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Report 98-141

*STATUTORY OFFICES OF INSPECTOR GENERAL: A  
20TH ANNIVERSARY REVIEW*

Frederick M. Kaiser, Government Division; and Diane T. Duffy, American Law Division

Updated November 20, 1998

**Abstract.** Despite their 20-year evolution and substantial statutory revisions in 1988, IGs still face a number of concerns and possibilities for change. These tie into their institutional arrangements, authority and powers, perceived effectiveness and orientation, reporting requirements, personnel practices, and use of and eligibility for incentive awards.

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## Statutory Offices of Inspector General: A 20<sup>th</sup> Anniversary Review

Updated November 20, 1998

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## **ABSTRACT**

1998 marked the 20th anniversary of the Inspector General Act of 1978, the basic authority governing statutory office of inspector general (OIGs), and the 10th anniversary of the Inspector General Act Amendments of 1998, which added to their reporting requirements and extended such offices to an additional set of government organizations. Consolidating responsibility for auditing and investigations within an establishment or entity, statutory OIGs now exist in nearly 60 departments, agencies, commissions, boards, and government corporations. Despite their 20-year history, OIGs still face a number of concerns and proposals for change, some of which were included in bills or enactments in the 105<sup>th</sup> Congress. This report—and a companion one on the establishment and evolution of these offices (CRS Report 98-397 GOV)—will be updated as events require.

# Statutory Offices of Inspector General: A 20<sup>th</sup> Anniversary Review

## Summary

The year 1998 marked the 20th anniversary of the Inspector General Act of 1978, the basic authority governing statutory offices of inspector general (OIGs), and the 10th anniversary of the Inspector General Act Amendments of 1988, which added to their reporting requirements and extended such offices to an additional set of government organizations. Statutory OIGs now exist in nearly 60 federal establishments and entities, including all cabinet departments and the largest federal agencies as well as many smaller boards, commissions, corporations, and foundations. (These are covered in CRS Report 98-379 GOV, updated as events require.)

The President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) operate under the auspices of the Office of Management and Budget. They provide coordinating mechanisms, respectively, for the inspectors general (IGs) in the larger establishments, appointed by the President and confirmed by the Senate, and for IGs in the smaller designated federal entities, appointed by the agency head. A special integrity committee, under these councils, may be established to investigate alleged wrongdoing by IGs or senior staff.

Offices of inspector general consolidate responsibility for auditing and investigations within a federal department, agency, or other organization. Established by law as permanent, independent, nonpartisan, and objective units, OIGs are designed to combat waste, fraud, and abuse. To accomplish this broad mandate, IGs have been granted a substantial amount of independence and authority. Inspectors general are authorized to conduct audits and investigations of agency programs; have direct access to agency records and materials; issue subpoenas for all necessary information, data, reports, and other documentary evidence; hire their own staff; and request assistance from other federal, state, and local government agencies directly. Except under rare circumstances, spelled out in the law, an agency head provides only "general supervision" over the IG and may not interfere with any of his or her audits, investigations, or issuances of subpoenas. Inspectors general, moreover, report semiannually to the agency head and Congress regarding their findings, conclusions, and recommendations for corrective action and may issue immediate reports on particularly serious or flagrant problems they discover. Indeed, IGs are required to keep the agency head and Congress fully and currently informed about problems and deficiencies relating to the administration of programs in their agency through these reports and other ways, including testimony at congressional hearings.

Despite their 20-year evolution and substantial statutory revisions in 1988, offices of inspector general still face a number of concerns and proposals for change. Some of these were advanced in the 105<sup>th</sup> Congress through oversight hearings, the statutory establishment of a new Treasury Inspector General for Tax Administration and whistleblower provisions for employees in the intelligence community, and other proposed amendments to the IG Act. These changes tie into the IGs' institutional arrangements, authority and powers, perceived effectiveness and orientation, reporting requirements, personnel practices, and incentive awards.

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# Statutory Offices of Inspector General: A 20<sup>th</sup> Anniversary Review

## Overview of Statutory OIGs

Statutory offices of inspector general (OIGs) consolidate responsibility for auditing and investigations within a federal department, agency, or other organization. Established by law as permanent, independent, nonpartisan, and objective units, the OIGs are designed to combat waste, fraud, and abuse. The initial establishments occurred in the wake of major financial and management scandals, first in the Department of Health, Education, and Welfare (now Health and Human Services) in 1976 and next in the General Services Administration (GSA) in 1978. The latter episode provided a catalyst for an OIG in GSA and in each of 11 other departments and agencies. Reinforcing this, an even earlier scandal involving the Agriculture Department demonstrated the weaknesses in independence, authority, and resources of administratively created offices of inspector general. Statutory offices now exist in nearly 60 federal establishments and entities, including all cabinet departments and the largest federal agencies as well as many smaller boards, commissions, corporations, and foundations.<sup>1</sup>

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<sup>1</sup> Separate from the offices directly under the Inspector General Act of 1978, as amended, are two others, which, for the most part, have been modeled after the provisions of the basic IG act, as amended: in the Central Intelligence Agency, whose IG is a presidential appointee subject to Senate confirmation (103 Stat. 1711-1715); and in the Government Printing Office, the only legislative branch entity with a statutory IG; in this case, the inspector general is appointed by the head of the agency, the Public Printer (102 Stat. 2530).

