

A Letter from the Editor-in-Chief

Dear Reader:

Welcome to the Fall/Winter 2002 edition of *The Journal of Public Inquiry*. For many years, the Journal has been a vehicle for the delivery of timely and thoughtful information and opinion on the many issues that involve our Federal Inspector General community.

Over the past few years, former Treasury Inspector General for Tax Administration IG Dave Williams, whose kind and generous words of farewell appear below, took the Journal from its infancy into an impressive maturity. Reviewing past issues, which are easily retrievable at www.ignet.gov, reveals a breadth of subject matter expertise reflective of far more established publications. I join the rest of the IG community in thanking Dave Williams for his service to Journal readers, and wish him well in his new position as Deputy Associate Under Secretary for Aviation Inspection at the Transportation Security Administration.

I also would like to thank those who served on the Journal's staff and its Editorial Board during the past years for providing the support and feedback necessary to find, develop, and publish material of such consistent high quality. I hope that we can build on such a strong record and continue to expand the reach of the Journal for the benefit of the entire IG community, and ultimately for the benefit of the taxpayers whom we serve.

This edition of the Journal inaugurates a somewhat modified format. Most important, however, are what our collection of authors have to communicate. I hope you find this issue of interest, and as we continue to explore new ways to make the Journal useful to your work, please share your ideas and thoughts with us. I can be reached at Daniel.Levinson@gsa.gov, and I look forward to hearing from you. 📧

Sincerely,

Daniel R. Levinson
Editor-in-Chief

A Letter from the Former Editor-in-Chief

Dear Reader:

Dan Levinson, the Journal's new Editor-in-Chief, was kind enough to allow me to say goodbye to the Journal's loyal readers from these last 12 years. I was so pleased to have been your Editor-in-Chief, since the Journal began. I also appreciate the chance to congratulate Dan and thank him for assuming the challenges of his new position.

I also want to thank the great staff at the Journal, under the Editor Agapi Doulaveris, and the Editorial Board. This group gave of their time and considerable talents, working voluntarily and in addition to their full-time and demanding positions in IG offices. I know that you have appreciated their work and the fact that they quietly operated above and beyond the call of duty for many years to serve you.

The hundreds of authors for the Journal's articles also deserve my thanks. Among their numbers were members of our community and distinguished executives from numerous government departments, Senators, Congressmen, and other members of the Legislative Branch, and other prestigious members of the private sector and academia also gave of their time to write articles.

The Journal has received high marks from Paul Light of the Brookings Institute and others for its place in continuously improving the IG community. The Government Printing Office notified us that the Journal is requested by colleges and libraries across the country.

The Journal has been a place where professional ideas could be presented and discussed. The Journal also attempted to chronicle our evolution as our professional disciplines developed and were refined. New innovations and a strong connection with the future were also hallmarks of the Journal's focus. The Journal was also there to chronicle changes as our community grew up from its tentative beginnings to a robust and powerful force in government.

The Journal went online several years ago at www.ignet.gov with all of our previous editions available to serve as references. Many of the articles contained in the archives have served as useful ready references.

Naturally I felt good about my participation in these endeavors as did the other members of the Editorial Staff and the Editorial Board. Most of all, though, I felt good about the ability to serve you. The men and women of the IG community have been my friends, since I joined you as one of your investigators in 1979. The idea of linking us together and reminding each other that we are part of a huge and valuable enterprise was one that deeply resonated inside me. It made the work enjoyable and rewarding for all of us. As you will recall from the article titles and the content of the articles, we also viewed the work as great fun.

I was so pleased when the President's Council on Integrity and Efficiency continued the Journal after my retirement a few weeks ago. I've continued in government service at the newly created Transportation Security Administration. The choice of Daniel Levinson as the new Editor-in-Chief was a very good one. I have enjoyed his friendship and have always been very impressed with his intellect and great sense of humor. I look forward to staying in touch with you all and to remaining a dedicated reader of *The Journal of Public Inquiry*. 📖

Sincerely,

David Williams

Former Editor-in-Chief

MARK W. EVERSON

Deputy Director of Management, Office of Management and Budget

The President's Management Agenda

An Update

After more than a year since launching the President's Management Agenda, we have seen some success, a great deal of progress and planning, and some, albeit little, deterioration. If we keep at this effort, we will achieve the breakthrough improvements in government management we are seeking. Agency Inspectors General are a critical part of this effort.

The objective of the President's Management Agenda is to improve the management and performance of the Federal Government. As President Bush said when we launched the agenda in 2001, the areas "we have targeted address the most apparent deficiencies where the opportunity to improve performance is the greatest." The Agenda consists of five governmentwide and nine agency-specific initiatives.

Since the agenda was launched in August 2001, we have updated the Executive Branch Management Scorecard—the device we use to measure agency status and progress on the agenda—three times. It is this device that gives the agenda momentum. The high level attention the agenda receives—it was covered at a recent cabinet meeting—and especially the scores

agencies are getting, tells me that we are getting traction in improving government management.

At the time of last year's budget, 85 percent of the major Departments and Agencies scored "red" in our baseline evaluation. During Fiscal Year

Five Governmentwide Initiatives

- Strategic Management of Human Capital
- Competitive Sourcing
- Improved Financial Performance
- Expanded Electronic Government
- Budget and Performance Integration

(FY) 2002, eight Departments and Agencies improved their status in one or more of the initiatives on the President's Management Agenda. The Departments of Energy and Labor improved in two categories, while Defense, the Environmental Protection Agency, Veterans Affairs, the National Aeronautics and Space Administration, the National Science Foundation, and the Social Security Administration all improved in one category.

We assigned six agencies nine red progress scores in the quarter ending June 30. Five of those scores improved in the last quarter. Most notably:

- The Department of Agriculture (USDA) had red progress scores in Human Capital, Competitive Sourcing, and Budget and Performance Integration. In the final quarter of FY 2001, the USDA improved its progress scores to green in Human Capital and yellow in Competitive Sourcing.
- Also in the third quarter of FY 2001, the Department of Transportation (DOT) scored just one green, in the financial performance initiative. In the final quarter of FY 2001, the DOT received green progress scores in all the initiatives. The DOT has made good progress in developing effective performance measures and goals to facilitate budget and performance integration; it is one of three Cabinet agencies rated yellow in status for that initiative.

The **Strategic Management of Human Capital** initiative is perhaps the most difficult, because of the challenges the Federal Government faces in the personnel area. Looming retirements, skill imbalances, and cumbersome personnel policies combine to present a particularly daunting handicap. Thanks largely to the leadership of Kay James at the Office of Personnel Management, agencies are beginning to take seriously the threat to their success that the Human Capital crisis brings. This initiative is reducing layers between citizens and decision-makers; better aligning skills with agency missions; and, with Congress' support, will allow

greater flexibility to acquire and develop talent and leadership.

Although progress in this initiative has been slow to start, some agencies are taking concrete actions to address their human capital weaknesses. The Department of Energy (DOE), for example, is using specific authorities, like buyouts and early retirement, to restructure and rebuild its workforce around the skills it needs most to accomplish its mission. The Department of Defense (DoD) has made substantial progress in headquarters civilian personnel reductions, planned reorganizations, and reductions in civilian supervisors and managers. And the USDA has identified gaps in the skills it needs and is implementing a Senior Executive Service Development Program, a Mentoring Program, and a Career Intern Program to address these needs.

The **Competitive Sourcing** initiative has the distinction of being the only initiative for which all agencies are red in status. That's because too few agencies have experience subjecting their commercial inventories to the pressures of public-private competition. Studies show, however, that such competitions reduce costs, generally producing savings of 20 percent or more. More importantly, they actually improve business processes, helping agencies improve their performance. With this initiative, the target of opportunity is enormous, as nearly half of Federal jobs perform tasks readily available in the commercial marketplace.

The Competitive Sourcing initiative is making agencies take their commercial inventories, prepared pursuant to the Federal Activities Inventory Reform Act, and subject them to the forces of competition. The initiative seeks simply to give teeth to what has been the stated policy of the Federal Government for more than 50 years. Since the Eisenhower Administration, it has been the policy of the Federal Government to rely on the private sector for commercial services. If the private sector can perform these functions cheaper or better, then they ought to have the chance.

The DoD has the most experience conducting public-private competitions. And it has not shied

away from continuing its work in this area. The DoD is currently conducting competitions on 30,000 civilian positions that are doing jobs found in the yellow pages. These include everything from cafeteria to facilities maintenance, aircraft maintenance to supply functions. But other agencies are conducting more and more competitions. Specifically in the information technology area, the DOE is moving ahead with the largest civilian agency-wide competition ever. It involves 1,000 positions of either current DOE employees or contractors and competing them with private firms to achieve the best information technology value for the taxpayer.

