

GAO

Report to the Chairman, Committee on
Governmental Affairs, U.S. Senate

April 1990

INSPECTORS GENERAL

Progress in Establishing OIGs at Designated Federal Entities



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**Accounting and Financial
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April 24, 1990

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

The Inspector General Act Amendments of 1988 (Public Law 100-504) established offices of inspector general (OIGs) in 33 designated federal entities. In response to your request, we reviewed the progress made by these entities in establishing their OIGs.

The designated federal entities have taken steps to establish their OIGs in accordance with the 1988 amendments. All of the entities have officially established an OIG and have appointed an inspector general (IG) or an acting inspector general. In addition, all of the entities have developed policy documents describing the mission of the OIG and the IG's duties.

We found that IG independence, authority, and capability to do work were sometimes constrained because of limitations imposed by the entities. Most of these constraints were removed through our discussions with officials at these designated federal entities. However, problems in establishing effective OIGs remain. For example, (1) at least eight of the new OIGs have inadequate resources and (2) the entity head responsible for supervising the IG has not been correctly identified at two entities.

Background

Prior to the 1988 amendments, the Inspector General Act of 1978, as amended, provided for independent inspectors general, presidentially appointed, to conduct and supervise audits and investigations and recommend policies to promote economy, efficiency, and effectiveness as well as the prevention and detection of fraud and abuse in programs and operations of their agencies. IGS are responsible for keeping agency heads and the Congress fully informed of agency problems and corrective actions. IGS are required to report on the results of their audits and investigations and to prepare semiannual reports to agency heads and the Congress.

The Congress enacted the Inspector General Act Amendments of 1988 to establish statutory OIGs at 33 designated federal entities defined in the

act.¹ (See appendix I for a list of the 33 designated federal entities.) The amendments provided for the entity heads to appoint their inspectors general. The powers and duties extended to the IGs appointed by the entity heads are essentially the same as those provided to presidentially appointed IGs. The 1988 amendments required the entities to establish their OIGs by April 17, 1989.

Objectives, Scope, and Methodology

The objectives of our review were to determine the designated federal entities' progress in implementing the 1988 amendments and to identify any problems they were encountering in so doing. We interviewed IGs, acting IGs, and other entity officials responsible for establishing the OIG at 27 entities. We reviewed draft and final policy documents, including IG position descriptions, statements of duties and responsibilities, mission and function statements, and memorandums of understanding with other entity components. We also reviewed legal opinions about implementation of the 1988 amendments.

We obtained similar information on the remaining five entities from separate reviews we have conducted of these entities' progress in establishing OIGs. We issued reports on the status of OIG implementation at the Tennessee Valley Authority (TVA) and at the National Science Foundation.² We plan to issue a report on the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the National Credit Union Administration.

We met with representatives of the Office of Management and Budget (OMB) and the President's Council on Integrity and Efficiency (PCIE). We also met with representatives of the PCIE Coordinating Conference—an interagency committee monitoring entity efforts to implement OIGs—to obtain their views on the establishment of OIGs at designated federal entities.

In accordance with your request, we are providing details on the status of OIG implementation at the Corporation for Public Broadcasting and the Federal Election Commission. Both entities experienced difficulty in

¹One of the entities, the Federal Home Loan Bank Board, was abolished by Public Law 101-73 (August 1989), leaving 32 designated federal entities.

²Inspectors General: Adequacy of TVA's Office of Inspector General (GAO/AFMD-89-68, July 3, 1989) and Inspectors General: Establishment of the National Science Foundation's Office of Inspector General (GAO/AFMD-90-15, April 10, 1990).

establishing an OIG because officials at each entity thought the OIG concept conflicted with the entity's mission.

At your request, we did not obtain agency comments on a draft of this report. However, the views of responsible entity officials were sought during the course of our work and are incorporated where appropriate. We explained to officials at each entity where we identified problems that certain provisions in their policy documents were not consistent with the act and should be changed.

Our audit work was conducted in accordance with generally accepted government auditing standards and was conducted from July 1989 to January 1990.