For information on the history of OIGs and proposals for change, see: Michael Hendricks, *et al.*, *Inspectors General: A New Force in Evaluation* (San Francisco: Jossey-Bass, 1990); Paul C. Light, "Make the Inspectors General Partners in Reform," *Government Executive*, v. 25, Dec. 1993, and *Monitoring Government: Inspectors General and the Search for Accountability* (Washington: Brookings Institution, 1993); Frederick M. Kaiser, "The Watchers' Watchdog: The CIA Inspector General," *International Journal of Intelligence and Counterintelligence*, v. 3, 1989; Kathryn E. Newcomer, "The Changing Nature of Accountability: The Role of the Inspectors General in Federal Agencies," *Public Administration Review*, v. 58, March/April 1998; U.S. Congress, House Committee on Government Operations, *The Inspector General Act of 1978: A 10-Year Review*, H.Rept. 100-1027, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1988); U.S. Congress, House Subcommittee on Government Management, Information, and Technology, *The Inspector General Act of 1978: Twenty Years After Passage, Are the Inspectors General Fulfilling Their Mission?*, Hearings, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 21, 1998 (not yet printed) and *Inspector General Act Oversight*, Hearing, 104<sup>th</sup> Cong. 1<sup>st</sup> sess. (Washington: GPO, 1996); and U.S. Library of Congress, Congressional Research Service, *Statutory Offices of Inspector General: Establishment and Evolution*, by Frederick M. Kaiser, CRS Report 98-379 GOV (Washington: 1998).

Under two major enactments—the Inspector General Act of 1978 (P.L. 95-452; 92 Stat. 1101-1109) and the Inspector General Act Amendments of 1988 (P.L. 100-504; 102 Stat. 2515-2530), codified at 5 U.S.C. Appendix—inspectors general (IGs) have been granted a substantial amount of independence and authority to carry out their basic mandate. Each office is headed by an inspector general who is appointed and removable in one of two ways: (1) presidential appointment, subject to the advice and consent of the Senate, and presidential removal in specified federal establishments, including all cabinet departments and larger federal agencies; and (2) agency head appointment and removal in designated federal entities, the usually smaller boards, foundations, commissions, and corporations.

The dual focus of OIG activities since their inception has been auditing and investigation. Indeed, the 1978 act requires each IG in a federal establishment to appoint two assistant inspectors general, one for auditing and one for investigations. More recently, the offices have added inspection, a short-hand phrase for a usually short-term evaluation of agency programs and operations and their impact.

## **Purposes, Powers, and Protections**

The statutory offices of inspector general have been given a broad mandate, along with an impressive array of powers and protections to carry it out independently and impartially.

### **Purposes of Offices of Inspector General**

Section 2 of the codified law specifies three broad purposes or missions of the OIGs:

- ! to conduct and supervise audits and investigations relating to the programs and operations of the establishment;
- ! to provide leadership and coordination and recommend policies for activities designed to: (a) promote economy, efficiency, and effectiveness in the administration of such programs and operations, and (b) prevent and detect fraud and abuse in such programs and operations; and
- ! to provide a means for keeping the head of the establishment and Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations as well as the necessity for and progress of corrective action.

### **Appointment, Removal, and General Supervision of IGs**

**IGs in Federal Establishments.** Section 3 of the codified law covers the appointment, removal, and general supervision of inspectors general in federal establishments. The President appoints the IGs in the federal establishments (*i.e.*, cabinet departments and larger federal agencies) by and with the advice and consent of the Senate. The statute also provides that the selection be done 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.

The IG Act, as amended, provides that an inspector general may be removed from office only by the President, who then must communicate the reasons for removal to both Houses of Congress. There are no explicit restrictions on the President's authority; removal may be with or without cause.

Each inspector general “must report to and be under the general supervision of” the establishment head or, to the extent this authority is delegated, to the officer next in rank below the head, and shall *not* report to or be subject to supervision by any other officer. The restriction on supervision is reinforced by another provision: “Neither the head of the establishment nor any other officer shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena.”

Exceptions to this prohibition are few; they are spelled out for only certain departments and for only specified reasons. Sections 8, 8D, and 8E of the IG Act, as amended, authorize the heads of the Departments of Defense, Treasury, and Justice, respectively, to prohibit an IG audit, investigation, or issuance of a subpoena which requires access to information concerning ongoing criminal investigations, sensitive operational plans, intelligence matters, counterintelligence matters, and other matters the disclosure of which would constitute a serious threat to national security. (Under separate statutory authority, the Director of Central Intelligence (DCI) has similar power over the Inspector General in the Central Intelligence Agency (CIA).) Should the agency head use this power to limit the IG's exercise of authority, the reasons must be communicated to the IG and then by the inspector general to specified committees of Congress.

Section 3 also provides for two assistant inspectors general within each IG office in the specified federal establishments: *i.e.*, an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

**IGs in Designated Federal Entities.** Section 8G covers the same matters for offices of inspectors general in “Designated Federal Entities,” a category of organization added by the 1988 Amendments. These entities include the Consumer Product Safety Commission, Federal Communications Commission, Federal Labor Relations Authority, and Securities and Exchange Commission, along with numerous other usually small boards, commissions, government corporations, and foundations.

In addition to these entities, the inspector general in the Government Printing Office (GPO)—the only legislative branch entity with a statutory office of inspector general—operates under similar guidelines. Because GPO is a legislative branch organization, however, its OIG was established under separate public law (44 U.S.C. 3901-3903).

The appointment and removal provisions for IGs in designated federal entities (and in GPO) differ from those which govern presidentially-appointed IGs. The inspectors general in designated entities are appointed by the agency head.



Regarding removal, the agency head may remove or transfer the IG, but must promptly communicate in writing the reasons for such action to both Houses of Congress.

