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Congressional Addressees

Inspectors General: Independence Principles and Considerations for Reform

Accountability—for both the use of public resources and the exercise of government authority—is key to our nation’s governing processes and to achieving national goals. Independent government audits, in turn, provide essential accountability and transparency over government programs and operations by providing objective analysis and information to decision-makers and the public. Given the current challenges facing the federal government, the oversight provided through independent government audits and investigations is more critical than ever.

In the past 4 decades since enactment of the Inspector General Act of 1978 (IG Act), federal inspectors general (IG) have played a critical role in enhancing government accountability.¹ Congress established the offices of inspector general (OIG) to prevent and detect fraud, waste, abuse, and mismanagement in federal agencies’ programs and operations; conduct and supervise audits and investigations; and recommend policies to promote economy, efficiency, and effectiveness.

Various legislative proposals to strengthen IG independence have been introduced in the current Congress, and several congressional committees have contacted GAO to request information on this and related topics.² Congressional oversight plays a critical role in ensuring that IGs perform their statutory responsibilities and in preserving and strengthening their independence.

The IG Act requires IGs to comply with standards established by the Comptroller General of the United States for audits of federal establishments, organizations, programs, activities, and functions. These standards are known as generally accepted government auditing standards (GAGAS).³ GAO also plays a role in overseeing IGs by conducting audits of individual OIGs at the request of committees and members of Congress and by providing technical assistance to Congress on OIG issues. In addition, GAO coordinates and collaborates with the IG community,

¹Pub. L. No. 97-452, 92 Stat. 1101 (1978), *classified as amended at 5 U.S.C. app.* In this report, references to the IG Act mean the Inspector General Act of 1978, as amended.

²As of June 4, 2020, bills introduced in the 116th Congress with IG independence-related provisions include the Inspector General Protection Act, H.R. 1847 (2019); Inspectors General Independence Act of 2020, H.R. 6668; Accountability for Acting Officials Act, H.R. 6689 (2020); The Heroes Act, H.R. 6800 (2020); Inspector General Independence Act, H.R. 6984 (2020); and Inspectors General Independence Act of 2020, S. 3664.

³GAO, *Government Auditing Standards: 2018 Revision*, [GAO-18-568G](#) (Washington, D.C.: July 2018).

including through periodic meetings and working groups, to facilitate audit work, avoid overlap and duplication of effort, and share best practices.

This report (1) provides information on the key independence principles that auditors and audit organizations, including OIGs, must consider; (2) presents an evaluative framework for how these independence principles could be applied through ongoing IG reform efforts; and (3) provides reform options that Congress could consider.

Key Independence Principles Established by the IG Act and Government Auditing Standards

Ensuring the independence of IGs is critical to OIGs' credibility and effectiveness. The IG Act, GAGAS, and our audit work have all emphasized the importance of IG independence. GAGAS provides a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services.

Most federal statutory IGs are authorized by the IG Act.⁴ Initially, all IG Act IGs were to be appointed by the President with the advice and consent of the Senate (PAS). The Inspector General Act Amendments of 1988 added a second category of IG Act IGs, known as designated federal entity (DFE) IGs.⁵ DFE IGs generally have the same authorities and responsibilities as the PAS IGs, except that they are appointed by and may be removed by their agency heads, rather than the President, and are not subject to Senate confirmation.

The IG Act recognizes IG independence as one of the most important elements of IG effectiveness. The IG Act provides specific protections for IG independence to enable an effective and independent audit and investigative function for IGs notwithstanding their reporting relationship within the agencies being reviewed. IGs report to, and are generally supervised by, the heads of their respective agencies, but they also have obligations to report externally to Congress.⁶ For example, each IG is required to prepare a semiannual report summarizing OIG activities and submit it to the agency head, who must transmit it to appropriate committees of Congress within 30 days of receiving it. The agency head may include comments but cannot alter the IG's report.

Further, the IG Act places constraints on IG supervision and removal. Apart from limited exceptions related to national security and law enforcement, an agency head cannot prevent or prohibit an IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, and IGs have the authority to make such investigations and reports as they judge necessary or desirable. IGs have authority over OIG personnel and are advised by their own legal counsel, and the President's budget submission to Congress must include a

⁴There are also civilian and military statutory IGs established by laws other than the IG Act. The civilian statutory IGs consist of the IGs for the Intelligence Community and the Central Intelligence Agency; three special inspectors general who are authorized to oversee nonpermanent federal activities and whose offices will terminate when the conditions in their authorizing statutes are met; and five IGs established within agencies in the legislative branch, including GAO. The authorizing statutes for these other civilian IGs reflect or incorporate many of the IG Act provisions. The military statutory IGs are established within components of the Department of Defense (DOD). Those DOD component statutory IGs are outside the scope of this report.