All Designated Federal Entities Have Established an OIG

Our review showed that all of the designated federal entities have taken steps to establish their OIGs in accordance with the 1988 amendments. All entities have established an office of inspector general and have appointed an IG or acting IG. In addition, all entities have prepared policy documents describing the mission and function of the OIG.

While the entities' initial policy documents did not always reflect the role and authority of the IG and needed modification, entity officials were generally cooperative in reviewing these issues with us and making appropriate revisions to their documents. However, at the National Archives and Record Administration, documents containing questionable provisions have not yet been revised. The documents with these provisions were prepared by the entity's policy staff and show that the entity head has considerable control over the IG's audit plan. He can require audits to be done and has approval authority over other audits. In addition, the IG must notify the entity head before taking cases to a U.S. attorney. We believe these types of provisions restrict the IG's statutory independence. The IG told us that he disagreed with these provisions and notified entity officials of his disagreement. He stated that he has now been authorized to write his own operating procedures and intends to correct the problems we cited.

Lack of Resources May Restrict Operations for at Least Eight OIGs

The designated federal entities expend considerable resources and are responsible for carrying out important federal activities. Their OIGs need to have the necessary resources to fulfill their statutory mission of detecting and preventing fraud, waste, and abuse. (See appendix I for a comparison of entity and inspector general resources.)

In 8 of the 32 entities, the IG was the only professional staff person assigned to the office. In most cases, a secretary was also provided. Not having sufficient resources can prevent IGs from adequately carrying out their roles and responsibilities. The IGs lacking resources told us they intend to use staff from management or other federal agencies to accomplish their plans or to rely on contracting out for audit services.

At one of these entities—the Federal Trade Commission—the IG told us he intends to contract with private accounting firms for all audits and to obtain investigative services from within the entity’s office of general counsel. We believe the lack of permanent staff would not permit the OIG to develop in-depth and comprehensive knowledge of agency programs and would thus limit the OIG’s effectiveness. At the remaining seven entities, OIGs plan to obtain additional staff from the entity or another federal agency or to contract out for temporary assistance until the OIG can obtain additional staff.

We believe that relying on management staff could detract from IG independence and objectivity. Furthermore, the lack of permanent staff could hamper an IG’s ability to develop in-depth, continuous knowledge of agency operations. We are concerned that a minimal level of staff resources will not permit effective fulfillment of IG responsibilities as defined in the act. We believe one professional staff person—the IG himself—is not sufficient for any OIG to accomplish the work required. Past experience has shown that having too few OIG resources restricts the effectiveness of an OIG.³

We believe the appropriate staff level for each entity’s OIG must be determined based on the IG’s work plan, which includes an assessment of priorities and a determination of staff levels needed to perform the work. Most IGs were in the process of assessing their staff needs and were discussing staff levels with entity management. They pointed out that they were still getting organized and needed some experience over a period of time to adequately determine their staff needs.

³The Inspector General Act of 1978: A 10-Year Review (House Report No. 100-1027, October 3, 1988) pp. 11-17.

GAO Disagreement With the OMB- Identified Head at Two Entities

The 1988 amendments require that the inspector general report to the head of the designated federal entity and to no other employee. According to the amendments, the authority to appoint and supervise the IG cannot be delegated to any other party. This provision helps ensure that IGs will be independent from program management and will have the authority to carry out their responsibilities. The 1988 amendments define the head of the entity as the head designated by statute, or, if no such designation exists, the chief policy-making officer or board as identified in a list published by OMB. The 1988 amendments required that OMB, in consultation with the Comptroller General, publish its first list of entity heads in the Federal Register by April 30, 1989, and annually thereafter.