As with the presidentially appointed inspectors general, however, the IGs in the designated federal entities are required to report to and be under the “general supervision” of the agency head. Furthermore, neither the head nor any other officer can interfere with an IG audit or investigation or issuance of a subpoena.

## **Duties of IGs**

The broad mandates, highlighted in section 2, are spelled out in greater detail in section 4 of the codified law. Each inspector general is required to perform specific duties to achieve the goals of promoting economy and efficiency and of detecting and preventing waste, fraud, and abuse. These duties illustrate the IG’s unique role within the agency and the broad grant of authority delegated by Congress. The IGs are specifically directed to:

- ! provide policy direction for, conduct, supervise, and coordinate audits and investigations relating to the establishment’s programs and operations;
- ! review existing and proposed legislation and regulations relating to programs and operations and make recommendations in the semiannual reports concerning the impact of the laws or regulations on the economy and efficiency in the establishment’s programs and operations and on the prevention and detection of fraud and abuse;
- ! recommend policies for, conduct, supervise, or coordinate other relevant activities of the establishment;
- ! recommend policies for, conduct, supervise, or coordinate relationships with other federal agencies, with state and local governmental agencies, and with nongovernmental entities with respect to promoting economy and efficiency and preventing and detecting fraud and abuse in establishment programs and with respect to identifying and prosecuting participants in fraud or abuse; and
- ! report expeditiously to the Attorney General whenever the inspector general has reasonable grounds to believe that there has been a violation of federal criminal law.

## **IG Reporting to and Informing the Agency Head and Congress**

Under section 5, inspectors general have two basic types of reporting requirements to the agency head and to Congress. These are: (1) semiannual reports and (2) seven-day letter reports dealing with particularly serious or flagrant problems, a reporting obligation that was supplemented in 1998, by legislation regarding allegations from whistleblowers in the intelligence community. These reporting obligations complement the section 4 requirement to keep the agency head and Congress “fully and currently informed.”

**Semiannual Reports.** IGs are directed to make semiannual reports that summarize the OIG's activities for the previous six months, itemizing waste, fraud, and abuse problems, and identifying proposals for corrective action. The 1988 amendments refined and enhanced several of the semiannual reports' ingredients. For example, the reports must contain certain entries, some of which include:

- ! a description of significant problems, abuses, and deficiencies relating to programs and operations;
- ! a description of recommendations for corrective action;
- ! an identification of each significant recommendation contained in the previous reports on which corrective action has not been completed; and,
- ! statistical information relating to costs, management of funds, and related matters.

These IG reports go directly to the agency head, who must transmit them unaltered to appropriate congressional committees within 30 days. After another 60 days, such reports are to be made available to the public. The agency head is authorized to append comments and specific data and information to the IG reports; this additional information includes statistical tables showing audit reports and dollar value of recommendations of disallowed costs and projected savings of recommendations for funds which could be put to a better use.

**Seven-Day Letter Reports.** The Inspector General Act, as amended, also requires the IG to report immediately to the agency head whenever the IG becomes aware of "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations." Such communications must be transmitted—unaltered but allowing for comments the head deems appropriate—to the appropriate congressional committees within seven days.

**Intelligence Community Whistleblower Reporting.** A parallel provision affecting inspectors general in the intelligence community became law in 1998. The Intelligence Community Whistleblower Protection Act (P.L. 105-272) specifically authorizes intelligence community employees and contractors to submit an "urgent concern"—that is, a serious or flagrant problem, abuse, violation of law or executive order, or other specified wrongdoing—based on classified information to Congress.

This is to be accomplished by first notifying the inspector general in the relevant agency—the Central Intelligence Agency, Department of Defense, Department of Justice, or other organizations that conduct foreign intelligence or counterintelligence—who must determine within 14 days whether the allegation appears credible. If so, the IG notifies the agency head, who transmits the complaint, along with any comments the head deems appropriate, to the House and Senate Select Committees on Intelligence within seven days. If the IG does not transmit the complaint or does not do so "in an accurate form," then the whistleblower may contact the intelligence committees directly, following specified guidelines; these include notification to the agency head, through the inspector general, of the intent to contact the committees and a statement of the allegation.

**Other Channels of Communication.** The enactment provides for additional channels for IGs to communicate with the agency head and Congress. Section 4 requires the IG:

to keep the head of such establishment and Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

The concept of keeping the head and Congress informed “otherwise” (separate from the required reports) allows for a variety of mechanisms for the inspector general or the office to communicate with Congress. These means extend to: testifying at congressional hearings; meeting with lawmakers and staff; and providing information and reports directly to Members of Congress, its committees and subcommittees, and other offices.

### **Authority of IGs**

To carry out the purposes of the act, Congress has granted the inspectors general broad authority.

**Specific Powers.** Section 6 of the codified legislation authorizes the IGs, among other things:

- ! to conduct audits and investigations and make reports relating to the administration of programs and operations;
- ! to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to programs and operations with respect to which the IG has responsibilities under the act;
- ! to request assistance from other federal, state, and local government agencies;
- ! to issue subpoenas for the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to perform the IG’s functions;<sup>2</sup>
- ! to administer to or take from any person an oath, affirmation, or affidavit;
- ! to have direct and prompt access to the agency head;
- ! to select, appoint, and employ officers and employees to carry out the functions, powers, and duties of the office of the inspector general;

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<sup>2</sup> This section does not permit the IG to use the subpoena power to obtain documents and information from other federal agencies. 5 U.S.C. App. 3, §6.