⁵Pub. L. No. 100-504, title I, 102 Stat. 2515 (1988). Provisions governing DFE IGs are in section 8G of the IG Act.

⁶Agency heads supervising PAS IGs may delegate the authority to supervise the IG only to the official next in rank below the agency head. DFE IG supervision cannot be delegated.

statement of each IG's original request. Although IGs may be removed by the President (for PAS IGs) or by the agency head (for DFE IGs), any action removing or transferring an IG must be communicated in writing to Congress at least 30 days beforehand, with an explanation of the reasons for the removal.

Another aspect of the IG Act that helps protect IG independence is that it requires IGs to comply with GAGAS for their audits. GAGAS recognizes the impact that threats to independence may have on the audit management team, including the IG. GAGAS therefore emphasizes the need for auditors to identify any threats to their independence and to put in place any appropriate safeguards needed to mitigate them.

The key GAGAS principles for OIG independence include the following:

- **Audit organization independence.** Audit organization independence refers to the audit organization's placement in relation to the activities being audited. GAGAS recognizes that an audit organization, such as an OIG within an entity, may be structurally independent if it is subject to certain legal protections.
- **Independence conceptual framework.** GAGAS establishes a conceptual framework that auditors use to identify, evaluate, and apply safeguards to address threats to their independence, including both independence of mind and independence in appearance.
- **Independence of the inspector general.** It is important that IGs consider threats to their independence and take appropriate action through safeguards to address any identified threats under the independence conceptual framework.

Evaluative Framework for Applying Key Independence Principles in Ongoing IG Reform Efforts

Based on existing requirements and standards, ongoing IG reform efforts could apply the key IG independence principles through a three-part evaluative framework:

- Legal protections related to the structure of an OIG, which are critical to preserving the independence of IGs, must be in place.
- IGs must evaluate threats to their independence and take steps to apply safeguards.
- Acting IGs must evaluate threats to their independence and apply safeguards related to the unique independence challenges of their positions.

Legal Protections Related to the Structure of an OIG, Which Are Critical to Preserving the Independence of IGs, Must Be in Place

GAGAS recognizes that a government audit organization placed within the entity it audits may be structurally independent if it is subject to certain legal protections. The IG Act contains the necessary protections to allow IGs to be structurally independent, if its provisions are appropriately implemented. Such protections include those related to hiring, dismissal, and lack of interference with the scope of work and reporting and include

- requiring that if the head of the audit organization is removed from office, the head of the agency reports this, along with the reasons for the removal, to the legislative body;

- requiring the audit organization to report to a legislative body or other independent governing body on a recurring basis;
- preventing the audited entity from interfering with the initiation, scope, timing, and completion of any audit engagement;
- preventing the audited entity from interfering with audit reporting, including the findings and conclusions or the manner, means, or timing of the audit organization’s reports; and
- giving the audit organization sole authority over the selection, retention, advancement, and dismissal of its personnel.

Later in this report, we provide several options for strengthening these protections.

IGs Must Evaluate Threats to Their Independence and Take Steps to Apply Safeguards

To ensure proper application of GAGAS, IGs must be independent both of mind and in appearance. Threats to independence compromise the integrity of an OIG’s work and limit quality information available to Congress to conduct meaningful oversight over the agency. As noted above, GAGAS establishes a conceptual framework that auditors and audit organizations use to identify, evaluate, and apply safeguards to address threats to independence. Under this framework, auditors need to identify any threats that might compromise their professional judgment or that would cause a reasonable and informed third party to conclude that the integrity, objectivity, or professional skepticism either of an auditor or of the audit organization had been compromised. Once a threat has been identified, auditors should seek to apply safeguards to eliminate or reduce it to an acceptable level. For example, an audit organization might involve another audit organization to review or re-perform some of its work, or auditors might recuse themselves from work in areas where a significant threat exists.