We disagree with the identification of entity heads for the Pension Benefit Guaranty Corporation (PBGC) and the Legal Services Corporation (LSC) in the list published on November 9, 1989. The statutes governing PBGC and LSC do not explicitly designate the head of these entities. Accordingly, the 1988 amendments require that OMB's list identify the chief policy-making officer or board as the head of PBGC and LSC. OMB's list identified PBGC's executive director as the entity head, and in the case of LSC, the list identified the entity's president. Neither of these officers is the chief policy-making officer or board for the entities. As required by the 1988 amendments, we consulted with OMB on its proposed list of entity heads prior to publication of the OMB list. We expressed concern with the entity heads OMB proposed for PBGC and LSC and suggested that the board of directors or the chairman would be a better choice for these entities.

Officials we interviewed at both entities agreed with OMB's decision even though both entities have boards of directors who have policy-making authority. These officials indicated that the entity head identified is largely responsible for running the entity's daily operations. They also indicated that the boards of directors meet infrequently and their members are geographically dispersed.

Our disagreement with the OMB list is based on the statutes and regulations governing PBGC and LSC and on our belief that inspectors general should be independent from program officials who run the very operations the IGs audit and investigate. The statute governing PBGC does not describe its powers and duties as being those of a particular board or person. But the statute does provide that the corporation shall be administered by the Secretary of Labor, as Chairman of the Board of Directors, in accordance with policies established by the Board [29

U.S.C. 1302 (a)(d)]. In this regard, we note that PBGC's own regulations state that the Board "shall establish the policies" of PBGC and that final decisions on certain policy matters are reserved to the Board and may not be delegated [29 C.F.R. 2601.3 (1989)]. The position of executive director is not established by statute, and, therefore, the executive director has no authority, policy-making or otherwise, other than that provided by the Board. The 1988 amendments do not include responsibility for an entity's daily operations as criteria for who shall be identified as an entity head on OMB's list. In view of PBGC's statute and regulations, we find no basis for the executive director being, in the words of the 1988 amendments, the chief policy-making officer of PBGC.

The statute governing LSC does not describe its powers and duties as being those of a particular board or person. However, the statute does refer to the policy-making function of the LSC Board.⁴ Furthermore, LSC's own regulations provide that the president's responsibility and authority as Chief Executive Officer is subject to the direction and policies established by the Board [45 C.F.R. 1601.33 (1988)]. Therefore, we also believe that the president cannot be viewed as the chief policy-making officer of LSC.

Our disagreement with OMB's list is not based solely on our reading of the statutes and regulations described above. As far back as 1977, when the Congress was considering the bill which ultimately became the Inspector General Act of 1978, it expressed the view that having auditors and investigators report to agency officials with program operating responsibilities was a deficiency in organizational structure and a conflict of interest [S. Rep. No. 95-1071, p. 7 (1978); H. Rep. No. 95-584, p. 5 (1977)]. The Congress thus provided that inspectors general would report only to the agency head or the officer next in rank if the agency head so delegated. This delegation is not authorized by the 1988 amendments for the 33 designated entities. Since the PBGC executive director and the LSC president are largely responsible for the daily operations of their entity, and thus the very activities the inspectors general will be reviewing, we believe OMB's designation will create the type of organizational structure deficiency the Congress sought to correct.

Accordingly, we continue to believe that OMB's list should identify the board of directors or the chairman as the head of PBGC and LSC.

⁴The LSC president's authority to appoint and remove LSC employees is subject to the general policies of the Board [42 U.S.C. 2996d].

OIGs at the Corporation for Public Broadcasting and the Federal Election Commission Were Properly Established

At your request, we examined the issues raised by the Corporation for Public Broadcasting and the Federal Election Commission in establishing their OIGs. Officials at both entities expressed serious concerns about the establishment of an OIG at their entities because they thought the OIG's role would conflict with the entities' missions. However, we found that an OIG could function satisfactorily at these entities because the IG's role would be to audit and investigate the activities of the entity and not become involved in the entity's program operating responsibilities. After our discussions with officials at both entities, most of their concerns over the establishment of an OIG were resolved.

Corporation for Public Broadcasting

The Corporation for Public Broadcasting (CPB) originally objected to having a statutory IG because CPB thought that it conflicted with its authorizing legislation, which protects the Corporation from government interference. Officials were concerned that the activities of the IG would undermine CPB's ability to protect the recipients of its funds from extraneous interference and control over program content and broadcasting activities, both of which are protected by the First Amendment. Because of these concerns, CPB officials told us that they initially attempted to place restraints on the IG role so that it would not conflict with CPB's mission or interfere with the free expression of CPB funding recipients.