- ! to obtain the services of experts and consultants on a temporary or intermittent basis, as authorized by 5 U.S.C. 3109; and
- ! to enter into contracts and other arrangements for audits, studies, and other services with public agencies as well as private persons and to make such payments as may be necessary to carry out the act.

The scope of an IG's investigative authority is seen further in the range of matters the inspector general may investigate stemming from an employee complaint or disclosure of information. Under section 7 of the act, the inspector general is authorized to receive and investigate complaints or information from an employee concerning the possible existence of an activity constituting: a violation of law, rules, or regulations; mismanagement, gross waste of funds, and abuse of authority; or a substantial and specific danger to the public health and safety. In such instances, the IG shall not disclose the identity of the employee without the employee's consent, unless the IG determines that such disclosure is unavoidable during the course of the investigation. The act, supplementing other "whistleblower" statutes,<sup>3</sup> also prohibits reprisals against employees who properly make complaints or disclose information to the IG.

**Prohibition on Program Operating Responsibilities.** Notwithstanding the broad powers granted by the IG Act, as amended, inspectors general are prohibited from taking corrective action or instituting changes themselves. Indeed, section 9 of the act expressly forbids the transfer "of program operating responsibilities" to an IG. This prohibition is designed to ensure the integrity of an IG's audit or investigation; if an IG were to carry out programs or institute changes, he or she would not be able to audit or investigate them objectively or impartially in the future.

**Law Enforcement Powers.** Despite the broad range of investigative authority under the IG Act, as amended, law enforcement powers have *not* been granted across-the-board in public law. Instead, the OIGs that have such authority—to carry firearms, make arrests without warrants, and obtain and execute search warrants—have acquired them in one of four basic ways: through transfers of pre-existing offices which held relevant powers when the OIG was created, specific statutory grants to a particular office (*e.g.*, in the Agriculture and Defense Departments), delegation of relevant authority and jurisdiction by the agency head, and special deputation by the Department of Justice.

In the past, IGs have received *ad hoc*, temporary special deputation from the Justice Department when law enforcement powers were needed independently (that is, without relying upon other agencies to make arrests, carry firearms, or execute search warrants). Criticism arose from the IG community, however, over the costs associated with such deputation, delays in processing OIG applications for it, and its limited duration and extent. As a result, an alternative policy has since been devised

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<sup>3</sup> See, most importantly, the Whistleblower Protection Act of 1989 (103 Stat. 16 *et seq.*) and its companion legislation setting forth the Merit System Principles (5 U.S.C. 2301-2305), along with the Intelligence Community Whistleblower Protection Act of 1998 (P.L. 105-272).

to provide extended, blanket deputation to most offices of inspector general in federal establishments (in 23 of the 28 OIGs headed by presidentially appointed IGs). Memoranda of Understanding between the Justice Department and the qualified OIGs implement this program, which is limited to one year and thus must be renewed annually.

## Jurisdiction

In nearly all cases, inspectors general have comprehensive jurisdiction over the establishment or entity in which they are located. The few exceptions—in the Departments of Justice and the Treasury—exclude from or circumscribe the department IG's jurisdiction over certain law enforcement agencies.

One of those bureaus excluded from its parent agency IG has been the Treasury Department's Internal Revenue Service (IRS), which has been criticized for abusive and arbitrary conduct, maladministration, and an absence of accountability, oversight, and controls. As a result, a Treasury Inspector General for Tax Administration, along with other new organizations, including an IRS Oversight Board, has been established to cover the Internal Revenue Service alone.<sup>4</sup> The new IG for Tax Administration, who is a presidential appointee subject to Senate confirmation, operates independently of the Treasury Department OIG. This is the only case among all statutory offices in which an IG has jurisdiction for a part of an establishment or entity that has its own office of inspector general. As a corollary, the Treasury Department Office of Inspector General is the only statutory office whose jurisdiction has been subdivided to accommodate a separate statutory OIG within the same establishment or entity.

## Coordination Among and Investigations of IGs

Inspectors general, along with other relevant agencies, are members of one of two coordinating mechanisms, which have been established by executive order and operate under the auspices of the Office of Management and Budget (OMB). In addition, allegations of wrongdoing against IGs themselves or other high ranking officers can be investigated by a special integrity committee consisting of members of these two councils.

### Coordination

Two councils—the President's Council on Integrity and Efficiency (PCIE), for the presidentially appointed IGs, and the Executive Council on Integrity and Efficiency (ECIE), for agency-head appointees—provide a coordinating mechanism for the inspectors general, along with representatives from other appropriate organizations. The other members include the Deputy Director for Management of

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<sup>4</sup> Sections 1102 and 1103 of P.L. 105-206, enacted on July 22, 1998. U.S. Congress, Committee of Conference, *Internal Revenue Service Restructuring and Reform Act of 1998*, conference report to accompany H.R. 2676, H.Rept. 105-599, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., (Washington: GPO, 1998), pp. 211-225.

the Office of Management and Budget, who chairs both councils; the Associate Deputy Director for Investigations of the Federal Bureau of Investigation (FBI); the Controller of the Office of Federal Financial Management; the Director of the Office of Government Ethics; the Special Counsel of the Office of Special Counsel; and the Deputy Director of the Office of Personnel Management. Besides these individuals, the Vice Chairperson of the PCIE sits on the ECIE and the Vice Chairperson of the ECIE, on the PCIE.

The President's Council on Integrity and Efficiency, the older of the two councils, was established in 1981 by President Reagan through Executive Order 12301. Both councils are now governed by Executive Order 12805, issued by President Bush in 1992. Among their functions, the councils "shall continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations to fraud, waste, and abuse, and shall develop plans for coordinated, Governmentwide activities that address these problems and promote economy and efficiency in Federal programs and operations."