In the past, few agencies have actively undertaken public-private competitions. The lack of agency enthusiasm for public-private competition can be attributed, in large part, to the fact that the process we require them to go through in conducting competitions is complicated and cumbersome. That is why we have proposed to streamline the competitive process. Our proposed revisions to the process are contained in the revised OMB Circular A-76. We are attempting to create an easy and well understood process with a level playing field for all bidders that eliminates excessive delays. The goals: savings and results.

Our expectation is that this new policy provides a framework in which competitions can be conducted easily and quickly enough to bring about the savings and efficiencies that public-private competitions can generate. It will mean more of what agencies are currently doing to achieve the goals of the Competitive Sourcing initiative.

The **Improved Financial Performance** initiative is designed to improve the ability of Federal agencies to collect and report accurate and timely information needed to support decision-making. Too often today, the Federal Government has neither. We have got to do better. That is why we have accelerated the due dates for audited financial statements from what the law requires, February 28, to February 1 for FY 2002 and November 15 for FY 2004.

For FY 2002, both the Department of the Treasury (Treasury) and the Social Security Administration produced audited financial statements on November 15. Their effort is a testament to the fact that with sufficient effort and agency commitment, the accelerated deadline can be met. It was in large part because of the cooperation of the Inspectors General, especially in the case of the Treasury, that these agencies were able to produce their audited financial statements by the accelerated deadline. Other agency Chief Financial Officers and Inspectors General are laying the groundwork for agency efforts to accelerate their financial reporting.

Other agencies are demonstrating marked improvement in their financial performance. The Department of Labor (DOL) and the Environmental Protection Agency (EPA) both improved in status for the Financial Management initiative. The DOL received an unqualified and timely audit opinion on its annual financial statements and met, for the first time, Federal financial management system requirements. The EPA corrected all of its material weaknesses.

Tracking and reducing erroneous payments is another component of the Financial Performance initiative and one in which Inspectors General are playing an active role. Each year, the government suffers billions of dollars in erroneous payments. We are making agencies estimate the level of erroneous payments they make and set goals for reducing them. The President's Council on Integrity and Efficiency joined with the Chief Financial Officers Council in a concerted effort to help agencies meet these goals and reduce their erroneous payments. And Congress recently helped us in this effort by passing a law requiring every agency and every program to estimate the extent of their erroneous payments.

The **Expanded Electronic Government** initiative is designed to improve service to the American people by providing easy-to-find single points of access to government services. There is tremendous interdependency in delivering services or achieving policy objectives, both across agencies

within the Federal Government and among Federal, state, and local government organizations. By leveraging interagency cooperation, we can improve our customer service, reduce the burden we place on businesses, reduce costs, and increase access for persons with disabilities.

Although it is often difficult to get agencies to see the value of contributing resources to interagency projects, often at the same time the agencies are giving up what they see as management sovereignty, we are making progress. We are prioritizing agency information technology investments together around the President's 24 initiatives. For instance, the E-payroll project is consolidating the Federal Government's 22 existing payroll providers to just two.

A part of this initiative is improving overall information technology management throughout the government. The community of Inspectors General has provided critical leadership in identifying the issue of information technology security as a governmentwide major management challenge. We are insisting that agencies provide even greater attention to providing security and protecting privacy.

The goal of the **Budget and Performance Integration** initiative is to provide greater focus on performance and accountability. It requires agencies to depict the full cost of their programs and associated outcomes. Agencies have been struggling for more than 10 years, under the Government Performance and Results Act, to measure the results of their activities. And in almost 10 years, they have made little progress. With this information, we intend to reinforce high-performing programs and reform or terminate nonperforming activities.

When we launched this initiative, the first thing we did was to require agencies to combine all

of their financial and performance reports into one document. This combined performance and accountability report brings financial and performance information together in one place. Some agencies are integrating more performance information with their budgets than ever before. The Department of Veterans Affairs (VA) has submitted a completely restructured budget with accounts aligned with its programs. It shows how each account in the new structure contributes to the VA's strategic goals and objectives. The VA is continuing work to define program activities, measure full cost, and improve presentation for FY 2005. The DOL has also produced a "performance budget," structured according to its strategic goals and outcome goals, providing performance measures and targets for each, and discussing means and strategies for achieving them.

With the FY 2003 budget, we gathered whatever assessments we could find and gave a number of Federal programs an initial rating. This year, we have refined that process by using what we call the PART—the Performance Assessment Rating Tool. The PART assesses the purpose, planning, and management of programs. Most importantly, it also assesses the accountability and results of a program. In the FY 2004 budget, we are going to begin basing budget decisions more on program results as determined by the PART. Programs that are "ineffective" will need to be improved or closed out. And, we are going to challenge programs that are performing well to do even better.

The initiatives that make up the President's Management Agenda are designed to address long-standing management challenges. The challenges are not new. But the discipline imposed by the Executive Branch Management Scorecard makes us apply rigorous standards and regularly assess agencies' progress against them. And it is working. 🏠

ROBERT J. SHEA

Counselor to the Controller, Office of Management and Budget

Erroneous Payments

Estimated Error Rates are Just the Beginning

When I was asked to join the Office of Management and Budget (OMB) to assist with the President's effort to reduce erroneous payments, agencies reported around \$20 billion of erroneous payments in their annual financial statements. I now joke that in the short time since I got here, erroneous payments have doubled. Now, that is not completely true. They have only risen by 50 percent, to \$30 billion. And that is a good thing.

A good thing, you ask incredulously? Yes. Erroneous payments are a bad thing, of course. And \$30 billion should shock you. But it is a good thing that more agencies are estimating and reporting their erroneous payments than ever before. Estimating and reporting erroneous payments are just the first steps an agency has to take before it can understand the scope and nature of its payment problems.

Take, for example, the case of Medicare Fee-for-Service payments. When the Federal Government first began to estimate erroneous Medicare Fee-for-Service payments in 1996, the error rate was 14 percent. Medicare reported a continued decrease in its erroneous payment rate from 6.8 percent in 2000 to 6.3 percent in 2001. In 1996, Health and Human Services Inspector General credits the Centers for Medicare and Medicaid Services (CMS) for their efforts. "CMS has worked with provider groups . . . to clarify reimbursement rules and to impress upon health care providers the importance of fully documenting services. . . . In addition, due to efforts by [the Centers for Medicare and Medicaid Services] and the provider community, the overwhelming majority of health care providers follow Medicare reimbursement rules and bill correctly."¹

¹"Improper Fiscal Year 2001 Medicare Fee-for-Service Payments," Health and Human Services Inspector General, Report Number A-17-01-02002, February 15, 2002.

The Food Stamps program is also one where we have a good historical baseline and a downward trend in erroneous payments. The national Food Stamps error rate fell from 8.91 percent in FY 2000 to 8.66 percent in FY 2001, the lowest error rate ever. The case for estimating erroneous payments is clear.

Based on the success in these programs, and the increasing attention paid to an increase in reported erroneous payments, in FY 2001, the President's Budget asked agencies to estimate the extent of erroneous payments made in programs they administer that make total annual payments in excess of \$2 billion. This includes programs like the Earned Income Tax Credit and housing subsidies, as well as loan programs like student financial assistance and the 7(a) small business loan program. The programs we have targeted represent more than \$1.2 trillion in annual payments.

Coming up with error rates is easier said than done. Most programs are not administered directly by the Federal Government. Medicaid, for instance, is a program that is financed with and administered by the states. Under broad Federal guidelines, each state establishes a Medicaid plan that outlines eligibility standards, provider methods, and benefit packages tailored to the needs of its citizens. Because Medicaid encompasses more than \$225 billion in payments each year, assessing the risk of erroneous payments is critical to both the Federal Government and the states.

Coming up with error rates is not the end—it is just the beginning. Agencies need to identify the reasons erroneous payments are made and implement policies that stop them. Despite a reduction in the national Food Stamps error rate, certain states had exorbitantly high error rates. For instance, California had an error rate of 17.37 percent, and Michigan had an error rate of 13.90 percent. Agriculture Under Secretary Eric Bost is working with those states to ensure they put policies and practices in place to prevent erroneous payments from being made in the first place. But he is also holding all states with high error rates accountable, levying

cash sanctions authorized by law to recover Federal dollars erroneously paid.

The Department of the Treasury convened a task force to study the causes of erroneous payments in the Earned Income Tax Program. Based on studies the task force commissioned, the reasons for the more than \$9 billion in annual Earned Income Tax Program overpayments are: (1) the applicant claims to support a child who is not related to or does not reside with him or her; (2) the applicant erroneously claims a filing status of "single" or "head of household"; and (3) the applicant reports an incorrect amount of income. The Internal Revenue Service (IRS) will now make a greater effort to verify the information provided to it by applicants for the credit. For instance, the IRS will make a more diligent effort to verify the custodian of the child by requiring documentation and by using data available to the Federal Government.

