency operations. The issues identified in the workplan must also be in alignment with our Strategic Plan, and by virtue thereof, in alignment with the Agency strategic plan.”
- “We conduct a rigorous audit planning process each year during which we review our priorities in light of the changing environment that the agency and OIG operates in. If necessary, resources can be shifted fairly quickly. Also many of the ‘big picture’ issues we identify come as a result of recurring issues that are found in the course of doing our routine audits of grantees. They tell us a lot about the strengths and weaknesses of the agency’s operations. Just as we have to select audits based on risk assessments and other factors, we also have to prioritize the commitment of our investigative resources to cases that we believe will have the greatest impact in resolving significant integrity issues and sending a signal that deters others from wrongdoing.”
- Being relatively new to the [Agency], I have been focusing on the “low hanging fruit” that is common to most agencies. I have a 3-year plan to focus on administration. I will then turn to programs.
- “An annual risk assessment, including an evaluation of the most significant management challenges facing the Department, helps to focus our resources on critical areas. In formulating the most significant management challenges, we seek input from the Dept as a means of better understanding agency concerns as well as those identified through our various audits and inspections. Subsequently, there is extensive coordination and vetting of issues and topic areas reviewed throughout the year. These steps help ensure that OIG resources are appropriately directed.”
- “By working 24/7 to convince the workforce that neither they, nor our OIG, will measure success with numbers – no ‘ROI’ in our vocabulary.”

Appendix D

Integrity Committee of the Council of IGs,
“Policy and Procedures for Exercising the Authority of the Integrity Committee
of the President’s Council on Integrity and Efficiency
and the Executive Council on Integrity and Efficiency,”

February 2007

POLICY AND PROCEDURES
FOR EXERCISING THE AUTHORITY OF THE
INTEGRITY COMMITTEE OF THE
PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY
AND THE
EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY

February 2007

Preface

In January of 1995, the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) established an Integrity Committee (IC), pursuant to authority granted by Executive Order (EO) 12805.

In EO 12993, signed on March 21, 1996, the IC was formally recognized and specifically tasked by the President to receive, review, and refer for investigation, where appropriate, allegations of wrongdoing against an Inspector General (IG) or, in the limited circumstances defined in EO 12993, allegations against a staff member in an IG office (OIG). However, the authority granted to the IC by EO 12993 does not encompass the statutory IGs of the legislative branch.

EO 12993 directs the IC to "establish the policies and procedures necessary to ensure consistency in conducting investigations and reporting activities under [the] order." This document seeks to accomplish that goal.

The policy and procedures provide a framework for the investigative function of the IC. The IC must consider a wide variety of allegations of wrongdoing and analyze conflicting information during its deliberations. Such deliberations require discretionary determinations. The standards and requirements set out in this document provide the structure in which that discretion can be exercised. However, policy and procedures cannot be read to dictate determinative outcomes in any particular matter before the IC.

The IC policy and procedures were developed under the guidance of its Chairperson and were considered and accepted by the full IC. Drafts of the policy and procedures were vetted with the membership of the PCIE and ECIE. The IC policy and procedures also have the concurrence of the Chairperson and Vice Chairpersons of the PCIE/ECIE.

After conducting itself under these procedures for a period of time, the IC may determine that amendments are

desired. In that event, the IC shall vote on any proposed amendment, which must be endorsed by its Chairperson. [The IC has conducted two such reviews and made minor modifications for the purpose of clarifying these procedures.] The IC will notify the PCIE/ECIE Chairperson and Vice Chairpersons of the proposed change. Any substantive changes will be vetted with the membership of the PCIE and ECIE. Unless the Chairperson or Vice Chairpersons voice disagreement within thirty days, the proposed amendment will become final.

The IC remains dedicated to building and ensuring integrity in the IG community by fulfilling its responsibilities under EO 12993 and by leading discussions of, and ongoing education on, integrity issues.