### **Administrative Investigations**

Allegations of wrongdoing by inspectors general or other high-ranking officers in an IG office may be investigated by a special Integrity Committee, following a process authorized by Executive Order 12993, issued by President Clinton in 1996. Such a committee, established by the Chairperson of the PCIE and ECIE (*i.e.*, the Deputy Director for Management from OMB), is to consist of at least the following PCIE and ECIE members: the FBI representative, who chairs the committee; the Special Counsel of the Office of Special Counsel; the Director of the Office of Government Ethics; and three or more IGs, representing both the PCIE and the ECIE. In addition, the Chief of the Public Integrity Section of the Criminal Division of the Department of Justice serves as an advisor to the Integrity Committee with respect to its responsibilities and functions.

Once it receives allegations of wrongdoing, the Integrity Committee reviews them and, where appropriate, refers them to one of two investigative entities: either to an agency with jurisdiction over the matter or to an investigative team composed of selected investigators supervised and controlled by the Integrity Committee's chairperson.

### **Current Issues Affecting Inspectors General**

The issues affecting the statutory IGs can be grouped under six broad categories:

- institutional arrangements and procedures;
- changes in authority of the IGs;
- effectiveness and orientation of the IGs, as well as the PCIE and ECIE;
- reporting to the agency head and Congress;
- personnel practices; and
- incentive awards.

Each of these issues is connected to the need for additional information and study or to options for change. These have arisen because of perceived problems or weaknesses in the existing offices' resources, capabilities, operations, or authority; a possible need for statutory OIGs in government organizations or entities which do not have them currently; initiatives from the inspectors general directly to enhance their powers; or recent studies of their operations and recommendations for change coming from Members and committees of Congress or from outside sources.

Underlying some of the issues and options for change are differences among the IGs, based in part upon the different needs and characteristics of the establishments where they serve as well as the characteristics, experience, and orientation of the IG; possible tension between the audit and investigation functions of the offices; differences in the IGs' focus between prevention and detection; concerns about IG independence (from the establishment officers) versus IG impact (by working closely with the same officials); and disputes between certain IGs and the Department of Justice over their authority and jurisdiction.

The following provides suggestions for each of the five broad issues, based on the public record since the IGs were established. The Congressional Research Service takes no position in support of or in opposition to these suggestions.

### **Institutional and Procedural Arrangements**

- ! Changing the removal provision for IGs by requiring that any such action by the President or agency head be "for cause," such as neglect of duty, malfeasance, or serious disability.
- ! Setting a term of office (*e.g.*, 6, 8, or 10 years) for the IGs, to encourage longer service and greater stability in a single post than is now common.
- ! Establishing an inspector general in the Executive Office of the President (with jurisdiction, for instance, over statutorily created entities therein).
- ! Establishing by statute offices of inspectors general in congressional branch support agencies, particularly the General Accounting Office and the Library of Congress, modeled perhaps after the OIG in the Government Printing Office or in designated federal entities, where the IG is appointed by the agency head.
- ! Bringing the OIG in the Government Printing Office into closer conformity with the IG Act provisions affecting OIGs in designated federal entities.
- ! Adding IG positions in other entities which might now meet the criteria used in the 1988 amendments for the designated federal entities but did not then.
- ! Setting up a panel of PCIE members to make recommendations to the entity heads or screen possible candidates for the IGs in the smaller designated federal entities.

- ! Placing certain OIGs in designated federal entities under a statutory inspector general in a related major establishment. This might be considered because of the OIGs small size, limited resources, or problems with independence, capabilities, and effectiveness. Several precedents for a dual assignment or shared jurisdiction exist. There has been only one dual inspector general assignment, however: i.e., the IG in the State Department also served as the IG in the Arms Control and Disarmament Agency, which has since been transferred to the State Department. Presently, the State Department IG also has jurisdiction over the Broadcasting Board of Governors and the International Broadcasting Bureau, while the IG in the Agency for International Development covers the Overseas Private Investment Corporation.
- ! Having one person be the inspector general for all or a number of smaller designated federal entities. For instance, one individual could be the inspector general in perhaps 10 or 11 small entities; thus, the so-called mini-IGs would have a combined total of three IGs, contrasted with the more than 30 presently. Because of this combination, the newly created posts could become presidential nominations subject to Senate confirmation, rather than remaining as agency head appointments. This might also be a way of overcoming the limitations of small size, few resources, and limited capabilities, by comparison to other statutory IGs.
- ! Examining the offices with presidentially appointed IGs established by the 1988 IG Act Amendments and since then. This review would look at the newest of the presidentially appointed IG positions with a view to assessing their performance and reviewing any concerns about their independence and their offices' capabilities.
- ! Reviewing the statutory limitations on the Treasury Department IG's jurisdiction and authority over the law enforcement organizations in the Department: *i.e.*, Bureau of Alcohol, Tobacco and Firearms; Customs Service; Internal Revenue Service (IRS); and Secret Service. This could examine whether there is a need to modify the current relationship with the existing Treasury Department IG or possibly to create a separate IG for one or all of these organizations, if merited, because of concerns about their accountability, performance, and conduct. In 1998, such an effort led to establishing a new Treasury Inspector General for Tax Administration to cover the IRS (P.L. 105-206).
- ! Establishing a separate office of inspector general for the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) in the Department of Justice or, alternatively, augmenting the authority and jurisdiction of the Justice Department inspector general over them. These options might be considered because of the size and importance of DEA and FBI, sensitivity of their operations, criticisms of past performance, and their relative independence from the Justice Department office of inspector general by comparison to other bureaus and organizations within the Department.