Often, unfortunately, program design or other statutory barriers prevent agencies from instituting sufficient internal controls to prevent erroneous payments. A longstanding issue with respect to the Pell Grant program has been its inability to verify the income of applicants with the IRS, even if the applicant assents to the check of the data. OMB Director Mitch Daniels, the Treasury Secretary, and Education Secretary Rod Paige asked Congress to grant the Department of Education access to tax data for the purposes of verifying the income of applicants for student financial assistance. Although the 107th Congress did not act on the legislation, the Administration will continue to pursue this common sense legislation. It will also continue to pursue similar statutory authority for data sharing for programs like Unemployment Insurance and housing subsidies. We can allow reasonable access to available data while retaining strong and appropriate privacy protections.

President Bush is leading the government to reduce waste, fraud, and abuse. Erroneous payment is just one part of the President's Management Agenda. We will continue to insist that agencies estimate erroneous payments and set

targets and institute policies to reduce them. Consistent with this policy, on November 26, 2002, the President signed the Improper Payments Information Act of 2002, a law that will require agencies to report to Congress and the President *all* programs that have erroneous payment rates in

excess of \$10 million. That means reported annual erroneous payment rates are likely to exceed even the \$30 billion already identified. And getting those estimates is just the first step in stemming the waste of billions and billions of tax dollars every year. 🏠

DONALD V. HAMMOND

Fiscal Assistant Secretary, Department of the Treasury

The Federal Budget

On the Path to Effective Financial Reporting

Background

In late October, the Department of the Treasury (Treasury) and the Office of Management Budget (OMB) released the annual budget results for the just completed fiscal year. Less than a month after the close of FY 2002, the public was provided a comprehensive report on the U.S. Government's budget activities. While very useful, this report does not provide a complete picture of the Federal Government's financial results. The disclosure of results is not complete until individual agency and governmentwide accrual based financial reports are issued. These reports contain significant additional information including liabilities, commitments, and asset portfolios. For example, for FY 2001, these reports revealed that the largest balance sheet liability of the U.S. Government was for post-employment benefits to military and civilian employees. Unfortunately, last year these releases were not completed until 5 and 6 months after the close of the fiscal year respectively.

Information provided this late loses its usefulness and does not constitute proper disclosure. As the Treasury Secretary stated, there is simply no point releasing financial information that is so out of date. In the corporate world, no company could access capital markets with financial reporting under these timeframes.

Acceleration Committee

Accelerating the issuance of the agency and governmentwide reports is an important component of the "Improved Financial Performance" element of the President's Management Agenda. While a few agencies issue their financial reports shortly after fiscal year end, the information will only be

truly useful when all the agencies and the government as a whole release the information promptly. OMB has established new issuance dates for the 2004 statements (November 15 for agencies and December 15 for the governmentwide), and has required the preparation of quarterly financial statements. Recognizing the importance of and the challenge imbedded in this task, the Chief Financial Officers (CFO) Council established a committee devoted to supporting the acceleration process.

The Council's acceleration committee has taken steps to help agencies with this transition but has noted that there are no "silver bullets" to meeting the new dates. In fact, the single biggest barrier is internal—agencies must change their business processes for processing financial data. It is important to note that the acceleration is primarily not an audit issue. Audit schedules will need to change but only after management demonstrates that meaningful information and statement preparation processes will be available to the auditors.

The committee identified two agencies that have consistently released their statements early—the Social Security Administration and the U.S. Postal Service. Each of these entities held an open house for the CFO community and provided insight into how they accomplish the task. Additionally, a preliminary list of impediments to meeting the deadlines was prepared and provided to the council members. Many of these impediments involve the practices of the central agencies, OMB, and Treasury. These issues are being referred to the respective entities to initiate ways to resolve them.

The committee also extracted the earliest dates for scheduled completion of key preparation steps from agency submitted financial statement preparation timelines and created a summary of the earliest dates. Finally, the Private Sector Council has accepted an invitation to assist in the analysis of issues regarding the estimation of actuarial liabilities particularly for interim statements. This effort will allow us to learn how corporations with significant actuarial liabilities produce timely and auditable estimates. These and other key committee documents are available at the CFO Council Web site www.cfoc.gov.

Accelerating Month-end Reporting

A critical acceleration dependency for agencies is the ability to receive complete information immediately after the reporting period in order to perform reconciliations and begin the process with final data. The current monthly process does not permit an agency to analyze the final data for up to 45 days after month end. Since the agency's final data includes information provided by other Federal agencies, this lag is particularly problematic. Treasury's Financial Management Service, with the concurrence of OMB, has developed a new timetable to mitigate this problem.

Starting in January 2003, agencies will be required to submit their month-end reporting much sooner. The schedule calls for a phased-in implementation [see timeline chart] that will conclude with all reporting accelerated by the beginning of FY 2004. In order to be successful, it is essential that all agencies meet these dates. This is because of the interdependency of individual agencies on data submitted by other agencies. Additionally, the release of the governmentwide monthly budget report, the Monthly Treasury Statement, will be able to be accelerated once all agencies are in compliance. Treasury will be monitoring agency compliance levels throughout the implementation and reporting to the agencies and OMB on the progress.

With this change, we will be able to accelerate the release of year-end budget results to mid-October. But will acceleration of reporting be enough to cause our financial reporting to be effective?

Ensuring Data Credibility

It goes without saying that not only must reporting be timely to be meaningful but it must also be credible. A measure of the credibility of financial results is the audit report that accompanies it. The audit assurance or opinion provides third-party validation that the financial report is prepared using information that is reliable and that the report is presented in conformance with generally accepted account-

ing principles (GAAP). Two areas of weakness noted in the governmentwide audit opinion for the government's reporting are the reporting of intra-governmental transactions and the process used to prepare the governmentwide financial report. It is essential that these two basic areas of weakness be resolved in order to have truly effective reporting.

As noted above a daunting problem for the government's financial reporting is the appropriate treatment and reporting of intra-governmental transactions. These financial transactions are the result of the business activities that the government conducts among its various components. These transactions include activity such as rent and utility payments to General Services Administration, employment-related benefit transactions with OPM, and agency trust fund investments with Treasury.

Accurately reflecting and in most cases eliminating these transactions for financial reporting is essential for meaningful and useful information. Just as with large private sector corporations, the financial consolidation of component entities (i.e. the agencies) requires the elimination of transactions within the "parent" in order to prevent double counting. Unfortunately, to date, the nature of this agency data varies greatly and the lack of detailed meaningful data makes agency reconciliations almost impossible. Little progress can be made on resolving this longstanding problem without effective standardized processes. The financial community identified this need and the result has been that OMB has issued formal business rules for the conduct of financial transactions between Federal entities. These rules take effect in January 2003 and will bring a disciplined and uniform approach to these important components of the Federal financial picture.

A second piece of the puzzle to accurately capture intra-governmental transactions is the development of an automated system to be used by agencies to conduct the commercial or "buy/sell" types of transactions. The system will capture the data necessary to comply with the business rules, greatly ease the reconciliation process, match the trading party data, and interface with the Inter-governmental Payment and Collections (IPAC)

settlement system when the transaction is completed. This system is currently under development and is scheduled to be implemented in the summer of 2003. Combined with the application of the business rules, the longstanding issue of the proper treatment of intra-governmental activity should be reaching a successful conclusion.

Consistency and Accuracy

The preparation of the governmentwide financial report presents its own unique challenges. Not only must it be prepared in a very compressed period—issued 30 days after the agency reports—but it must also be consistent with the agency financial reports. This consistency is critical for two reasons. First and most obvious, it is essential that the government report the same results for identical activities regardless of who is doing the reporting. Second and more problematic, the audit assurance that is provided to the agency financial reports must flow through to the governmentwide report. The flow-through audit assurance is necessitated by the short time period in which the agency financial data is currently available to the auditors and simply is more efficient in avoiding the need to have the same information audited twice. The process that has been used to prepare the governmentwide financial report does not allow for the effective flow-through of the agency audit opinions and makes Treasury responsible to ensure that the agency data submitted is consistent with the respective financial report.

A working group was assembled to evaluate new approaches to collecting data from the agencies for the preparation of the governmentwide report. The result was that a concept was recommended that would collect data at the agency level directly from the agencies' audited financial statements. This approach has been selected by Treasury and OMB because it meets the two criteria. It provides for the provision of financial data that is consistent with the agency statements since that is the source of the data and it provides for

the flow-through of audit assurance since it is the same information that has been audited. The approach has an additional benefit. It clearly aligns responsibility for an agency's financial information with the agency CFO not various agency reporting components. Our experience indicates that the quality and reliability of the financial data should be enhanced by this central point of responsibility.