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I. STATEMENT OF POLICY

The IC serves as an independent investigative mechanism for allegations of administrative misconduct brought against IGs and, under certain circumstances, members of their staffs, as authorized by EO 12993.

Allegations against an agency OIG staff member that implicate that agency's IG are within the jurisdiction of the IC.

Allegations against OIG senior staff members that do not implicate the IG may be referred to the IC by an IG when: 1.) the IG determines that an objective internal investigation of the allegation, or the appearance thereof, is not feasible; and 2.) the IG is unable to obtain an external investigation by another executive branch agency.

The IC receives allegations, reviews them, and, where necessary, refers them for investigation either to an agency with jurisdiction over the matter or to an investigative team composed of selected investigators supervised and controlled by the IC's Chairperson.

The procedures which follow describe how the IC, in implementing EO 12993, will ensure fairness, timeliness, and consistency in conducting, and reporting, investigations and other activities.

II. RECEIPT OF ALLEGATIONS

A. Receipt of Complaints.

1. The IC receives complaints containing allegations from a variety of sources, among them private citizens, government officials, and other sources. The IC will respond to all named complainants in writing, advising them that the allegations have been received. In the IC's reply, complainants will generally be advised that the IC concentrates its efforts on allegations of administrative misconduct by an IG or an OIG staff member under the circumstances described in EO 12993. Complainants will also be advised that the IC will refer cases to other investigative bodies, close cases, or take other actions consistent with its discretionary powers under EO 12993.

2. Assignment of a Case File Number. A document containing allegations will be assigned a file number as a record of the IC for indexing purposes in the FBI Central Records System.

B. Allegations Against the IG for the Department of Justice.

To avoid the appearance of a conflict of interest, the working group will refer any allegation received concerning the IG of the Department of Justice to an alternate member of the IC who will act as IC Chairperson for the allegation. The working group and IC Chairperson will thereafter recuse themselves from any further involvement. The IC member designated as Chairperson for the allegation will provide staff to act as the working group. Upon the conclusion of the case, all records associated with the allegation will be returned to the FBI for filing purposes.

C. Review of Complaints by the Working Group.

Upon the assignment of a case file number, the working group will refer the allegation to the Public Integrity Section, Department of Justice for review. If the Public Integrity Section determines that an allegation does not warrant criminal investigation, the working group will conduct a timely, initial review of the complaint to determine whether the allegations made are credible and not frivolous, and fall within the IC's jurisdiction under EO 12993. Based on that review, a course of action for every allegation will be recommended to the IC for consideration at the next scheduled IC meeting. The working group, at its discretion or at the request of the Public Integrity Section, may conduct inquiries to gather additional information which may be helpful to the IC or the Public Integrity Section when making determinations under this section. These inquiries will not be considered investigations.

D. Review of Complaints by the Public Integrity Section.

1. The Public Integrity Section will review each complaint referred by the working group to determine whether it presents information sufficient to warrant a criminal investigation. Should the Public Integrity Section determine that criminal investigation is warranted, the Public Integrity Section shall so notify the working group, which will refer the matter to the appropriate law enforcement agency. When a criminal investigation has been conducted, the IC Chairperson may request that the investigative authority provide, for IC review, a summary report of the results of the investigation as it relates to the jurisdiction of the IC. If during, or after, IC review of the matter, the IC Chairperson determines that additional information should be considered by the Public Integrity Section, the IC Chairperson will refer such information to the Public Integrity Section and maintain the allegation in a pending status.

2. If the Public Integrity Section determines that criminal investigation is not warranted, the matter will be returned to the working group for screening.

E. Definitions.

"Abuse of authority" means arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to him/her or to preferred other persons. There is no de minimus standard for abuse of authority.

"Administrative misconduct" means noncriminal misconduct, or misconduct the Public Integrity Section declines to pursue on a criminal basis, that evidences a violation of any law, rule, or regulation; or gross mismanagement; gross waste of funds; or abuse of authority, in the exercise of official duties or while acting under color of office.