As GAGAS recognizes, however, some threats by their very nature are too significant for mitigation by any safeguards, such as the same individual both preparing and auditing a financial statement. To the extent that safeguards have not been or cannot be applied to reduce a threat to an acceptable level, GAGAS instructs auditors to decline to perform or terminate their work. However, in the instance where an IG is required by statute to complete a particular audit, GAGAS states that the IG should perform the work but disclose in the written report what GAGAS requirements were not followed and how not following those requirements affected or could have affected the work.

GAGAS also requires that any identified threats to independence requiring safeguards be documented, along with the safeguards, if any, taken to address them. For example, auditors who have recused themselves from particular areas of work should issue recusal memos to document the scope of the recusal and how it will be carried out by the audit organization. Further, audit organizations must maintain a system of quality control and undergo periodic peer reviews. OIG peer reviews are coordinated in accordance with guidance from the Council of the Inspectors General on Integrity and Efficiency (CIGIE).⁷ Later in this report, we provide options for strengthening these safeguards.

⁷CIGIE was statutorily established as an independent entity within the executive branch by the Inspector General Reform Act of 2008 to: (1) address integrity, economy, and effectiveness issues that transcend individual government agencies; and (2) increase the professionalism and effectiveness of personnel by developing policies, standards, and

Acting IGs Must Evaluate Threats to Their Independence and Apply Safeguards Related to the Unique Independence Challenges of Their Positions

Designating acting IGs to fill vacancies in IG positions creates additional independence considerations. In recent years, the number and duration of IG vacancies have raised concerns about the effect of vacancies on the ability of OIGs to carry out their statutory responsibilities. When vacancies exist for long periods of time, designating qualified individuals as acting IGs is even more critical. Subject matter experience is not sufficient; the acting IG must also meet the independence requirements of GAGAS and comply with the provisions of the IG Act that protect the OIG from inappropriate interference.

Given the important role that IGs play, it is critical to nominate and confirm qualified permanent IGs and minimize the duration of vacancies. CIGIE can assist with assessing the qualifications of nominees for IG positions, including identifying potential independence concerns. In a 2018 report on IG vacancies, we described how CIGIE has assisted in the vetting of candidates for the IG nomination process.⁸ The IG Act requires CIGIE to recommend individuals to the appropriate appointing authority for any appointment to an OIG. Later in this report, we provide an option for additional CIGIE assistance with respect to IG vacancies.

Also in our 2018 report, we reported the results of our survey of IGs and OIG staff on various issues related to independence.⁹ Many permanent IGs and OIG employees reported benefits when the acting IG comes from within the OIG, such as having expertise in agency issues, knowledge of the OIG's role and practices, and investment in the OIG's mission. Such benefits would not be present for an acting IG coming from outside the OIG. A majority of the permanent IGs we surveyed did not think that acting IGs are inherently less independent of mind, but a majority indicated that an acting IG is less independent in appearance than a permanent IG. Acting IGs commented on the steps they had taken to mitigate any concerns about independence, bias, and potential conflicts that could be perceived.

Unique independence challenges exist when an acting IG holds a position as a senior employee or PAS official of the agency (outside of the OIG) or a PAS official at another agency (other than in the OIG). Acting IGs should be aware of these unique challenges when evaluating their independence, and Congress should consider them when overseeing OIGs.

We have expressed concerns about the independence implications of such scenarios. In a 2007 report and testimony on the Department of State OIG, we stated that the extended use of temporarily assigned agency management staff to head an OIG can affect the perceived independence of the entire office in its reviews of agency operations. We also said that the practice is not consistent with the independence requirements of GAGAS, other professional standards that IGs follow, and the purposes of the IG Act.¹⁰ We noted that such staffing

approaches to aid in establishing well-trained and highly skilled workforces in the OIGs. Pub. L. No. 110-409, § 7, 122 Stat. 4302, 4305 (Oct. 14, 2008), *classified as amended at* 5 U.S.C. app. § 11.

⁸GAO, *Inspectors General: Information on Vacancies and IG Community Views on Their Impact*, [GAO-18-270](#) (Washington, D.C.: Mar. 9, 2018).

⁹[GAO-18-270](#).

¹⁰GAO, *Inspectors General: Activities of the Department of State Office of Inspector General*, [GAO-07-138](#) (Washington, D.C.: Mar. 23, 2007), and *Inspectors General: Limitations of IG Oversight at the Department of State*, [GAO-08-135T](#) (Washington, D.C.: Oct. 31, 2007).

arrangements represent potential impairments to independence and the appearance of independence under professional standards applicable to the IGs.