- ! Examining and clarifying in statute the role and responsibilities of the Justice Department IG with regard to the Office of Professional Responsibility (OPR), an administratively created office, along with other internal investigative or audit units in the department. Currently, for instance, there is a dispute within the Justice Department about the scope of the IG's jurisdiction vis-a-vis OPR's, regarding investigation of officers or employees in attorney positions.
- ! Clarifying or changing the relationship of the IGs in the individual Armed Services with the Department of Defense (DOD) IG. This might include placing the military IGs directly and explicitly under the control of the civilian DOD inspector general.
- ! Expanding or clarifying the jurisdiction and authority of the IG in the Central Intelligence Agency with respect to other intelligence agencies, for instance, those in the Departments of Defense and Justice. One option would be to extend the CIA IG's jurisdiction to mirror the jurisdiction of the Director of Central of Intelligence, resulting in an inspector general for the entire intelligence community.
- ! Examining the relationship of the IG with the Chief Financial Officer (CFO) in each establishment where both posts exist.
- ! Creating the post of assistant inspector general for inspections, to supplement the existing ones for auditing and investigations.

### **Authority of Inspectors General**

- ! Reviewing and further clarifying, if necessary, the scope and tools of the IGs' regulatory investigation authority. Certain limits on this authority and jurisdiction were prescribed in a 1989 Justice Department Office of Legal Counsel memorandum, commonly known as the "Kmiec memo" for its author. The following year, the Acting Attorney General, based on discussions between the Department of Justice and the PCIE, issued a followup memorandum, establishing a set of principles that attempt to clarify the earlier opinion.
- ! Examining and possibly expanding and standardizing law enforcement authority for criminal investigators in the offices of inspector general. This area of inquiry could look at: whether the current arrangements, especially the long-term special deputation by the Marshals Service, have proven effective and at what costs and impact on the offices of inspector general; whether there should be across-the-board law enforcement powers in public law or whether law enforcement powers, if expanded by statute, should be granted selectively to specific agencies; and, most fundamentally, whether there is a need for independent law enforcement authority for OIG criminal investigators, by comparison to other mechanisms which rely upon the Marshals Service or other law enforcement entities, and what impact such a change would produce in the OIGs themselves, in their relationship with the Justice Department, and in crime control efforts at the federal level.

- ! Enhancing IG testimonial subpoena authority for all statutory inspectors general under the 1978 IG Act. This change could aid IGs especially in gathering information about alleged abuses of authority and evidence about suspected criminal wrong-doing.
- ! Examining and possibly clarifying the rights of employees who are interviewed by IG staff, such as the right to counsel or to union representation at such meetings.
- ! Clarifying or expanding IG access to certain private records of public officials. These might include such items as income tax records and other financial records.
- ! Protecting the confidentiality of “whistleblowers” and other employees who bring allegations of wrong-doing to the IGs’ attention. This might result in examining instances where such confidentiality has not been adequately protected, where the individual employee protested the disclosure, and where (alleged) reprisals resulted.
- ! Granting IGs authority to halt specific projects or operations which are found to have “particularly serious or flagrant problems” and which are reported to the agency head and within seven days to Congress. (Only the now-defunct Inspector General for Foreign Assistance has held authority to halt a project.) These new powers could help to improve agency responsiveness to IG findings of these serious problems and subsequent recommendations for corrective action.
- ! Providing prosecutorial authority for IGs in specified areas, possibly on a trial basis. This power could increase the impact of IG findings of criminal conduct. Currently, prosecutions based on such discoveries are conducted by U.S. Attorneys and the Department of Justice. These Justice Department prosecutors may be overwhelmed with other cases that have a higher priority, such as those involving illegal narcotics, thus, reducing the likelihood of prosecutions based on IG findings of wrongdoing (for instance, for Medicare or Medicaid fraud).

### **Effectiveness and Orientation of IGs, PCIE, and ECIE**

- ! Measuring effectiveness and orientation of the offices and comparing them over time. This could include attempts to determine changes within and between the audit and investigation functions since the establishment of an OIG, between an IG’s prevention and detection focuses, or between his or her possible roles as an “outsider” (*e.g.*, an independent critic) or “insider” (*e.g.*, an ally of management). Other studies could focus on corrective action taken by an agency on IG recommendations, based in part on the semiannual statistical reporting provisions required by the 1988 Amendments to the IG Act; these studies might examine whether the proposed corrective actions have actually taken place, to what extent, and with what results. A related inquiry might question the budgetary impact of corrective recommendations that have been implemented, asking, for instance, whether the cost-savings resulted in a reduction of an agency’s budget requests.