"Agency head" means the head of an establishment or a designated federal entity; or an IG who has referred allegations against a subordinate to the IC for investigation.

"Frivolous allegations" means those allegations that would not constitute criminal violations or administrative misconduct, even if they prove to be true.

"Gross mismanagement" means action or inaction that creates a substantial risk of significant adverse impact on the OIG's ability to accomplish its mission; but it does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing. There must be an element of willful misconduct.

"Gross waste of funds" means more than a debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.

"Working group" means agency staff associated with the Chairperson of the IC. All IC correspondence is handled by the working group.

III. ADMINISTRATION OF IC MEETINGS.

A. Membership.

The IC is composed of the following members: a Chairperson, who is the FBI official designated by the Director of the FBI to serve on the PCIE; the Special Counsel of the Office of Special Counsel; the Director of the Office of Government Ethics; and three IGs, representing

both the PCIE and the ECIE, appointed by the PCIE/ECIE Chairperson. The Chief of the Public Integrity Section of the Department of Justice, or his designee, and a representative of the PCIE/ECIE attends the meetings in an advisory capacity.

B. Membership Responsibilities.

The IC will meet at least once each calendar quarter to review the status of all pending complaints. More frequent meetings may be called at the discretion of the IC's Chairperson. Prior to the meetings, IC members are expected to independently review each case.

C. Records of Meetings.

A written agenda of each meeting, and decisions made pursuant to each agenda item, will be made and retained as a record of the IC.

IV. IC REVIEW OF NEW ALLEGATIONS.

A. Initial Review of the Complaint by the IC.

1. The IC will review each complaint to determine if there is a substantial likelihood that the allegation discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, or abuse of authority, as provided in EO 12993, and is a matter within its jurisdiction.

2. Allegations falling within the purview of the IC must allege administrative misconduct specifically by an IG or a staff member acting with the knowledge of the IG.

3. Matters which are determined by the IC to be outside of its jurisdiction may be forwarded to an agency of the federal government for review, submitted to the named IG for investigation in the discretion of that IG, or closed without further action, as appropriate. [For example, equal employment opportunity complaints are referred to the Equal Employment Opportunity Office of the affected agency, while allegations of illegal political activity, whistleblower retaliation, or prohibited personnel practices are referred to the Office of Special Counsel, or other agency as provided by law.] In accord with Section 4(b) of EO 12993, the IC may request a summary of the findings from the investigative authority to which complaints have been referred.

B. Determine Whether Further Investigation Is Necessary.

1. If an allegation falls within the IC's purview, the IC will determine whether investigation by the IC is

appropriate. Typically, allegations accepted for IC investigation will contain significant supporting documentation and will clearly identify the alleged wrongdoing by the IG. If the IC determines that there is insufficient information to proceed with an investigation, the IC may choose to take no further investigative action, or may direct the working group to make further inquiries to develop additional information for the IC to determine whether investigation is warranted.

2. If the IC asserts its further interest in the matter, it may direct the Chair to notify the subject IG and request the IG's comment on the allegations (s) prior to any further disposition, or it may certify the matter to the Chair who shall cause a thorough and timely investigation to allegations to be conducted in accordance with EO 12993.

V. IC INVESTIGATIONS

A. Arranging for an IC Investigation.

1. Requesting Investigative Resources. For those allegations meriting investigation by the IC, EO 12993 allows the IC to request that the FBI conduct or assist in the conduct of such investigations, or that such investigations be conducted by uninvolved OIGs under the control and direction of the IC Chairperson. Should an investigation by such an OIG be required, the IC Chairperson, with the assistance of the PCIE/ECIE Chairperson if necessary, will request the assistance of IGs whose personnel have the requisite expertise. OIG investigators will be assigned to the IC with funding for the investigation provided in accord with EO 12993. An investigation by an uninvolved OIG will be conducted in accordance with the *Quality Standards for Investigations* of the PCIE/ECIE. The investigation will utilize the investigative procedures of the uninvolved OIG unless otherwise directed by the IC Chairperson following review of the investigative plan.