The detailed development of this approach is underway. While the implementation timeframes are aggressive, they have also been designed to allow time for meaningful agency and auditor input into the reporting requirements. A draft set of requirements was released for agency review in October. Five agencies will "pilot test" the new approach using financial data of their choice. Once agency comments are received and incorporated the second draft of requirements will be shared with the audit

community in the spring. These comments will then be incorporated into the requirements, and they will be finalized in June 2003. The requirements will be effective for FY 2004 reporting (November 2004), meaning that agencies will have more than a year to be able to comply with the new reporting submission. Since the reporting requirements have their origins in the standard general ledger, all agencies will have a common frame of reference with which to collect the information.

Conclusion

The Federal Government has an obligation to the citizens of the United States to publish complete, reliable, and timely financial information on the government's activities. The initiatives currently underway should put the Federal Government in a better position to fulfill this obligation.

Central Accounting and Reporting Operations of Governmentwide Accounting *The Accelerated Monthly Process*

Summary

The basic principle of the President's Management Agenda calls for improving financial performance by providing timely, reliable, and useful information. In accordance with this, the Office of Management and Budget (OMB) has significantly accelerated financial reporting due dates and requires additional disclosures to facilitate the preparation and audit of the Financial Report of the U.S. Government.

The accelerated financial reporting due dates include year-end and quarterly reporting for CFO Act agencies and the Federal Government. The additional disclosure requirements in agency financial statements will serve as building blocks for the Department of the Treasury (Treasury) as they move closer to using agency audited financial statements to prepare the Financial Report of the U.S. Government.

Beginning with the quarter ending March 31, 2004, agencies will be required to prepare and submit to OMB their quarterly unaudited financial

statements 21 days after the end of each quarter. In addition, beginning with the fiscal year ending September 30, 2004, performance and accountability reports will be due to the President, OMB, and the Congress by November 15, 2004. Treasury will be required to issue the Financial Report of the U.S. Government to the President and Congress by December 15.

In consideration of the accelerated financial reporting due dates, Governmentwide Accounting has prepared an abstract of the Central Accounting and Reporting Operations for the accelerated monthly process.

Following is a timeline of the current monthly process, an interim accelerated schedule for FY 2003, and the maximum accelerated monthly process effective FY 2004. Also included are implementation steps for the accelerated monthly process and the associated timeframes. This new timeline allows minimal time for agency reporting and the Financial Management Service's (FMS) review of data prior to release of information to users. 🏠

CENTRAL ACCOUNTING AND REPORTING OPERATIONS OF GOVERNMENTWIDE ACCOUNTING

(CURRENT MONTHLY PROCESS)

Open System	1218/1221 1219/1220 224s Due	5th wkdy	7th wkdy	1218/1221 1219/1220 224s Due	5th wkdy	7th wkdy	RFC Merge	8th wkdy	Run Payment & Collection Comparisons	9th wkdy	10th wkdy	Generate Preliminary MTS	11th wkdy	Data Integrity Checks	12th wkdy	Data Integrity Checks	12th wkdy	Generate Final MTS	13th wkdy	Undisbursed Available to Agencies on GOALS	14th wkdy	15th wkdy	Undisbursed Available to Agencies on GOALS ¹	2108 Balance Available to Agencies on FACTS II
	1st wkdy																							

**(INTERIM ACCELERATED MONTHLY PROCESS)
Accounting Month JAN. 2003–MAR. 2003**

Open System	1218/1221 1219/1220 224s Due	3rd wkdy	5th wkdy	6th wkdy	Agency Suppl. Due	6th wkdy	RFC Merge	6th wkdy	Run Payment & Collection Comparisons	7th wkdy	8th wkdy	Generate Preliminary MTS	9th wkdy	Data Integrity Checks	10th wkdy	Data Integrity Checks	12th wkdy	Generate Final MTS	13th wkdy	Undisbursed Available to Agencies on GOALS	14th wkdy	15th wkdy	Undisbursed Available to Agencies on GOALS ¹	2108 Balance Available to Agencies on FACTS II
	1st wkdy																							

**(INTERIM ACCELERATED MONTHLY PROCESS)²
Accounting Month APR. 2003–SEPT. 2003**

Open System	1218/1221 1219/1220 224s Due	3rd wkdy	3rd wkdy	4th wkdy	Agency Suppl. Due	4th wkdy	RFC Merge	4th wkdy	Run Payment & Collection Comparisons	7th wkdy	8th wkdy	Generate Preliminary MTS	9th wkdy	Data Integrity Checks	10th wkdy	Data Integrity Checks	12th wkdy	Generate Final MTS	13th wkdy	Undisbursed Available to Agencies on GOALS	14th wkdy	15th wkdy	Undisbursed Available to Agencies on GOALS ¹	2108 Balance Available to Agencies on FACTS II
	1st wkdy																							

(Continued)

CENTRAL ACCOUNTING AND REPORTING OPERATIONS OF GOVERNMENTWIDE ACCOUNTING

(MAXIMUM ACCELERATED MONTHLY PROCESS)⁴
EFFECTIVE DURING FY 2004

Open System	1218/1221 1219/1220 224s & DoD Due	3rd wkdy	RFC Merge	3rd wkdy	Account Statement Available to Agencies ³	4th wkdy	Run Payment & Collection Comparisons	4th wkdy	Generate Preliminary MTS	4th wkdy	Data Integrity Checks	4th wkdy	Data Integrity Checks	5th wkdy	Generate Final MTS	5th wkdy	Undisbursed Available to Agencies on GOALS	5	Undisbursed Available to Agencies on GOALS ¹	5	2108 Balance Available to Agencies on FACTS II	5
1st wkdy	3rd wkdy	3rd wkdy	3rd wkdy	4th wkdy	4th wkdy	4th wkdy	4th wkdy	4th wkdy	4th wkdy	4th wkdy	5th wkdy	5th wkdy	5th wkdy	5th wkdy	5th wkdy	5th wkdy	5	5	5	5	5	YEAR-END ONLY

Open System (224/1219)	1219s 224s & DoD Due	5th wkdy	RFC Merge	5th wkdy	**Account Statement Available to Agencies	6th wkdy	Run Payment & Collection Comparisons	6th wkdy	Generate Preliminary MTS	6th wkdy	Data Integrity Checks	7th wkdy	Data Integrity Checks	8th wkdy	Generate Final MTS	9th wkdy	Run Undisbursed in STAR	9th wkdy	*Undisbursed MTS Released	10th wkdy	2108 Balance Available to Agencies on GOALS	10th wkdy	2108 Balance Available to Agencies on GOALS	11th wkdy
1st wkdy	5th wkdy	5th wkdy	5th wkdy	6th wkdy	6th wkdy	6th wkdy	6th wkdy	6th wkdy	6th wkdy	6th wkdy	7th wkdy	7th wkdy	8th wkdy	8th wkdy	9th wkdy	9th wkdy	9th wkdy	10th wkdy	10th wkdy	10th wkdy	10th wkdy	10th wkdy	11th wkdy	YEAR-END ONLY

1. Agencies can verify data contained in Undisbursed Ledger by using alternative means. For example, access to STAR, CASHLINK, or RFC Agency Link (Available by 3rd workday).

2. Evaluate agency performance to determine if, by the accounting month of Sept., the Undisbursed Ledgers and MTS will be accelerated.

3. GWA Project to provide account statement online in October 2003.

4. Remove Supplemental Period in accounting month of October 2003.

5. Continue to reevaluate agency performance with the goal of attaining maximum acceleration by Sept. 2004.

NOTE: Issues/concerns on attached sheet.

* Agencies can verify data contained in Undisbursed Ledger by using alternative means.

For example: Access to STAR, CASHLINK or RFC Agency Link (Available by 3rd workday).