As noted above, impairments could rise to the level of being impossible to mitigate. GAGAS provides that if auditors assume management responsibilities for an audited entity—such as directing and accepting responsibility for the actions of the audited entity's employees in performing their routine, recurring activities and deciding which of the audit organization's or outside third party's recommendations to implement—the threats created would be so significant that no safeguards could reduce them to an acceptable level.

It is important that independence, of mind or appearance, not be sacrificed for other factors in the staffing and leadership of OIGs. While short-term designation of an acting IG from an agency management position may not automatically be problematic, it must be handled carefully. To protect the independence and integrity of the OIG's work, an acting IG should be vigilant in evaluating independence and applying appropriate safeguards. Otherwise, when independence is impaired, there is a detrimental effect on the quality of OIG work. Impairment of an OIG's independence also limits the usefulness of the IG's work for both the agency and Congress in providing a clear basis for taking appropriate actions.

GAGAS outlines the types of threats that should be considered in evaluating independence. Examples of the types of threats that might arise, as applied to acting IGs, include the following:

- **Bias threat.** The threat that an auditor will, as a result of political, ideological, social, or other convictions, take a position that is not objective.
 - *Hypothetical example:* An acting IG has biases associated with political, ideological, or social convictions that result from membership or employment in, or loyalty to, a particular type of policy, group, entity, or level of government that could affect the IG's objectivity.
- **Familiarity threat.** The threat that aspects of a relationship with management or personnel of an audited entity, such as a close or long relationship, or that of an immediate or close family member, will lead an auditor to take a position that is not objective.
 - *Hypothetical example:* An acting IG has close personal ties with a member of management of the audited agency.
- **Undue influence threat.** The threat that influences or pressures from sources external to the audit organization will affect an auditor's ability to make objective judgments.
 - *Hypothetical example:* An acting IG feels threat of dismissal based on potential management disagreement with the contents of an audit report, which affects the IG's ability to make objective opinions, findings, conclusions, judgments, and recommendations in an audit report.
- **Management participation threat.** The threat that results from an auditor taking on the role of management or otherwise performing management functions on behalf of the audited entity, which will lead an auditor to take a position that is not objective.
 - *Hypothetical example:* A newly designated acting IG is or has recently been a principal or senior manager of the audited entity.

Acting IGs who hold PAS or other senior positions outside of the OIG should be vigilant in evaluating whether their positions create either inherent threats to independence of mind or the appearance of being less independent. Their existing portfolios of work and relationships may be more likely to appear to constitute threats of bias, familiarity, undue influence, or management participation than those of differently situated acting IGs. Acting IGs must consider how they should approach their “dual-hatted” roles—holding positions both within the OIG and outside it—in light of the potential for significant threats to their independence. They must ensure that they are fulfilling their responsibilities under the IG Act and applicable standards. They should seek appropriate counsel as needed and take steps to apply safeguards to protect the integrity of their OIGs.

A particular concern that illustrates the unique challenges of dual-hatted acting IGs pertains to the sensitive information to which IGs have access. Acting IGs must ensure that sensitive information in the OIG’s possession remains confidential and is not disclosed to agency management, in accordance with the IG Act.¹¹ Specifically, IGs are entrusted with receiving and investigating whistleblower complaints. Whistleblowers serve the public interest by spurring the investigation of potential legal violations, mismanagement, gross wastes of funds, abuses of authority, and dangers to health and safety.

Whistleblower identities must be kept confidential within the OIG, unless the complainant first consents to disclosure or the IG determines that disclosure is unavoidable during the course of the investigation. If agency employees do not have confidence that their disclosures to IGs will be kept confidential, there will be a chilling effect. Potential whistleblowers may refrain from coming forward with valuable information on instances of wrongdoing if they believe the acting IG is susceptible to pressures to release whistleblower identities to agency management colleagues. An acting IG who currently holds a position in agency management therefore should provide assurances to OIG staff, agency employees, and Congress that the confidentiality of whistleblower disclosures will be maintained and that whistleblower identities will not be shared with agency management. Congress could consider requiring the documentation and reporting of such assurances; later in this report, we provide options for such requirements.