2. Allegations Currently under Investigation. The IC may review the status of any investigations currently under way and will request expeditious and appropriate action, where necessary. If information is developed during the course of an investigation which may be potentially criminal, the OIG investigators will promptly notify the working group which will discuss the matter with the Public Integrity Section. In addition, the OIG investigators will always consult with the Public Integrity Section before conducting an interview of the subject of the investigation.

B. Notification to the IG and Opportunity for Comment.

1. Following the IC determination that an investigation of an IG will ensue, the IC Chair will notify the subject IG of the pending investigation and--

- List the allegations to be investigated;
- Advise that additional allegations may be investigated as they become known, with notice of any such additional allegations to be made if they involve an expansion of scope of the investigation;
- Outline the following procedures with regard to the investigation and consideration by the IC;
 - o The IG will be interviewed but may decline that interview
 - o The IG will be provided a copy of the interview transcript if the interview is recorded, or a summary memorandum of the interview if it is not;
 - o The IG will have opportunity for comment concerning the accuracy of the transcript or memorandum and opportunity to provide additional information before the IC considers the matter;
 - o The IG may inquire about the status of the investigation, as warranted, during the pendency of the investigation;
 - o A copy of the ROI will not be provided to the IG by the IC at the conclusion but may be obtained in accord with the Privacy Act and implementing DOJ regulations.
 - o After considering the matter, the IC may choose to forward the report along with additional comments from the IG, if provided, to the PCIE/ECIE Chairman.

2. The IC may direct that the investigation commence without notice to the subject IG, or that notice be delayed, based on its determination that notice to the IG would likely compromise the success of the investigation or result in destruction of or tampering with evidence pertinent to the investigation.

C. Reviewing the Investigative Report

At the conclusion of any IC investigation, the investigative team will provide an investigative report containing necessary facts and conclusions by the investigating agency to the IC. The IC will determine whether the report establishes any administrative misconduct within the IC's jurisdiction. If the report does not establish misconduct, the IC will close the matter and so notify the PCIE/ECIE Chairperson. The IC may also choose to forward such a report to the PCIE/ECIE Chairperson and suggest that the Chairperson share the report with the

subject's agency head, and/or the subject, where appropriate (for example, where the allegation has become generally known and is now disproved or was initially referred to the IC by the agency head.) However, if, in the IC's opinion, the report does establish administrative misconduct or otherwise requires action, the IC shall refer the report to the PCIE/ECIE Chairperson with recommendations for appropriate action.

D. Transmitting the Investigative Report.

EO 12993 requires that the IC forward to the PCIE/ECIE Chairperson investigative reports with IC recommendations for further action if the results of the particular investigation warrant such recommendations. The PCIE/ECIE Chairperson will then work with the appropriate offices based on the investigative findings and recommendations of the IC. The PCIE/ECIE Chairperson may, when he or she deems appropriate, forward these findings and recommendations to the appropriate parties, such as agency heads of the subjects of the reports.

E. Notice to the IG Following the IC's Consideration.

Following the IC's consideration of the report of investigation, the Chair will advise the subject IG that the IC has completed its review of the matter and the report of investigation, along with any matters submitted by the IG, is being forwarded to the PCIE/ECIE Chairman for further consideration. If the IC determines that the report of investigation should not be forwarded to the PCIE/ECIE Chairman, the Chair will similarly inform the subject IG.