In reviewing CPB's original statement of IG duties and responsibilities, we found it had made one individual serve as both inspector general and director of audit. As IG, he would report to the Congress and management on his investigative activities. But as director of audit, he would report on his audit activities to management only. The IG act requires that audit activities be included in the IG's duties and that the IG report to both the Congress and management on all of his activities, including audits. The arrangement originally established by CPB would have the IG reporting only to management for that part of his duties performed as director of audit. We also found that the board of directors of CPB had delegated the authority to supervise the IG to CPB's president, and this delegation is not permitted by the act.

We told CPB officials that we had reviewed the entity's role and mission and concluded that an OIG could function satisfactorily at CPB because the IG's role was to audit and investigate the activities of CPB and not become involved with CPB's program operating responsibilities. We also stated that the act intended for the IG to report to the chief policy-making officer or board at the entity and that having an IG's role divided

into two parts with different rules governing each was not consistent with the intent of the IG act.

Following our discussions of these issues, CPB officials reconsidered their position and changed their policies. The board of directors assumed responsibility for appointing the IG and maintaining general supervision. A revised policy document modified the role of the IG to include the duties of the director of audit and the duties of the inspector general, and provided that in the fulfillment of all of these duties, the IG would be responsible to both the Congress and the entity head.

Federal Election Commission

The Federal Election Commission (FEC) took the position that the operations of its OIG needed to be constrained. The FEC maintained that its audits and investigations of presidential campaign funds and other campaign financing entities are part of the programmatic responsibilities of the FEC and not the responsibility of an FEC IG. The FEC also claimed that the IG concept threatened the political balance within the agency, which requires an absolute majority approval for all policies and actions.

Bills were introduced in the House of Representatives and Senate to remove the FEC from the IG Act Amendments of 1988. In a bill authorizing appropriations for the FEC for fiscal year 1990 (H.R. 1326), the House Committee on House Administration included a provision to strike the FEC from the IG Act Amendments of 1988. However, the House Government Operations Committee subsequently recommended that the bill retain the FEC in the IG Act Amendments of 1988, with the stipulation that the FEC IG is not to undertake the FEC's external audit functions. The Senate Committee on Rules and Administration also introduced a bill (S. 1074) to authorize appropriations for the FEC for fiscal year 1990, with a provision to remove the FEC from the IG Act Amendments of 1988. Neither bill passed.

The FEC has established an OIG, appointed an IG, and developed OIG policy documents in a manner consistent with the 1988 amendments. Based on our review of the FEC's role and mission, we believe an IG can function satisfactorily at FEC because the IG's role is to audit and investigate the functions of FEC, not the presidential campaign funds or campaign financing entities which are the subject of FEC's program operating responsibility. We agree that the FEC IG should not engage in activities deemed to be program operating responsibilities of the Commission.

Conclusions

Designated federal entities have taken steps to establish offices of inspector general in accordance with the 1988 amendments. However, the level of resources provided to at least eight of the new OIGs may not be adequate for the successful achievement of OIG objectives. If adequate resources are not provided, the IGS' objectivity and independence could be impaired because they may rely too heavily on resources borrowed from the entity. In addition, a lack of permanent staff could prevent IGS from developing an in-depth, continuous knowledge of agency programs. During the course of our review, most of the IGS were in the process of assessing their staff needs and were discussing staff levels with entity management.

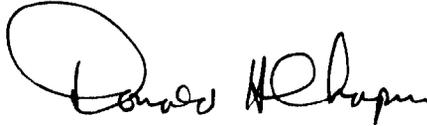
OMB's list has identified chief executive officers as the entity heads at PBGC and LSC, and entity officials have agreed with OMB's judgment. These officers are responsible for the entities' operations and are not the entities' chief policy-making officers or board. The 1988 amendments state that the head of the entity is the head designated by statute, or if no such designation exists, the chief policy-making officer or board as identified in a list published by OMB. Based on this provision, we believe the board or chairman of the board at these entities would be a better choice because at these entities, they perform the chief policy-making function.