Improving the way acting IGs are designated could strengthen the independence of OIGs. *Standards for Internal Control in the Federal Government* and our audit work related to IGs have emphasized the importance of succession planning.¹² Effective succession planning would specify the order of positions within the OIG that would take over in the event of a vacancy. Once a PAS IG position becomes vacant, the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹³ instructs the official serving as first assistant to the vacant position to perform the functions and duties of that position in an acting capacity, absent other action by the President. However, the President has the option of directing a PAS official or senior employee of the agency or a PAS official at another agency to serve as acting IG instead.¹⁴

¹¹⁵ U.S.C. app. § 7.

¹² GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014); GAO-07-138; and GAO-08-135T.

¹³ 5 U.S.C. §§ 3345–3349d.

¹⁴ 5 U.S.C. § 3345(a).

Reform Options That Congress Could Consider through the Evaluative Framework

As outlined below, Congress could consider a number of options to strengthen IG independence.

Reform Options for Legal Protections Related to OIG Structure

Legislative changes related to IG removal and reporting could provide appropriate support to the IGs' unique role among executive branch positions and to Congress's constitutional oversight role. Such changes could support the foundational legal protections discussed in GAGAS and could further strengthen the independence of IG organizations. Given the unique role that IGs play within the executive branch, they should be protected from removal to the limits allowed by the U.S. Constitution. Legislative changes to require additional reporting could better enable Congress to perform its constitutional oversight role with respect to OIGs.

- Congress could consider amending provisions governing the removal of IGs to authorize for-cause removal only, to align with existing federal statutes applying for-cause removal to certain federal officers and applicable U.S. Supreme Court precedent.
- Congress could consider amending provisions governing the removal of IGs to require the President to provide advance notification of changes in status of an IG beyond removal or transfer, such as placing an IG on administrative leave, and to provide more detail on the reasons for such changes in status.
- Congress could consider requiring a one-time or ongoing report to Congress by the President, agency head, or acting IG on the IG vacancy and its impact on OIG activities and agency oversight needs, in the event that a vacancy occurs in an IG position.
- Congress could consider expanding the existing semiannual IG reporting requirement to include additional topics or institute a shorter time interval for reporting to Congress on matters related to IG independence.

Reform Options for Evaluating Threats to IG Independence and Applying Safeguards

Legislative changes that place additional requirements around the process for identifying and mitigating threats to independence could strengthen IG independence and enable greater congressional oversight.

- Congress could consider specific requirements related to documenting and reporting to Congress on identified threats and safeguards taken to address them.
- Congress could consider a mandatory recusal mechanism for IGs for whom threats related to particular areas of work are identified and could require OIGs to report to Congress on how they will conduct meaningful oversight in areas where the IGs have recused themselves.

Reform Options for Addressing the Unique Independence Challenges Related to Acting IGs and IG Vacancies

Legislative changes that improve the way acting IGs are designated could strengthen the independence of OIGs.

- Congress could consider amending the Vacancies Act to require the first assistant to the vacant IG position (i.e., the individual identified through the OIG's succession planning, such as a deputy, who would take over as acting IG in the event of a vacancy) to serve as the acting IG in all circumstances where one currently exists. If there is no first assistant, an acting IG should be selected from OIG staff at the Senior Executive Service level (or equivalent) or higher in accordance with the OIG's succession planning.
- Congress could consider requiring IGs to maintain clear documentation of their first assistants for Vacancies Act purposes, to avoid any potential disputes. Congress could also consider requiring the first assistant to have served in the position for a minimum period (such as 90 days) prior to the vacancy occurring, and requiring the position to have been formally designated the first assistant position for a minimum period, in order for the first assistant to serve as the acting IG.
- Congress could consider requiring an acting IG who currently holds a position in agency management to provide and document assurances to OIG staff, agency employees, and Congress that the confidentiality of whistleblower disclosures will be maintained and that whistleblower identities will not be inappropriately shared with agency management.
- Congress could consider tasking CIGIE with providing regular updates to Congress on IG vacancies and naming CIGIE a recipient of any reporting to Congress on IG vacancies by the President, agency heads, and acting IGs.

IGs serve a critical role in accountability and transparency in government. I urge Congress to use its constitutional oversight authorities to protect their independence.

We are sending copies of this report to the appropriate congressional committees and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If there are any questions regarding the principles and options in this report, please contact Gene L. Dodaro at (202) 512-5500; Susan Sawtelle, Managing Associate General Counsel, at sawtelles@gao.gov or (202) 512-6417; or Lisa Motley, Assistant General Counsel, at motleyl@gao.gov or (202) 512-3072. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,



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