F. Availability of the Report of Investigation to the Subject IG.

When the IC forwards the Report of Investigation to the PCIE/ECIE Chairman, or notifies the Chairman the Report is not being forwarded, a copy of the Report will normally be made available to the individual about whom the report pertains, with appropriate redactions of personal or confidential information taken, provided the individual has made a timely request under the Privacy Act. The copy will be released by the FBI Record Information Dissemination Section, Records Management Division (the entity responsible for reply to a Privacy Act request for records maintained by the FBI) unless other Privacy Act or Freedom of Information Act exemptions apply that make release of all or part of the report unwarranted.

VI. CLOSING CASES.

A. Action by IC.

Depending on the circumstances, the IC may take action to close case as follows:

- After its initial review, if the allegation concerns a matter outside the IC's purview or is an allegation about which the IC decides to take no further action, as provided in Section 2 (d) of EO 12993.
- After review of the response from an IG named in a complaint or from an IG who investigates a complaint about a senior staff member, if the IC determines the response resolves the matter to its satisfaction.
- After review of a response from the head of an agency of the Executive Branch, if the allegation has been so referred under Section 2(C) of EO 12993.
- After review of the report of investigation conducted under the direction of the IC Chair, if the IC determines not to forward the report to the PCIE/ECIE Chair.
- After receipt of a notice of final disposition provided by the PCIE/ECIE Chair under Section 4 (e) of EO 12993, if the report of investigation concerning the matter was forwarded to the PCIE/ECIE Chair.

B. Notice of Action.

The IC will notify a subject IG and the individual making the complaint when a case is closed and the reasons for the action.

VII. POLICY REVIEW

A. The IC Chairperson.

As Chairperson of the IC, the FBI representative to the PCIE/ECIE is the federal official with primary responsibility for: 1) the effective conduct of the IC, and 2) responses to inquiries regarding allegations received from executive, legislative, and judicial branch officials, in a manner consistent with applicable law. The IC Chairperson oversees the working group, the quality of IC investigative reports, and discretionary determinations. The IC Chairperson is also responsible for the timeliness of IC actions, and IC (and/or IC-lead FBI) investigations. The IC Chairperson may recommend changes to the IC procedures as he or she finds necessary. The IC Chairperson will also issue an annual report to the PCIE/ECIE Chairperson on the status of complaints received by the IC.

B. The Chairperson and Vice Chairpersons of the PCIE/ECIE.

The PCIE/ECIE Chairperson and Vice Chairpersons provide guidance and support to the Chairperson of the IC. After the completion of IC action on a matter within its jurisdiction, the PCIE/ECIE Chairperson and Vice Chairpersons may review with an IG, or with other appropriate parties, any allegations which appear to constitute a pattern of misconduct or gross mismanagement in a particular OIG.

VIII. MAINTENANCE OF IC RECORDS

A. The Central Records System.

1. Content of Records. All documents received or transmitted by the IC in fulfilling its responsibilities under EO 12993 (including, but not limited to, written complaints making allegations against IGs; IC correspondence; reports of administrative misconduct investigations; reports of final actions taken with regard to proven allegations; and memoranda providing the final dispositions of allegations determined to be frivolous, outside the jurisdiction of the IC, or otherwise closed without further investigation) will be collected and maintained as IC records in the FBI's Central Records System. The Central Records System consists of a numerical sequence of subject matter files and an index.

2. Criminal Investigative Files Not Included as Integrity Committee Records. The Integrity Committee records will not include any criminal investigative files with general investigative information arising out of Public Integrity Section referrals or criminal allegations to the FBI. However, Integrity Committee records may contain information from criminal investigative files when such information is the source of the alleged administrative misconduct. The FBI's criminal investigative files are maintained in the Central Records System under the subject matter of the criminal violation, and, therefore, will be separate from IC records.

B. Disclosure of Information under the Freedom of Information Act.

Third party requests (requests by individuals other than the IG, or OIG staff member, who is the subject of the allegation) for information will be processed pursuant to the Freedom of Information Act (FOIA) (Title 5, U.S.C., Section 552), in accord with applicable law; regulations implementing the FOIA at Title 28, C.F.R. Part 16, Subpart A; and FBI FOIA policy and procedures.