** GWA Project delivery of account statement online until October 2003.

THE ACCELERATED MONTHLY PROCESS

IMPLEMENTATION STEPS	
Tasks	Timeframe
Discuss the new reporting requirements at the Year-end and FMS Annual Conferences.	August 12–15, 2002
Issue a Treasury Financial Manual (TFM) announcement alerting agencies of new reporting requirements and due dates for transaction reports.	August 30, 2002
Brief the CFO Council.	September 4, 2002
Modify the internal processing cycle of the Bank transcript data to shorten the number of workdays at the beginning of the month for prior month reporting.	December 2002
Put a message on GOALS to remind agencies of the new reporting dates.	January/February 2003
Accelerate the FMS 224 reporting to the 3rd workday and the FMS 1219/1220 and SF 1218/1221 reports to the 5th workday. Supplementals for both types of reporting will be accepted until the 6th workday. No changes will be made in the MTS cycle and therefore agencies will still receive their undisbursed ledgers on the 13th workday. Agencies can use alternative means for verifying their undisbursed ledger balances before the 13th workday; for example, access to STAR, CASHLINK, and RFC Agency Link.	February–April 2003 (Jan.–Mar. acting month)
Evaluate data integrity and prepare monthly feedback reports on late reporting or non-complying agencies. Meet with agencies that consistently report late.	February–August 2003 (Jan.–July acting month)
Accelerate the FMS 1219/1220 and the SF 1218/1221 reporting another 2 days to the 3rd workday. Maintain requirement for FMS 224 reporting by the 3rd workday. Supplementals will be further accelerated to the 4th workday for both FMS 224 and FMS 1219/1220 and SF 1218/1221 reporters. Agencies can use alternative means for verifying their undisbursed ledger balances before the 13th workday; for example, access to STAR, CASHLINK, and RFC Agency Link.	May 2003 and beyond (Apr. acting month)
Change the internal FMS threshold for resolving payment and collection differences, if necessary, after assessing agency performance.	July 2003 (Jun. acting month)
Discuss the accelerated reporting at the AGA Conference.	July 2003
Evaluate agency performance (timeliness and accuracy) to determine if we could accelerate the year-end undisbursed ledgers and the MTS. Users will be notified that the September MTS will be released early if appropriate.	August 2003
Generate the accounting month of August on a test basis to determine if we can accelerate the undisbursed ledgers and the MTS.	September 2003 (Aug. acting month)
Release the undisbursed ledgers and the MTS on a schedule consistent with the performance of the agencies and our evaluation of the steps above.	October 2003 (Sept. acting month)
Agency account statements will be available for agencies to view their undisbursed data online daily. This would make the undisbursed data available to the agencies the day AFTER their reporting is complete and accurate. As a result, the undisbursed ledgers may not be as critical.	October 2003
Remove the supplemental period for submissions of the FMS 224 and FMS 1219/1220 and SF 1218/1221 reports and continue to reevaluate agency performance and accelerate the release of the undisbursed ledgers and the MTS with the goal of attaining the maximum acceleration by September 2004.	November 2003 (Oct. acting month)

GASTON L. GIANNI, JR.

Inspector General, Federal Deposit and Insurance Corporation; Vice Chair, President's Council on Integrity and Efficiency

Celebrating 25 Years

Reflections on the Silver Anniversary of the IG Act

October 12, 2003 will mark the 25th anniversary of the enactment of the Inspector General (IG) Act. On that date in 1978, President Jimmy Carter created independent audit and investigative offices in 12 Federal agencies. The IG concept put into place on that day was derived in part from the military custom of having an IG provide an independent review of the combat readiness of the Continental Army's troops. The need for that independent review over 225 years ago remains the solid foundation that guides the IG community today.

Moving from the IG concept into law was neither quick nor without opposition. Work in the early 1960s by a subcommittee of the Government Operations Committee, U.S. House of Representatives, began to highlight the need for independent statutory IGs. Further work by this same subcommittee in 1974 revealed a situation in the former Department of Health, Education, and Welfare (HEW) where processes for investigating program fraud and abuse were essentially non-existent. In response, legislation establishing a statutory IG at HEW was enacted 2 years later. During congressional hearings debating the Act itself, several witnesses sounded warnings of serious adverse consequences that would result if the Act became law, and other witnesses questioned the constitutionality of some of the Act's provisions. However, these concerns were tempered by the testimony of the HEW Secretary and IG, and the Act passed both houses of the Congress with strong bipartisan support.

Now, 25 years later, it is clear that adverse consequences have not materialized, and the basic tenets of the Act's intended mission have remained constant and strong. Although amended several times over the years to add new IGs and clarify reporting requirements, the Act has given IGs the

authority and responsibility to be independent voices for economy, efficiency, and effectiveness within the Federal Government. Today, with the recent amendment to the Act establishing an IG at the Export-Import Bank, 58 IGs protect the integrity of government; improve program efficiency and effectiveness; and prevent and detect fraud, waste, and abuse in 60 Federal agencies.

Since their early beginnings, IGs have focused attention on good government. As charged by the Act, individual IGs direct their work toward examining agency programs and operations with the goal of promoting program efficiency and effectiveness and protecting government integrity. The IGs independently identify government vulnerabilities, facilitate solutions, and leverage their resources to promote government integrity, accountability, transparency, and excellence. Simply put, IGs appropriately view themselves as “agents of positive change.”

The IG concept has proven to be of significant benefit to our government as well as governments abroad. Each year, billions of dollars are returned to the Federal Government or better spent based on the recommendations from IG reports. IG investigations contribute to the prosecution of thousands of wrongdoers and recovery of billions of dollars annually. In FY 2001 alone, the IGs accounted for more than \$28 billion in saved and recovered Federal funds. The IG concept of good governance and accountability encourages foreign governments to seek advice with the goal of replicating the basic IG principles in their governments.

Over the last several years, IGs have been operating in a changing environment. In addition to the traditional roles of promoting economy and efficiency and fighting fraud, waste, and abuse, new responsibilities and challenges have emerged. The IGs are now playing a pivotal role within their

agencies by conducting financial audits, reporting on Results Act compliance and accountability, assessing information security efforts, identifying their agencies’ most significant challenges, and ensuring the effective implementation of the President’s Management Agenda.

The President’s Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) are continuing their long tradition of coordinating the professional activities of the IG community. Established by Executive Order in 1981 and 1992, respectively, the PCIE and ECIE were charged with addressing integrity and efficiency issues that transcend individual government agencies and increasing the professionalism and effectiveness of OIG personnel throughout government. Through their committees and working groups, both Councils have addressed relevant issues related to audit, investigation, and inspection efforts; developed professional standards, guidelines, and manuals; issued reports on governmentwide initiatives and concerns; and trained OIG staff to remain current in their respective professions.

In celebrating the many accomplishments of our community, we will use this next year as an opportunity to reflect, both individually and as a community, on the successes of our past and how we can continue to build on our accomplishments. Over the next 12 months, we are looking to engage the administration and the Congress in a dialogue on ways to improve upon the Act. We hope to host forums and other events as well as produce publications, such as *The Journal of Public Inquiry* and our individual agency semiannual reports, to share our past and articulate our vision for the future.

We look forward to an exciting and productive year. 🏠

JOSEPH E. SCHMITZ

Inspector General, Department of Defense

The Enduring Legacy of Inspector General von Steuben

According to one 20th Century Army historian, “the military services of two men, and of two men alone, can be regarded as indispensable to the achievement of American Independence. These two men were Washington and Steuben. . . . Washington was the indispensable commander. Steuben was his indispensable staff officer.”¹

When Benjamin Franklin recruited Baron von Steuben in 1777 from the latter’s post-Prussian Army position as “Hofmarschall” (Lord Chamberlain) of a small Hohenzollern principality in what is now Southern Germany, how could anyone have envisioned the enduring legacy of this first effective American Inspector General: “integrity, knowledge, and loyalty to conscience”?² The Steuben family motto, *Sub Tutela Altissimi Semper*³ (translated, Under the Protection of the Almighty Always), might have foreshadowed the legacy of this German-American patriot whose monument graces the park across from the White House, along with Generals Lafayette, Rochambeau, and Kosciuszko: all four of whom “testify to the gratitude of the American people to those from France, from Poland, and from Prussia

¹ John Palmer, *General von Steuben* 1 (Yale University Press, 1937).

² Joseph Whitehorne, “Von Steuben’s Legacy,” *The Inspectors General of the United States Army, 1903-1939*, at 4 (Office of the Inspector General & Center of Military History, United States Army, 1998).

³ Henning-Hubertus Baron von Steuben, *Chronik der Familie von Steuben* 4 (1998).

who aided them in their struggle for national independence and existence.”⁴

Ever since the Revolutionary War, the military Inspector General in America has served as *an independent extension of the eyes, ears, and conscience of the Commander*.⁵ Still today, all Inspectors General in the Department of Defense, including the military departments, are trained to serve in this role; as such, the military Inspector General is always a paradigm of military leadership—the only issue is whether he or she is a good paradigm.

While today’s Army Inspector General is the modern day personification of the enduring legacy of General von Steuben, it is also clear that General von Steuben is much more than the founding father of the Army Inspector General system. He is, of course, that. Not only is the first lesson plan of the Army Inspector General School devoted to General von Steuben, the entire 3-week course is permeated with the “Von Steuben Model.” He is the enduring prime role model for every one of the 239 principal Army Inspectors General, a veritable “IG-Network” of senior officers serving full time in assistance, inspection, non-criminal investigation, and “teach & train” functions at every major command around the world.

