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¶ 57 FEATURE COMMENT: Inspector General Update

President Trump's recent firing of 18 inspectors general (IGs) brings renewed attention to this relatively obscure but immensely powerful Federal Government position. A reminder of what IGs are and what they do is, then, in order.

IGs are internal watchdogs inside nearly every federal agency, and their mission is to combat fraud, waste, abuse, and mismanagement in the programs and operations of the agency they oversee.

There have been IGs, in one form or another, since even before the founding of the Republic. The Continental Congress appointed Baron Friedrich von Steuben, a Prussian military officer, to serve as the IG of the Continental Army. There have been IGs in various branches of the U.S. military ever since.

Back in 1906, an office was established in the State Department to evaluate the effectiveness of our embassies and consulates around the world in implementing U.S. foreign policy. That office was incorporated into a State Department Office of Inspector General in 1959. In 1962, the Kennedy Administration created the position of the Inspector General of the Agriculture Department. In 1976, Congress established the first statutory Office of Inspector General (OIG) for the department now known as "Health and Human Services," with a goal of eliminating fraud and waste in Medicare and Medicaid programs. The Inspector General Act of 1978 (the "Act"), P.L. 95-452, passed by Congress in the wake of Watergate and signed into law by President Carter, created OIGs, as we now know them, in additional federal agencies. And, in 1988, the Act was amended to create still more OIGs, P.L. 100-504. Currently, there are 74 of them, in agencies large and small. (Note that there are also "Special" IGs, some with oversight authority over programs and operations undertaken by multiple agencies. A current example is the Special Inspector General for Afghanistan Reconstruction; for a number of years, there was likewise a Special Inspector General for Iraq Reconstruction. There is also currently a Special Inspector General for Pandemic Recovery, with oversight over Treasury Department programs under the Coronavirus Aid, Recovery, and Economic Security or "CARES" Act, and, for a number of years following the financial crisis of 2008, there was a Special Inspector General for the Troubled Asset Relief Program.)

In Cabinet-level departments and other large federal agencies, like, for example, the Department of Defense and the Department of Homeland Security, the IG is nominated by the president and must be confirmed by the Senate to serve in other than an acting capacity. In smaller agencies, like, for example, the Smithsonian Institution and the Equal Employment Opportunity Commission, the IG is appointed by the

agency head. The OIGs whose leaders are appointed by the president and subject to Senate confirmation are called "establishment" OIGs; those whose leaders are appointed by the agency head are called "designated federal entities" or "DFEs."

Though IGs are housed inside an agency, they are supposed to be independent of the agency, so that they can be objective and credible in carrying out their oversight responsibilities. To further their independence and bolster their credibility, the Act provides that establishment IGs can be removed from office only by the president.

To discourage them from removing IGs for partisan reasons, political ones, or no reason at all, a provision requiring presidents to provide Congress with 30 days prior written notice, with reasons to justify the removal, was included among the 2008 amendments to the Act, P.L. 110-409.

With one notable exception, until the removal of several IGs during President Trump's first term, it had long been the norm that IGs appointed by one president would not be removed and replaced by a new president, even if (and perhaps *especially* if) the new president was from a different political party than that of the appointing president. The lone exception occurred in 1981, when then newly elected President Reagan fired 15 IGs, with the intention of replacing them all with his own appointees. After objections from Congress and critical media coverage, all but a handful of those IGs were rehired.

In removing, for example, the then-State Department IG in 2020, one of the IGs removed during his first term, President Trump's letter to Congress explained that he had simply lost confidence in him. No doubt in response, the 2022 amendments to the Act, P.L. 117-263, the Fiscal Year 2023 National Defense Authorization Act, included a provision, § 5202, requiring a president's 30-day written notice to include a "substantive rationale, including detailed and case-specific reasons" for removal. The latest firings are as of this writing being challenged in court by a group of terminated IGs on account of the failure to provide such notice. And, the Chairman of the Senate Judiciary Committee, Sen. Chuck Grassley (R-Iowa), a longtime champion of the IG community, and ranking member Sen. Dick Durbin (D-Ill.) have written to the president to request, among other things, that he provide, after the fact, at least a substantive rationale for the firings, *www.judiciary.senate.gov/press/rep/releases/grassley-durbin-seek-presidential-explanation-for-ig-dismissals*.