C. Privacy Act Protection.

1. Restrictions on Disclosure. The records of the IC will be maintained in accord with the Privacy Act of 1974 (Title 5, U.S.C., Section 552a), which restricts the disclosure of all records contained in a system of records maintained by an executive branch agency and retrieved by an individual's name or a personal identifier, such as a social security number. The records may be disclosed only in response to the written request of, or with the prior consent of, the individual to whom the record pertains, or under the conditions specifically set for in the Act at Section 552a(b).

2. Access by Individuals to Their Own Records. Procedures for access by individuals to their own records have been established by the Privacy Act and in regulations implementing the Act at Title 28, C.F.R., Part 16, Subpart D. All disclosures of information requested from the IC records will be coordinated with the IC.

3. Release to an Individual About Whom a Report of Investigation Pertains. In coordinating a response to a request under the Privacy Act for the Report of Investigation by an individual about whom the report pertains, the IC Chairman may notify the FBI Record Information Dissemination Section, Records Management Division (the entity responsible for reply to the Privacy Act request) that the IC does not object to release provided the IC has reviewed the report and either forwarded the report to the PCIE Chairman or determined that no further action is required.

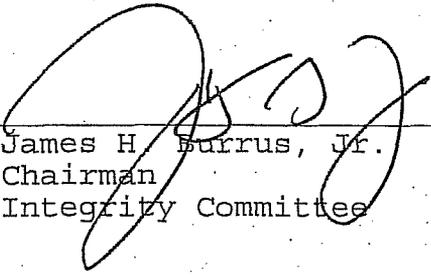
D. Physical Maintenance of Records.

1. Retention of Records. The records of the IC will be maintained by the working group in a restricted area.

2. Disposal of Records. FBI record disposition programs relevant to the Central Records System are conducted under the FBI Records Retention Plan and Disposition Schedule approved of the Archivist of the United States and U.S. District Court, District of Columbia. Administrative records at FBI Headquarters which meet the destruction criteria are destroyed after a period of ten

years or when administrative needs have expired, whichever is later.

APPROVED:



James H. Burrus, Jr.
Chairman
Integrity Committee

DATE:

4/27/07

Appendix E

Department of the Interior Office of Inspector General,
Critical Point Evaluations

Office of Inspector General Critical Point Evaluations

Issue: The Office of Inspector General (OIG) is dedicated to promoting accountability in the Department of the Interior. The OIG is committed to both prongs of its statutory mandate – to promote economy, efficiency and effectiveness as well as preventing and detecting fraud and abuse in the Department’s programs and operations. Critical Point Evaluations (CPEs) focus on major DOI projects or initiatives to identify potential problems that could result in waste of DOI resources or otherwise limit the effectiveness of the project or initiative *before* such consequences are realized.

Proposal: CPEs are limited scope evaluations of planned or on-going major projects or initiatives, such as the acquisition of a new financial system, a large construction project, or a new cross-cutting initiative. CPEs can be conducted at the beginning of a project, before major funding has been expended, to ensure that adequate management controls and oversight have been incorporated in the project. Alternatively, CPEs can be an iterative component of a project, occurring at the major milestones. For example, a CPE could evaluate the acquisition planning before a contract is awarded, and additional CPEs conducted at critical milestones during the acquisition cycle.

Methodology: Using the PCIE Inspection Standards as a guide, we will develop standardized evaluation methodology for various types of projects that may be reviewed. For example, we would likely employ one methodology to evaluate a major system acquisition and a modified methodology to evaluate a cross-cutting initiative like the Department-wide donation guidelines. The OIG will work with the DOI project management team to identify critical decision points when CPEs should be conducted. The OIG will also include a member of the relevant Assistant Secretary’s management team on every CPE team, together with multi-disciplined OIG staff and independent subject-matter experts, when necessary.