Modern day military Inspectors General serve in a variety of uniforms: the 239 principal Army IGs mentioned above; 150 senior Air Force IGs and an additional 2,000 counterintelligence and criminal investigative professionals report to the Air Force Inspector General; the Navy and Marine Corps together deploy more than 70 IGs in similar functions. All three service Inspectors General are three-star flag and general officers; the

Marine Corps IG has two-stars. By statute, however, “No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense”⁶—a Senate-confirmed civilian officer responsible for approximately 1,250 professional auditors, inspectors, and investigators, including 30 uniformed military officers.

Inspector General von Steuben is also a role model for the 30 Presidentially-appointed civilian Inspectors General who comprise the President’s Council on Integrity and Efficiency (PCIE) and another 27 agency head-appointed civilian Inspectors General who comprise the Executive Council on Integrity and Efficiency (ECIE). (See <http://www.ignet.gov>.) According to the PCIE/ ECIE *Progress Report to the President* for FY 2001, this “community of nearly 10,000 employees has accounted for over \$28 billion in saved and recovered funds and was instrumental in over 7,600 successful prosecutions, suspensions or debarments of nearly 8,800 individuals or businesses, and more than 2,000 civil or personnel actions.”⁷ In addition to the Federal PCIE/ECIE community, a robust “Association of Inspectors General” caters to a multitude of “Inspectors General at all levels of government [who] are entrusted with fostering and promoting accountability and integrity in government.”⁸

How is it that this historical paradigm of military leadership has become the modern professional role model for civilians? As explained below, the answer is not just in the title. Although he is most known for military training, discipline, and accountability, General von Steuben is also known for his integrity and aversion to fraud and waste: “Prolonged study of his official correspondence and other military papers shows them to be models of veracity and scientific precision.”⁹

⁴ William Howard Taft, “Address of the President of the United States,” reprinted in *Proceedings Upon the Unveiling of the Statue of Baron von Steuben, Major General Inspector General in the Continental Army During the Revolutionary War 49* (Joint Committee on Printing, 1912).

⁵ Army Regulation 20-1, *Inspector General Activities and Procedures 5* (Department of the Army, 2002).

⁶ Inspector General Act of 1978, as amended, Section 8.

⁷ PCIE/ECIE Press Release, December 10, 2002.

⁸ Association of Inspectors General, *Principles and Standards for Officers of Inspector General 3* (May 2001) (<http://www.inspectorsgeneral.org>).

⁹ Palmer, General von Steuben, *supra*, at 5.

According to the official history of the Army Inspectors General, “Steuben, beginning work as an advisor to [General] Washington, proclaimed the money department ‘a mere farce,’ and said that paying quartermaster agents a commission according to what they spent was a prescription for waste.”¹⁰

Integrity & Efficiency. “Although Maj. Gen. Friedrich W. A. von Steuben was preceded briefly by three Inspectors General, he is credited with establishing the high standards desired by Washington—integrity, knowledge, and loyalty to conscience—that have been the measure of the inspection system ever since.”¹¹

According to the recently published chronicle of the Steuben family, the 13 years Baron von Steuben served Prince Joseph Wilhelm von Hohenzollern-Hechingen “were the most difficult times of his life.”¹² The modern day Baron von Steuben concludes that his namesake’s service as Hofmarschall “strongly shaped his attitudes”: “Because the Prince was a spendthrift, Steuben tried everything financially to save the principality. . . . This experience shaped his understanding of honesty, probity, efficiency and truthfulness. These principles he later brought to the American Army, above all to his training of its military commanders.”¹³

In his own writing, approved by Congress in March 29, 1779, as “invariable rules for the order and discipline of the troops,”¹⁴ General von Steuben admonished that “the commanding

officer of a regiment must preserve the strictest discipline and order in his corps, obliging every officer to a strict performance of his duty, without relaxing in the smallest point; punishing impartially the faults that are committed, without distinction of rank or service.”¹⁵

Training. General von Steuben’s most well known legacy, “Military Instruction,” is enshrined on his monument in Lafayette Park. Upon arrival at Valley Forge in 1778, he confronted an American Army, simply stated, in disarray. His first task was to train General Washington’s own guard. Having proved his value as a military trainer to his Commander-in-Chief, Steuben’s acumen for training soon spread to the entire army. According to the U.S. Army’s official history of the Inspectors General, “Steuben shocked American officers by personally teaching men the manual of arms and drill, but his success helped to convince them. . . . With Washington’s support, Steuben set out to involve officers in training, making the subordinate inspectors—a body of officers drilled by Steuben—his agents.”¹⁶

According to President William Howard Taft, “The effect of STEUBEN’S instruction in the American Army teaches us a lesson that is well for us all to keep in mind, and that is that no people, however warlike in spirit and ambition, in natural courage and self-confidence, can be made at once, by uniforms and guns, a military force. Until they learn drill and discipline, they are a mob, and the theory that they can be made an army overnight has cost this Nation billions of dollars and thousands of lives.”¹⁷

Discipline. According to the 1902 Proceedings in Congress, “[General von Steuben] made

¹⁰ David Clary and Joseph Whitehorne, *The Inspectors General of the United States Army, 1777-1903*, 37 (U.S. Government Printing Office, 1987).

¹¹ Whitehorne, “Von Steuben’s Legacy,” *The Inspectors General, 1903-1939*, *supra*, at 4.

¹² Henning-Hubertus Baron von Steuben, *Chronik der Familie von Steuben*, *supra*, at 73.

¹³ Henning von Steuben, Translated E-mail to Joseph E. Schmitz, December 1, 2002.

¹⁴ “In Congress, 29th March, 1779,” reprinted in Baron von Steuben’s *Revolutionary War Drill Manual: A Facsimile Reprint of the 1794 Edition A2* (New York, Dover Publications, 1985).

¹⁵ Frederick William Baron von Steuben, *Revolutionary War Drill Manual: A Facsimile Reprint of the 1794 Edition*, *supra*, at 128.

¹⁶ Clary and Whitehorne, *The Inspectors General, 1777-1903*, *supra*, at 40.

¹⁷ Proceedings Upon the Unveiling of the Statue of Baron von Steuben, *supra*, at 50.

the patriotic army a disciplined and effective force—the drilled corps that ultimately won the war for freedom. He worked incessantly to do this under the greatest difficulties and the credit for it is all his own.”¹⁸ When the Pentagon commissioned its “Soldier-Signers of the Constitution Corridor” in 1986, the following signage accompanied the central oil painting of Washington at Valley Forge, surrounded by his mounted staff and tattered soldiers: “During the coming months they would suffer from shortages of food and clothing, and from the cold, but under the tutelage of Washington and Major General Frederick Steuben [sic] would gain the professional training necessary to become the equal of the British and Hessians in open battle.”

Accountability. Parallel with his emphasis on training and drilling the troops, General von Steuben maintained that his inspectors “must depart from purely military inspection and must also examine financial accounts.”¹⁹ Inspector General von Steuben himself described what he encountered on arrival at Valley Forge in 1778, and how he established a system to eliminate wasteful losses of muskets, bayonets, and other Revolutionary War “accouterments”:

General Knox assured me that, previous to the establishment of my department, there never was a campaign in which the military magazines did not furnish from five thousand to eight thousand muskets to replace those which were lost The loss of bayonets was still greater. The American soldier, never having used this arm, had no faith in it, and never used it but to roast his beefsteak, and indeed often left it at home. This

is not astonishing when it is considered that the majority of the States engaged their soldiers for from six to nine months. Each man who went away took his musket with him, and his successor received another from the public store. No captain kept a book. Accounts were never furnished nor required. As our army is, thank God, little subject to desertion, I venture to say that during an entire campaign there have not been twenty muskets lost since my system came into force. It was the same with the pouches and other accouterments, and I do not believe that I exaggerate when I state that my arrangements have saved the United States at least eight hundred thousand French livres a year.²⁰

The original state of affairs upon his arrival at Valley Forge, according to a Congressional publication, indicated “[t]here were 5,000 muskets more on paper than were required, yet many soldiers were without them. Steuben’s first task was, therefore, to inaugurate a system of control over the needs and supply of arms, and, in course of time, he succeeded in carrying this control to such perfection that, on his last inspection before he left the Army, there were but three muskets missing, and even those were accounted for.”²¹

The Constitution ratified by Congress after the successful conclusion of the Revolutionary War still requires that “a regular Statement and Account of the Receipts and Expenditure of all public Money shall be published from time to time.”²² Moreover,

²⁰ Friedrich Kapp, *The Life of Frederick William von Steuben, Major General in the Revolutionary Army* 117 (New York, Mason Brothers, 1859) (quoting “Steuben, MS. Papers, vol. xi.”).

²¹ “Address of Hon. Richard Bartholdt” (“Author of the Steuben Statue Legislation”), reprinted in *Proceedings Upon the Unveiling of the Statue of Baron von Steuben*, *supra*, at 22-23.