- ! Using different measurements or bases to assess performance effectiveness and success. Different kinds of measurements than presently used might reveal different levels or rates of success and effectiveness of IGs.
- ! Assessing the role of OIGs in implementation of the Government Performance and Results Act, both for themselves and for the agencies in which they are located.
- ! Examining the role of OIGs in helping to determine, commenting upon, and recommending corrective action for the high risk or high vulnerability areas in federal programs that have been identified by GAO.
- ! Requiring that the summary reports on IG activities produced by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency be issued semiannually. The PCIE reports had been issued twice a year until the FY 1988 report. These accounts, along with the ECIE reports, now appear only once a year; and their release is often delayed by more than six months after the end of the fiscal year. This results not only in fewer summary accounts of IG activities but also in less timely information and data than would be available if they were issued semiannually.
- ! Examining the role and responsibilities of the President's Council on Integrity and Efficiency (PCIE), covering presidentially-appointed IGs, and the Executive Council on Integrity and Efficiency (ECIE), covering entity-head appointments. This effort could examine how the PCIE and ECIE have contributed to the effectiveness of the IGs, presumably through improved coordination; any OMB followup to such efforts; what other techniques or operations might be adopted along the same lines; and whether individual IG activities, operations, or independence might have been jeopardized or reduced because of PCIE or ECIE demands.
- ! Looking into the controls (via the PCIE/ECIE Integrity Committee) over alleged abuses of authority or other improprieties by IGs or their top assistants.
- ! Examining what has happened to IG findings of suspected criminal wrongdoing reported to the Attorney General. This might include comparing among the IGs the number and type of such reported suspicions, as well as the Justice Department's own followup investigations and prosecutions. This examination could lead to determining the reasons why the Justice Department followed up (or did not do so) with its own investigations and prosecutions and, thus, help to improve IG preliminary investigations and gathering of evidence, if that appears necessary.

### **Reporting to the Agency Head and Congress**

- ! Enhancing and standardizing the data and information on investigations in the semiannual reports. This might follow the lines for audit statistics and data required by the 1988 IG Act Amendments.

- ! Improving communication surrounding the major findings, conclusions, and recommendations in the semiannual reports. This could occur through, for instance, regular hearings with relevant congressional subcommittees when the report is issued and in-person briefings by IG personnel for congressional staff on relevant panels.
- ! Consolidating or coordinating the semiannual reports from IGs with the periodic reports submitted under other relevant statutes, such as the Chief Financial Officers Act and the Federal Managers' Financial Integrity Act.
- ! Requiring that the IGs issue their summary activity reports only annually, rather than semiannually, as is the case now.
- ! Increasing the use of the seven-day letter reports about "particularly serious or flagrant problems." This might be accomplished by clarifying the meaning of the phrase in law, in a congressional report, or in a PCIE advisory opinion to the IGs. The effort might also lead to setting specific criteria and standards for submitting such reports. It might, for instance, require that any finding which is repeated in three successive semiannual reports be considered "particularly serious or flagrant" and automatically submitted to the agency head and then sent to Congress within seven days. This possible product could be based on an examination of the infrequent use of the seven-day letter reports—about once a year for all IGs—and a comparison of this use with episodes that appear to meet a common understanding of "particularly serious or flagrant problems" but were not reported under this provision.
- ! Examining systematically the agency heads' and Congress's response to seven-day letter reports about particularly serious or flagrant problems discovered by the IGs.
- ! Requiring the IG to issue a confidential report directly to the appropriate congressional committees whenever the head of the establishment is the subject of an IG investigation. Presently, only the CIA Inspector General has this authority (for the Director of Central Intelligence).

## Personnel Practices

- ! Comparing personnel practices of IGs. This might include examining whether the IG hires his or her own staff or relies upon personnel rotating into and out of the office from other parts of the establishment. It could also involve a comparison of the recruitment practices and selection criteria for new hirings, promotional opportunities and practices, and complaints or grievances from IG personnel in this field.
- ! Comparing changes over time between the audit and investigative side of each OIG. This effort could help to determine whether any growth in one side has been accomplished at the expense of the other, and if so, why.
- ! Contracting out for activities and operations. This could involve a review of such contracting among IGs currently or for each IG over time, what types of activities are contracted for, actual costs and cost-benefits, and the possible

loss of in-house capabilities through a reliance on such outsourcing of activities and operations, which might result in “hollow government” (that is, the inability of a government office to perform its basic functions or activities itself).

## Incentive Awards

- ! Using “whistleblower” cash incentive awards. This effort could look at the extent of their use by the inspectors general to reward federal personnel for cost-saving disclosures, differences among the IGs, and changes in usage over time.
- ! Allowing IGs to be eligible for incentive awards or not. An examination of this matter might first of all review the differences in accepting incentive awards among IGs and then examine the differences of opinion over whether IGs should be eligible for such awards, particularly those granted by the establishment head or based on his or her recommendation. If these types of awards are found acceptable, attention might then be given to alternative arrangements for nominating IGs—possibly through a panel of PCIE or ECIE members or through a panel of experts set up under the Federal Advisory Committee Act—to avoid the appearance of a conflict of interest.

## Legislative Initiatives

Several legislative initiatives in the 105<sup>th</sup> Congress have called for changes in the statutory offices of inspector general.

### Proposed Inspector General Act Amendments of 1998

In the most far-reaching of these, Senator Susan Collins introduced legislation (S. 2167), for herself and Senator Grassley, that would have amended the Inspector General Act of 1978 in a number of ways. First of all, the proposal would consolidate seven of smaller IG offices in designated federal entities into larger OIGs in federal establishments with similar subject matter jurisdictions (*e.g.*, Peace Corps OIG into the State Department OIG). The initiative would also reduce the semiannual reporting by IGs (to the agency head and to Congress) to a single annual report.

In addition, inspectors general in larger federal establishments, who are appointed by the President and confirmed by the Senate, would be given a renewable nine-year term of office, in the expectation that this would encourage longer tenure. The bill would also require that all IGs undergo an external review or evaluation of their activities and operations at least every three years. Finally, S. 2167 would increase the salary level of IGs in the federal establishments from Executive Level 4 (\$118,400) to Executive Level 3 (\$125,900). Because IGs have generally refrained from receiving bonuses in order to avoid the appearance of a conflict of interest, this loss of bonuses (from the agency head) has resulted in some IGs receiving lower

annual compensation than their subordinates, particularly assistant and deputy inspectors general, who have accepted such bonuses.