Reporting: The team will prepare and issue a concise report on each CPE, including a summary of the project or initiative, and its current stage of execution; a description of any problems encountered or deficiencies discovered, with suggested corrective actions; and a short discussion section highlighting issues of potential future concern. To the extent possible, best practices in the public or private sector will be identified and reported. For projects with multiple CPEs, a compilation report may be prepared at the conclusion, primarily to record and memorialize lessons learned to aid the OIG and DOI in future projects.

Expected Results:

- Identify and resolve issues or concerns early, at the lowest level, and least cost;
- Prevention of waste and costly mistakes;
- Identify best practices in the public and private sectors relevant to the project or initiative; and
- Enhance coordination among affected DOI organizational entities.

Appendix F

Project On Government Oversight,
Survey of IGs' Websites, Links, and Information

POGO Survey of IGs' Websites, Links, and Information

POGO Survey of IGs' Websites, Links, and Inform	Obvious Link on Agency Homepage	IG role & mission	Clear procedures	Rights of WBs	WB retaliation illegal
Amtrak	Yes	Yes	3	2	Yes
Appalachian Regional Commission	Yes	Yes	3	2	Yes
Architect of the Capitol	No	--	--	--	--
Central Intelligence Agency	No	--	--	--	--
Commodity Futures Trading Commission	Yes	Yes	1	3	Yes
Consumer Product Safety Commission	Yes	Yes	2	4	Yes
Corporation for National and Community Service	Yes	Yes	5	5	Yes
Corporation for Public Broadcasting	Yes	Yes	3	1	No
Department of Commerce	Yes	Yes	2	2	Yes
Department of Defense	Yes	Yes	5	5	Yes
Department of Education	Yes	Yes	2	1	No
Department of Energy	Yes	Yes	3	3	No
Department of Health and Human Services	No	Yes	3	1	No
Department of Homeland Security	Yes	Yes	2	4	Yes
Department of Housing and Urban Development	Yes	Yes	4	3	No
Department of Interior	Yes	Yes	5	5	Yes
Department of Justice	Yes	Yes	2	2	Yes
Department of Labor	Yes	Yes	5	1	No
Department of State	Yes	Yes	5	5	No
Department of Transportation	Yes	Yes	3	3	Yes
Department of Treasury	Yes	Yes	4	4	Yes
Department of Veteran's Affairs	Yes	Yes	5	3	No
Election Assistance Commission	Yes	Yes	1	1	No
Environmental Protection Agency	Yes	Yes	5	5	Yes
Equal Employment Opportunity Commission	Yes	Yes	2	5	Yes
Export-Import Bank of the United States	Yes	Yes	5	5	Yes
Farm Credit Administration	Yes	Yes	5	5	Yes
Federal Communications Commission	Yes	Yes	5	4	Yes
Federal Deposit Insurance Corporation	Yes	Yes	4	5	Yes
Federal Election Commission	Yes	Yes	4	5	Yes
Federal Housing Finance Board	Yes	Yes	1	4	Yes
Federal Labor Relations Authority	Yes	Yes	2	4	Yes
Federal Maritime Commission	Yes	Yes	5	5	Yes
Federal Reserve Board	Yes	Yes	2	4	Yes
Federal Trade Commission	Yes	Yes	3	3	Yes
General Services Administration	Yes	Yes	4	4	Yes
Government Accountability Office	Yes	Yes	1	4	Yes
Government Printing Office	Yes	Yes	3	2	Yes