²² U.S. Constitution, Article I, Section 9.

¹⁸ United States Congress, “Proceedings in Congress Relating to Baron Steuben,” July 1, 1902, reprinted in *Proceedings Upon the Unveiling of the Statue of Baron von Steuben*, *supra*, at 154.

¹⁹ Clary and Whitehorne, *The Inspectors General, 1777-1903*, *supra*, at 37.

as explained in the 1789 Preamble to the Bill of Rights, the first ten Amendments were designed “to prevent misconstructions or abuse of its power,”²³ *i.e.*, to prevent abuses of “powers . . . delegated to the United States by the Constitution.”²⁴

Congress subsequently codified these same constitutional principles—200 years after confirming Baron von Steuben as George Washington’s Inspector General—in the Inspector General Act of 1978, which created “independent and objective units” in most major Federal agencies “to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in

the administration of; and (B) to prevent and detect fraud and abuse.”²⁵

So, the next time an Inspector General knocks on someone else’s figurative door, only to encounter a panic or curse (or both), the Inspector General (or the IG’s representative) might remind his or her “customer” that the Inspector General, whether civilian or military, serves as an extension of the *Commander’s Conscience*, guarding a Revolutionary War legacy of: integrity; training and discipline; preventing and detecting fraud, waste, abuse, and mismanagement; and ensuring constitutional accountability ultimately to “the People of the United States”²⁶—*sub tutela Altissimi semper*. 🏛️

²³ Bill of Rights, Preamble.

²⁴ U.S. Constitution, Amendment X.

²⁵ Inspector General Act of 1978, as amended, Section 2.

²⁶ U.S. Constitution, Preamble.

DANNY L. ATHANASAW, D.P.A.

Director, Inspectors General Auditor Training Institute

Recent Developments

The Inspectors General Auditor Training Institute

As we enter a new year, I would like to offer some reflections on important new developments at the Inspectors General Auditor Training Institute (IGATI). Thanks in large part to a dedicated corps of instructors and of staff, this past year was highly successful by almost every measure. In a rapidly changing environment, we have persevered to improve the training experiences of a growing number of students in the Inspector General (IG) community while strengthening the Institute's course portfolio.

I know that every individual at the Institute has been challenged this past year, and to enumerate these accomplishments serves to underscore our collective commitment to excellence. The Institute is achieving greater instructional recognition, remaining competitive, and continuously improving.

Building on Past Success

During the past 10 years, the Institute has earned a reputation of providing excellent quality training for the IG community and other audit organizations. This past year our reputation continued to spread throughout the IG community. Notwithstanding disruptions caused by the September 11, 2001 terrorist attacks, the Institute successfully completed 60 training classes and conducted 17 agency-specific training exercises, involving about 1,400 students. Remarkably, this was accomplished with a small staff of two full-time instructors, two administrative staff, contract instructors, and volunteers. The quality of the instructors and staff, reflected in their diligence to meet the needs of our customers, is first class.

The Institute could not expand course offerings without additional instructors, so we hired two outstanding new full-time instructors at the end of FY 2002. The Institute now has four full-time instructors comprising a faculty that will allow us to improve and increase our course offerings. Numerous curricular improvements and teaching innovations supported by the Institute are underway.

Looking Toward the Future

This year the Institute plans to deliver over 95 scheduled classes, representing 26 different courses. These 26 courses fall within one of five categories—Performance Auditing, Financial Auditing, Information Technology Auditing, Communications, and Management Analysis and Techniques. Among the proposed course offerings will be the following:

- **Ethics for Auditors and Evaluators.** The collapse of several major corporations has raised awareness about ethics. Along with several IG counsels, we are developing a course focusing on how ethics, as it relates to compliance and integrity, impacts the performance of audits and evaluations and what auditors and evaluators need to be aware of when doing these reviews.
- **Electronic Reports Distribution.** Within the IG community there is an interest in electronic distribution of reports. As a result, the Institute, collaborating with the staff from the Office of Inspector General (OIG), Department of Interior (DOI), is developing a course that will instruct students how to use Adobe Acrobat in preparing audit reports for distribution using a CD or their agency Web site. Additionally, we are looking to include training for students to learn basic HTML coding techniques to alert recipients of new reports on agency Web sites. We are very excited to be partnering

with the OIG DOI in this most important endeavor. Students have already shown interest for this course.

- **TeamMate.** Several OIGs have inquired about the Institute conducting training on PriceWaterhouse's TeamMate software. To provide needed training for the community, we are looking into the possibility of developing a course on using TeamMate to prepare and route electronic work papers. As more and more OIGs move toward electronic work papers, this course and others like it will be invaluable to the community.
- **Information Technology Concepts for Financial and Program Auditors.** There is a need in the community for a basic course for auditors in information technology. The Institute is developing an introductory information technology course that will provide a foundation for auditors to perform basic application and general control tests to determine the reliability of computer processed data that they may encounter during an audit.
- **MS Access and Excel.** The use of Access and Excel in our work is becoming ever more important. While a large number of the community's newly hired auditors can use these programs, there is a growing need to use them in a productive manner in our audits. This course is geared towards providing the auditor and evaluator a better understanding of the advantages for using these two programs in their audit work and report.
- **Decision-Making Processes for Managers.** When doing audits and evaluations, managers are faced with choices between two or more options. This course will evaluate the many quantitative methods and analytical audit procedures available to managers in making and interpreting information.

A New Campus

For the past 10 years, the Institute was located at Ft. Belvoir, Virginia. We located to Ft. Belvoir because it provided cost-effective spacing. The location provided a pleasant campus-like setting, inexpensive student accommodations, free parking, and many other facilities and services. However, Ft. Belvoir is located outside the Capital Beltway, more than 20 miles from downtown Washington with no metro rail or other public transportation in close proximity. This made it difficult for many students to attend the Institute. Recognizing the need for training devoted primarily to a central city Federal OIG community, the Institute, with the support and approval of the Audit Committee of the President's Council on Integrity and Efficiency, decided in FY 2002 to relocate closer to Washington D.C.

In October 2002, the Institute opened its new state-of-the-art training center at the Rosslyn Metro Center Building, Rosslyn, Virginia. The new training center is multi-use and includes offices for instructors and administrative staff, three classrooms, one large computer lab, three breakout rooms, a library with Internet access, and a kitchenette. It also provides two areas for students to make telephone calls and have Internet access.

All of our classrooms are equipped with projector/screen, television, VCR, telephone, an instructor computer, and printer. Each classroom can seat up to 18 students with sufficient space and windows for a truly enjoyable learning environment. Our new breakout rooms, which can seat six, are also equipped with television, VCR, and telephones. The Institute also has a computer

lab consisting of 16 student workstations, an NT server, and Internet access. Our lab can provide students with hands-on training in data retrieval and analysis, Internet research, network/IT security, and automated work papers. By having individual workstations, students are able to gain hands-on experience using programs such as IDEA, Adobe Acrobat, password crackers, and Microsoft Office products. In addition, we have a second classroom that is wired so we can meet any increase in demand for information technology related training.

Staying Ahead

In a new approach to providing training to the community, the Institute is planning a series of symposiums this year. These symposiums are geared to focus on emerging issues confronting the IG community. For instance, the Institute is developing a one-day symposium on the implementation of electronic work papers. The symposium will include a roundtable discussion on implementation and business process re-engineering issues the IGs should consider when deciding to implement electronic work papers. We also plan to include a discussion of lessons learned and best practices based on experiences of other offices already using electronic work papers.

Conclusion

The Institute's primary focus is to provide the most current and relevant training opportunities. I look forward to 2003 as we continue in our endeavors to serve the IG community. 📧



Entryway



Dr. Danny Athanasaw



Staff



Inspector General Everett Mosley



Classroom



Breakout Rooms



Computer Lab

PEGGY L. FISCHER, PH.D.

Associate Inspector General for Investigations, National Science Foundation

JAMES T. KROLL, PH.D.

Section Head, Administrative Investigations, National Science Foundation

MONTGOMERY K. FISHER, PH.D., J.D.

Senior Counsel, Office of Inspector General, National Science Foundation

Research Misconduct and its Relationship to Fraud

Research Misconduct (RM) and government investigations into allegations of RM have been the focus of several congressionally-appointed review committees. This interest culminated in a 3-year, multi-agency effort spearheaded by the Office of Science and Technology Policy (OSTP) to publish a uniform government process for handling RM allegations.¹ The process requires all Federal agencies that support intramural or extramural research to develop a process for investigating these allegations. These agency processes will either vest the responsibility for these investigations with the Office of Inspector General (OIG), or result in an OIG review of agency investigative efforts, to ensure both the referral of fraud cases and the quality of the agency investigative process. In this article we describe the OSTP effort to implement RM policies within agencies and the companion OIG effort to ensure that OIGs can adequately investigate those RM cases involving fraud. We describe how our office has handled RM allegations to highlight the advantages of parallel processing to ensure adequate administrative, civil, or criminal resolution.