### **Proposed Inspector General for Medicare and Medicaid**

H.R. 251, introduced by Representative Jack Quinn on January 7, 1997, would have created a statutory inspector general for medicare and medicaid. The new inspector general would have the same responsibilities, duties, powers, and authorities as the other statutory IGs under the 1978 Inspector General Act, as amended.

### **Proposed Reform of the Justice Department Inspector General**

The proposed Department of Justice Inspector General Reform Act, H.R. 2182, would have amended the IG Act of 1978, as it pertains to the Department of Justice (DOJ). Introduced by Representative Robert Wexler on July 7, 1997, the bill provided that the Inspector General in the Justice Department would have oversight responsibility for the internal investigations performed by any DOJ entity. The IG would also have authority to initiate, conduct, and supervise inspections (along with audits and investigations as it is now authorized), regarding any Department entity or organization. The head of each DOJ entity, moreover, would be required to report promptly to the IG such matters, and under the terms, that the IG determines are necessary to carry out the IG's responsibilities. The proposal would also ensure that an IG audit, investigation, or inspection would preempt that of any other DOJ entity on the same matter.

### **Treasury Inspector General for Tax Administration**

The Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206) established a new Treasury Inspector General for Tax Administration to cover the Internal Revenue Service. The law is to take effect within 180 days after its enactment, which occurred on July 22, 1998.<sup>5</sup> (The enactment contained additional oversight mechanisms and procedures to help improve accountability and control over the IRS.)

The jurisdiction for the new IG is confined to the IRS and tax administration, while the Treasury Department IG is excluded from such matters. As a presidential appointee, subject to Senate confirmation, the Inspector General for Tax Administration is on a par with statutory IGs in other establishments, that is, all the cabinet departments and larger federal agencies. The new IG reports to and is under only the "general supervision" of the head of the establishment—the Secretary of the Treasury, here—as are the other inspectors general. The IG for Tax Administration also has the same duties, authorities, and requirements of the IGs in other establishments. In addition, the powers and responsibilities of the IRS Office of Chief Inspector, including access to tax records, are transferred to the new Inspector General for Tax Administration.

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<sup>5</sup> Sections 1102 and 1103 of P.L. 105-206.

## **Intelligence Community Whistleblower Protection Act of 1998**

The Intelligence Authorization Act for Fiscal Year 1999 (P.L. 105-272) contained the Intelligence Community Whistleblower Protection Act of 1998, which involves the inspectors general in relevant establishments, notably the Central Intelligence Agency, Department of Defense, and Department of Justice, along with other organizations that conduct foreign intelligence or counterintelligence. Based on H.R. 3829, introduced by Representative Porter Goss, Chairman of the House Permanent Select Committee on Intelligence, and modified by the conferees on the intelligence authorization bill, the new whistleblower statute is designed to promote and protect reporting to Congress by employees or contractors who have an "urgent concern" about a number of matters, based on classified information. Such concerns include: suspected serious or flagrant problems, abuses, violations of law or executive orders; false statements to Congress; a willful withholding of certain information from Congress; and reprisals or the threat of reprisals against a whistleblower. (A parallel proposal in the Senate—S. 1668, 105<sup>th</sup> Congress—by comparison, did not specifically involve the IGs, unlike the House proposal and the final version.)

The new whistleblower statute establishes a procedure whereby employees notify the inspector general in their establishment of such problems and concerns. The IG is to determine within 14 days, if the charge appears credible. If so, the inspector general then notifies the agency head, who must transmit the information, along with any comments the head deems appropriate, to the House and Senate Select Committees on Intelligence within seven days.

If the IG does not transmit the complaint to the agency head or does not do so in an "accurate form," the inspector general must report this to the whistleblower. If he or she does not agree with the IG's decision, then the whistleblower is allowed to submit the information to the intelligence committees directly, under prescribed conditions; these include notice to the agency head, through the IG, of the intent to contact the panels and a statement of the allegation.

## **Foreign Affairs Reform and Restructuring Act of 1998**

The Foreign Affairs Reform and Restructuring Act of 1998, a part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (P.L. 105-277), calls for the transfer of certain programs and agencies to the Department of State. Two of these—the Arms Control and Disarmament Agency (ACDA) and the United States Information (USIA)—are scheduled to be merged into the Department in 1999; consequently, the State Department IG will inherit jurisdiction for their programs and operations. (Previously, the State Department IG had a dual assignment as Inspector General in ACDA; this was the only case in which the same individual held two official inspector general positions, serving as the IG in two separate establishments.) In addition, the State Department inspector general, via P.L. 105-277, has been granted jurisdiction over the independent Broadcasting Board and the International Broadcasting Bureau, which had been under the USIA inspector general.

## **Recognition of IG Accomplishments Since the 1978 Act**

In 1998, Congress recognized the accomplishments of the statutory inspectors general upon their 20<sup>th</sup> anniversary through P.L. 105-349. Introduced by Senator Glenn, for himself and six cosponsors, the joint resolution (S.J.Res. 58) commended the offices for their professionalism and dedication; recognized their accomplishments in combating waste, fraud, and abuse (resulting, for instance, in an estimated \$3 billion in returns and investigative recoveries and another \$25 billion in funds that could be put to better use, in FY1997); and reaffirmed the role of the IGs in promoting economy, efficiency, and effectiveness in the administration of federal programs and operations.