Agency IG's	Obvious Link on Agency Homepage	IG role & mission	Clear procedures	Rights of WBs	WB retaliation illegal
Legal Services Corporation	Yes	Yes	1	2	Yes
Library of Congress	Yes	Yes	1	1	No
National Aeronautics and Space Administration	Yes	Yes	2	2	Yes
National Archives	Yes	Yes	2	2	Yes
National Credit Union Administration	Yes	Yes	5	5	Yes
National Endowment for the Arts	Yes	Yes	2	2	Yes
National Endowment for the Humanities	Yes	Yes	2	5	Yes
National Science Foundation	Yes	Yes	3	3	Yes
Nuclear Regulatory Commission	Yes	Yes	5	3	Yes
Office of Director of National Intelligence	No (Same as DoD IG)	--	--	5	Yes
Office of Personnel Management	Yes	Yes	2	3	Yes
Peace Corps	Yes	Yes	3	3	Yes
Pension Benefit Guaranty Corporation	Yes	Yes	3	4	Yes
Postal Regulatory Commission	Yes	Yes	3	2	Yes
Railroad Retirement Board	Yes	Yes	3	5	Yes
Securities and Exchange Commission	Yes	Yes	4	5	Yes
Small Business Administration	Yes	Yes	3	5	Yes
Smithsonian Institution	Yes	Yes	2	2	No
Social Security Administration	("Report Fraud")	Yes	5	5	Yes
Special Inspector General for Iraq Reconstruction	--	Yes	4	2	No
Tennessee Valley Authority	("Empowerline")	Yes	4	5	Yes
The Denali Commission	Yes	Yes	1	1	No
Treasury Inspector General for Tax Administration	Yes	Yes	3	4	Yes
U.S. Capitol Police	Yes	Yes	2	1	No
U.S. International Trade Commission	No	Yes	2	2	Yes
U.S. Postal Service	Yes	Yes	5	5	Yes
United States Agency on International Development	Yes	Yes	5	5	Yes
United States Department of Agriculture	Yes	Yes	4	5	Yes

1: no mention; scarce information

2: mention; inadequate

3: average; adequate

4: meets criteria of 1-3, with added detail

5: exemplary; exceptional detail

Appendix G

President's Council on Integrity and Efficiency
Executive Council on Integrity and Efficiency,
"Letter to Joseph E. Schmitz"

October 23, 2006

Integrity Committee



President's Council on Integrity and Efficiency
Executive Council on Integrity and Efficiency

935 Pennsylvania Ave., NW, Room 3973
Washington, D.C. 20535-0001

October 23, 2006

Joseph E. Schmitz
5502 Parkston Road
Bethesda, MD 20816

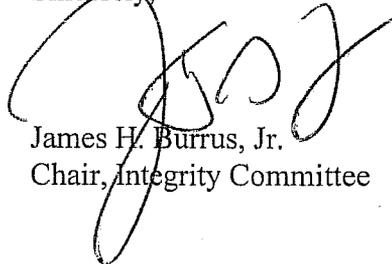
Dear Mr. Schmitz:

The purpose of this letter is to inform you of the Integrity Committee's (IC) further review of allegations that concern your service as Inspector General of the Department of Defense. This is a follow-up to my letter to your attorney dated October 5, 2006.

The IC carefully considered the supplemental materials provided with Kenneth Mead's letter of September 14, 2006, and the Report of Investigation (ROI) prepared by the United States Postal Service, Office of Inspector General, at the request of the IC. Based on its review of the report and these supplemental materials, and in consideration of the standard prescribed in Executive Order 12993 for review of allegations, the IC concluded that you had not violated any law, rule, or regulation, and that you had not engaged in gross mismanagement, gross waste of funds, or abuse of authority in connection with any of the matters under review.

The IC forwarded the supplemental materials to the Chairman of the President's Council on Integrity and Efficiency (PCIE), along with the conclusions noted above, and considers its review of the allegations to be complete.

Sincerely,



James H. Burrus, Jr.
Chair, Integrity Committee

Joseph E. Schmitz

2

October 23, 2006

1 - The Honorable Clay Johnson, III
Chairman, President's & Executive Councils on Integrity and Efficiency
C/o United States Office of Management and Budget (OMB)
Eisenhower Executive Office Building
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Washington, D.C. 20503

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