OIGs are treated as a separate agency within an agency, meaning, for example, that IGs have the power to hire and fire their own staff. They have their own legal counsel. They have their own press office. They have their own congressional liaison. And, they have considerable authority over their budget.

Like all other agency components, OIGs submit their budget requests to the agency head, and then the agency head submits the agency's requested budget for the OIG, *and* the OIG's own budget request, to the Office of Management and Budget. OMB then decides for the administration what each agency's budget request will be. If there is any difference between the OIG's budget request and the administration's requested budget for that office, Congress can see it and then decide which of the two budget requests is merited. If the IG believes that the differences between the budget requests are so significant as to "substantially inhibit the Inspector General from performing the duties of the office," 5 USCA § 406(g)(3)(E), the administration must submit the IG's comments to that effect to Congress for its consideration in determining whether an increase in the OIG's budget over the administration's objections is warranted.

In selecting an IG nominee, the Act specifies that presidents are to do so "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." 5 USCA § 403(a).

The "without regard to political affiliation" clause has been interpreted to mean that, while a president certainly may (and, of course, usually does) choose a nominee who shares his party affiliation and ideological persuasion, the key criterion should be the nominee's expertise in one or more of the

specified disciplines. Once confirmed, IGs are supposed to check their politics at the door and carry out their work without regard to the political consequences for the president, his administration and party, and the agency head.

IGs have a dual reporting chain, to both the agency head and to "Congress," which, in practice, means the House and Senate committees and subcommittees that have authorizing and appropriations jurisdiction over the applicable agency. The specific language with respect to reporting to the agency head is "report to and be under the general supervision of the head" of the agency.

"Report to" has been read in conjunction with other language in the statute requiring IGs simply to "keep the head of the establishment … fully and currently informed" about agency problems and corrective actions. 5 USCA § 402(b)(3). "General supervision" has been taken to mean simply that the IG is expected to follow the agency head's lead on administrative matters of general applicability, like, for example, hours of operation and dress code.

Reporting to the agency head and being under his/her general supervision is not taken to mean that the agency head has the authority to tell IGs what they may, must, or must not do. IGs have broad authority to undertake such examinations "relating to the administration of the programs and operations [of the agencies they oversee] *as are in the judgment of the Inspector General*, necessary or desirable." 5 USCA § 406(a)(2). The only exception is the ability of certain agency heads (those of the departments of Defense, Homeland Security, Justice, the Treasury; the Chair of the Federal Reserve Board; and the heads of the Postal Service and the Consumer Financial Protection Bureau) to prohibit the respective IGs from examining matters that could negatively affect national security, ongoing criminal prosecutions, or the economy. This option is rarely exercised, no doubt because the agency head must advise Congress when they do so and justify it in writing.

IGs have the power to subpoena the "production of all information, documents, reports, answers, records, accounts, papers, and other data … and documentary evidence necessary in the performance of the functions" of the office. 5 USCA § 406(a)(4). This power to issue a subpoena to compel compliance with demands for access to relevant documents covers not only agency employees; the IG can subpoena documents from those in the private sector also, if those entities or individuals receive money from agency contracts, grants, or cooperative agreements and the matter at issue somehow relates to the award or expenditure of those funds.

IGs must have "direct and prompt" access to the agency head when such access is deemed by the IG to be necessary. 5 USCA § 406(a)(6). Additionally, IGs are statutorily required to report to the agency head "particularly serious or flagrant problems, abuses or deficiencies relating to the administration of [the agency's] programs and operations." The agency head in turn must submit a copy of that report to Congress within seven days of its receipt. 5 USCA § 405(e). Known as "seven-day letters," these reports are issued in practice only rarely, which has the effect of underscoring their significance when they *are* issued.