Recommendation

To ensure that the IGS at the Pension Benefit Guaranty Corporation and at the Legal Services Corporation are reporting to the proper authority, OMB, in its next annual list of entity heads, should identify the board of directors or its chairman as the entity head at these entities.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of this letter. At that time, we will send copies to the Director of the Office of Management and Budget; the Chairman of the Committee on Government Operations, House of Representatives; all statutory inspectors general and acting inspectors general; and other interested parties upon request. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald H. Chapin". The signature is written in a cursive style with a large initial "D".

Donald H. Chapin
Assistant Comptroller General

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Abbreviations

CPB	Corporation for Public Broadcasting
FEC	Federal Election Commission
IG	inspector general
LSC	Legal Services Corporation
OIG	Office of Inspector General
OMB	Office of Management Budget
PBGC	Pension Benefit Guaranty Corporation
PCIE	President's Council on Integrity and Efficiency
TVA	Tennessee Valley Authority

Thirty-Three Designated Federal Entities: Resources Compared to OIG Staff

Designated federal entity	1990 Estimate		
	Total entity staff size ^a (Full-time positions)	Budget authority ^a (Dollars in thousands)	Size of OIG staff ^b (Full-time equivalents)
ACTION	460	\$175,665	6
Amtrak	^c	604,685	75
Appalachian Regional Commission	40	147,900	2
Federal Reserve System	1,576	^d	9
Board for International Broadcasting	17	373,021	2
Commodity Futures Trading Commission	545	37,186	3
Consumer Product Safety Commission	514	35,147	1.5
Corporation for Public Broadcasting	^c	229,391	11
Equal Employment Opportunity Commission	3,200	184,926	12.1
Farm Credit Administration	594	^d	6
Federal Communications Commission	1,835	82,550	3
Federal Deposit Insurance Corporation	3,585	1,996,557	144
Federal Election Commission	243	15,330	2
Federal Home Loan Bank Board ^e	•	•	•
Federal Labor Relations Authority	256	17,590	2
Federal Maritime Commission	225	15,452	3
Federal Trade Commission	899	53,876	2
Interstate Commerce Commission	661	44,205	1
Legal Services Corporation	^c	316,525	6
National Archives and Records Administration	1,785	125,112	10
National Credit Union Administration	920	^d	6
National Endowment for the Arts	219	171,285	8
National Endowment for the Humanities	251	157,510	6
National Labor Relations Board	3,000	140,111	7
National Science Foundation	1,096	2,103,608	25
Panama Canal Commission	8,056	4,078	22
Peace Corps	1,080	166,049	16.5
Pension Benefit Guaranty Corporation	562	^d	6
Securities and Exchange Commission	2,451	143,717	7
Smithsonian Institution	5,308	313,554	20
Tennessee Valley Authority	21,000	476,979	155
U.S. International Trade Commission	502	38,477	2
U.S. Postal Service	655,584	4,577,077	4,419

^aBudget authority and total agency staff (full-time positions) were derived from Budget of the United States Government, Fiscal Year 1991.

^bIncludes professional and secretarial staff planned for 1990 based on entity estimates.

^cData not available from budget.

^dNo budget authority.

^eEntity abolished by Public Law 101-73 (August 1989).

Major Contributors to This Report

Accounting and
Financial Management
Division, Washington,
D.C.

John J. Adair, Director, Audit Oversight and Policy
Marsha L. Boals, Assistant Director, (202) 275-8646
Warren C. Underwood, Evaluator-in-Charge
Johnny R. Bowen, Evaluator
Jackson W. Hufnagle, Accountant
Ann R. Lewis, Evaluator
Steven H. Farnsworth, Accountant

Office of the General
Counsel, Washington,
D.C.

Jeffrey A. Jacobson, Assistant General Counsel

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