As for the reporting obligation to Congress, IGs provide copies of their work to, as noted above, the congressional committees with jurisdiction over their agency. And they are statutorily required to submit semiannual reports that summarize their activities during the applicable period. Additionally, IGs are routinely called to testify before Congress about their work, and, unless classified, their testimony (or at least their opening statements) is posted on their websites.

An IG's work consists of investigations, audits, and inspections or, depending on a particular OIG's lexicon, "evaluations" (or some other synonym). An especially important thing to understand, when contacted by an OIG, is exactly what kind of an examination the office is conducting. *Any* kind of OIG examination can be referred to colloquially as an "investigation," but investigations, audits, and inspections/evaluations are distinct kinds of examinations and there are notable differences between and among them.

Both audits and inspections/evaluations are examinations of a given Government program or

operation, but, though alike in kind, they differ in scope, nature, and timing.

Audits are typically thought of as examinations of the financial kind, i.e., whether Government money is being spent and accounted for properly. While IGs certainly do conduct financial audits, they also conduct "program" audits, meaning, examinations undertaken to assess whether a given program is effective in achieving its goals and/or whether the program is being operated efficiently and economically. Such audits are similar to the work of a consulting firm.

A classic example of a financial audit is one that examines whether agency employees are charging personal expenses on their Government credit cards or using Government vehicles for personal purposes. Another example is one that focuses on whether a contractor providing goods or services to an agency is overcharging for them, or whether the goods or services are non-conforming to specifications or otherwise subpar in some way. A classic example of a program audit is an assessment of what went right and wrong during the height of the COVID pandemic in terms of developing and distributing vaccines. Another example of a program audit would be an assessment of what went right and wrong during the course of the U.S. exit from Afghanistan.

Whether it is a financial audit or a program one, audit reports will contain not only findings, but also, when shortcomings are found, any recommendations for improvement. Drafts of the audit report are shared with applicable agency personnel for their review and any comments. If the agency points to errors or flaws of a factual, legal, and/or methodological nature, or the agency can show that a given audit recommendation is inappropriate, impractical, or otherwise ill-advised, the auditors will revise the draft accordingly. If, however, there is simply a difference of opinion between the agency and OIG auditors on a given matter (as is often the case), no changes will be made to the draft on that account. In either case, though, the final audit report will include any agency comments and any OIG response to those comments. When an audit involves a person or entity in the private sector—a contractor, grantee, or party to a cooperative agreement with the agency—whether to share a draft of the report with that person or entity for review and comment, and what, if anything, is done with any such comments, is left to the discretion of the OIG.

Like academics researching and writing scholarly works, auditors are required to engage in a rigorous process according to stringent quality standards prescribed by the Government Accountability Office in its "yellow book," *www.gao.gov/assets/720/713761.pdf*. So exacting are those standards that it can take considerable time, months, or, in some cases, even a year or more, for a finalized audit report to issue.

Therefore, when there are hot button, headline-grabbing, politically charged issues that cry out for an IG's immediate attention, they usually turn to their inspections or evaluations team to conduct the review. Their work, too, must, of course, be accurate and thorough, and they, too, have guidelines, the "blue book," Quality Standards for Inspection and Evaluation, *www.ignet.gov/sites/default/files/files/QualityStandardsforInspectionandEvaluation-2020.pdf*, prescribed by the association of Inspectors General known as "CIGIE" (Council of Inspectors General on Integrity and Efficiency). But these guidelines are not as stringent as those of auditors. Accordingly, inspectors/evaluators can respond more quickly to "breaking news" and its equivalent. A classic example of such a report is the "alert" recently issued by the now terminated IG of the U.S. Agency for International Development in response to the administration-mandated pause on foreign assistance programs. See *Oversight of USAID-Funded Humanitarian Assistance Programming Impacted by Staffing Reductions and Pause on Foreign Assistance*, available at *oig.usaid.gov/sites/default/files/2025-02/USAID%20OIG%20-%20Oversight%20of%20USAID-Funded%20Humanitarian%20Assistance%20Programming%20021025.pdf*

When there is evidence, or simply credible allegations, that laws have been violated, an OIG's team of "agents" investigates them. (Note that such evidence can be uncovered during the course of an audit or inspection, in which case the auditors or inspectors will pass it on to OIG agents.)

These agents are sworn and trained federal law enforcement officers with the power to seek and execute arrest warrants, search premises and seize evidence upon probable cause to do so, serve a subpoena, and administer to or take from a person an oath, affirmation, or affidavit. Their authority is not limited to a particular jurisdiction; it extends throughout the entirety of the U.S. As is the case with lying to any other federal law enforcement officer, lying to an OIG agent is a crime in itself.

If an investigation uncovers (or further confirms) evidence that a crime (usually, some kind of fraud) has been committed, IGs are statutorily required to refer the matter to the Department of Justice for its determination whether criminal prosecution, a civil lawsuit, referral back to the agency for administrative resolution, or no action at all, is warranted.

There are standards for conducting and documenting investigations, too, the CIGIE-prescribed Quality Standards for Investigations, *www.ignet.gov/sites/default/files/files/committees/investigation/invprg1211appi.pdf*. However, unlike audit and inspection reports, reports of investigation are not made public, but statistics about OIG investigations (cases opened, cases closed and how resolved, etc.) and summary information about them is contained in the semiannual reports to Congress. Also, unlike audit and inspection reports, drafts of investigative reports are not shared with the subject of the investigation.

IGs can also refer their findings to agency components that have the power to suspend or even debar contractors and grantees from continuing to do business with the Federal Government.

How do IGs decide what to audit, inspect, and investigate? IGs can decide for themselves what to examine, subject to the limitations mentioned above. For one reason or another, they might have a personal interest in a specific program, operation, or issue, or a news report might pique their interest and prompt the opening of an inquiry. The agency head can ask an IG to look into a matter. IGs can also receive referrals from Congress, usually from the heads of the House or Senate committees that have jurisdiction over the agency. Finally, members of the public and agency employees can report allegations anonymously to the IG's office by means of a confidential hotline, and, of course, people can send letters or emails to an OIG.

According to the most recent Annual Report to the President and Congress (for Fiscal Year 2023), *www.ignet.gov/sites/default/files/files/CIGIEAnnualReporttothePresidentFY2023_FINAL.pdf*, IGs' audit recommendations and investigative recoveries and receivables resulted in $93.1 billion in potential savings for America's taxpayers. They issued 2,217 audit, inspection, and evaluation reports; processed 743,275 hotline complaints; and closed 19,755 investigations. Their findings resulted in 4,691 indictments and criminal "informations"; 4,318 successful prosecutions; 1,106 successful civil actions; 2,907 suspensions or debarments; and 3,187 personnel actions. All in all, an impressive record by any measure.

IG inquiries can attract the attention of Congress and the press. In cases where the allegations are especially serious and/or the amount of money at issue is large, it is not uncommon for there to be congressional hearings, media stories, *and* DOJ involvement of some kind all at once, the proverbial "perfect storm" that, depending on the particulars, can significantly tarnish a company's reputation, and even lower its market value. An IG inquiry that results in a suspension or debarment can be the death knell for a company that derives a significant share of its revenue from Government business, and it goes without saying that an IG investigation that results in simply an indictment, much less a conviction, can be devastating.

All Government contractors should, then, make it a priority to be familiar with IGs and to follow their work closely, lest one come knocking on their door someday. Given the potential stakes, however innocuous they may seem at first blush, IG inquiries are never to be taken lightly.

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