The National Science Foundation (NSF) first published its regulation in the Federal Register in 1987.² It vested the responsibility for investigating

¹ 65 Fed. Reg. 76,260 (2000).

² 52 Fed. Reg. 24,466 (1987) (codified at 45 C.F.R. pt. 689).

allegations with its Division of Audit and Oversight (DAO). It transferred that responsibility to the NSF OIG after our Inspector General's office was established at NSF in 1989. The NSF subsequently modified its regulation to formally place the responsibility for these investigations in the OIG.³ Placing the investigative functions in an office independent of agency management, while retaining the adjudicative function in the NSF, created a firewall between the two functions that is analogous to the United States system for investigating and adjudicating civil and criminal matters.⁴

According to NSF's regulation, all allegations of RM⁵ are referred to the NSF OIG for investigation. We view investigating these allegations as consistent with and part of our charge under the IG Act to "conduct . . . investigations relating to the programs and operations of the establishment" and to "prevent and detect fraud and abuse . . ."⁶ Our RM investigations follow the same guidelines as our investigations into civil or criminal wrongdoing.⁷ In fact, our Privacy Act system of records notice makes no distinction between our civil/criminal files and the administrative files in which we store evidence of our RM investigations.⁸

Over the past 12 years, our office has investigated approximately 800 research misconduct allegations in 600 cases. Approximately 10 percent of these cases have resulted in findings by NSF

management of RM. These findings were accompanied by actions ranging from a written reprimand to debarment. Some of these investigations have also resulted in the recovery of NSF funds.

In our experience, many RM cases contain elements of fraud that must be investigated by the OIG. Whether the agencies or the OIGs investigate RM allegations, OIGs should carefully review allegations and the evidence to ensure that the potential civil and criminal issues are adequately addressed.

The OSTP Governmentwide Research Misconduct Policy and the OIG Misconduct in Research Working Group

The OSTP policy took effect in December 2000 and required all Federal agencies that support research (internally or externally)⁹ to develop a policy for handling research misconduct allegations by December 2001. As described in the OSTP policy, each agency's policy must adopt:

- The OSTP definition of research misconduct;
- Procedural separation of inquiry, investigation, adjudication, and appeal;
- Organizational separation of inquiry and investigation from adjudication and appeal;
- Referral of most investigations to home institutions; and
- Certain procedural elements.

Since the publication of the OSTP policy, the OSTP has convened meetings of an Interagency Implementation Working Group attended by

³ 56 Fed. Reg. 22,286 (1991).

⁴ See K.G. Herman, P.L. Sunshine, M.K. Fisher, J.J. Zwolenik & C.H. Herz, "Investigating Misconduct in Science: The National Science Foundation Model," 65 J. Higher Ed. 384 (1994).

⁵ NSF referred to these cases as "misconduct in science" prior to modifying its regulation in 2002, and as "research misconduct" after 2002 pursuant to the OSTP policy. For simplicity, we will refer to all these matters as "research misconduct."

⁶ 5 U.S.C. App. § 2(1) and § 2(2)(B).

⁷ For example we apply the same quality standards, as described in the PCIE/ECIE *Quality Standards for Investigations* as well as the same rules for preservation of evidence, interviews, affidavits, warnings, file security, and confidentiality.

⁸ 64 Fed. Reg. 29,703 (1999).

⁹ The policy defines research as: "all basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects and animals." 65 Fed. Reg. 76,260 at 76,262 n.3 (2000). In its revised regulation, NSF explained that this definition would cover NSF-funded activities in science, engineering, and education. 45 C.F.R. § 689.1(a)(4).

agency representatives in order to track the progress of policy development and to serve as a focal point for resolving common concerns. The IG community recognized the need for a similar effort, and formed the PCIE/ECIE Misconduct in Research Working Group (MIRWG).

Representatives from over 20 different OIG offices have attended the MIRWG meetings.¹⁰ The MIRWG functions as the OIG counterpart to the OSTP Interagency Implementation Working Group, and an MIRWG liaison attends the Interagency Group meetings. The MIRWG has served as the focal point for discussions about the role of the OIGs in RM investigations.

Some OIGs were interested in conducting the investigations themselves and others viewed these investigations as an agency programmatic function rather than an IG responsibility. The OIG representatives concluded that if the agency carries out RM investigations, the OIG should be notified of allegations on their receipt by the agency and when agency RM investigations raise substantive administrative, civil, or criminal issues. Representatives also wanted agencies to provide OIGs with copies of the final Reports of Investigation. The OIG reviews of an agency's processes and investigative reports will ensure that the OIG is learning of allegations involving civil or criminal wrongdoing. The OIG can also ensure that the agency's processes meet the standards for quality investigations. The MIRWG linked the OIG and agency representatives so that these issues, and the role of the OIGs in RM investigations, should be resolved before agency policies are issued.

The MIRWG developed a *Supplement* to the *PCIE/ECIE Quality Standards for Investigations*¹¹ that discusses the unique issues arising in investigating RM allegations. The MIRWG also

developed *Guidelines* for the OIG oversight of agency RM investigations¹² and a position paper on processing fraud allegations arising in RM investigations.¹³

How Research Misconduct Cases Are Processed at NSF

Receipt of Allegations

The NSF's Personnel Manual requires NSF staff to report to the OIG all "allegations of misconduct, fraud, waste, abuse or corruption,"¹⁴ and we regularly hear of allegations of research misconduct from NSF staff, as well as reviewers of NSF proposals and others in the NSF-funded community. Institutional policies stipulate that research misconduct allegations must be reported to specified institution officials, and NSF's regulation requires institutions to inform the OIG of allegations that the institutions investigate.¹⁵

Unfortunately, we have anecdotal evidence suggesting institutions sometimes resolve substantive RM allegations without initiating investigations, thereby bypassing the reporting requirement. Our office receives approximately 50 RM allegations each year. When compared with the aggregate number of proposals and ongoing awards the NSF manages annually, this results in a reporting rate of 0.14 percent. This figure is approximately 100-fold less than published estimates of the amount of research misconduct.¹⁶

¹² Available at <http://www.ignet.gov/pcieecie/mir/rmpolicy.pdf>.

¹³ Available at <http://www.ignet.gov/pcieecie/mir/statutes.pdf>.

¹⁴ NSF Manual 14, June 19, 1996, I-100-2 § 143.

¹⁵ See below for the distinction between investigation and inquiry.

¹⁶ Swazey, J.P. Anderson, M.S. and K. Seashore Lewis; *Ethical Problems in Academic Research*; *American Scientist*, Vol. 81; 1993; pp. 542-553. Steneck, N.H. *Assessing the Integrity of Publicly Funded Research. A Background Report for the November ORI Research Conference on Research Integrity*; 2000. If these estimates are correct, RM may be a large category of fraud left unaddressed by Inspectors General.

¹⁰ MIRWG minutes and work products are found at <http://www.ignet.gov/pcieecie/misconduct.htm>.

¹¹ Available at <http://www.ignet.gov/pcieecie/mir/supplement.pdf>.

The Inquiry Phase

The NSF regulation specifies the OIG will conduct an inquiry, typically lasting no more than 90 days, to determine if an RM allegation has substance. Our first step is to contact the complainant to obtain a full understanding of the allegation and to obtain any evidence the complainant has to substantiate the allegation. Our second step is to ascertain if the NSF OIG has jurisdiction over the matter and whether that jurisdiction is shared with other Federal agencies. If the jurisdiction is shared with another Federal agency, we will coordinate with that agency and its OIG to determine which office will lead the inquiry effort.

Once jurisdiction is established, we customarily contact the subject to obtain his/her perspective on the allegations unless we believe there is a risk the subject could destroy evidence or intimidate witnesses. We do this because the Privacy Act requires us to gather information about the allegation first from the subject if it is “practicable” to do so.¹⁷ In general, we have determined that it is practicable to contact the subject first concerning plagiarism allegations, but not when the allegations concern fabrication or falsification. However, when the RM allegation implicates possible fraud, we handle it as a potential criminal case, and the requirement for collecting information from the subject does not apply.¹⁸

If we need expert advice or assessment of evidence, we typically seek that information from the NSF program staff. If our inquiry determines there is substance to the allegation, we proceed immediately to the investigation phase. If we determine the allegation is unsubstantiated, we notify the subject and complainant and close the case. This method allows us to handle unsubstan-

tiated allegations without involving the grantee institution.

The Investigation Phase

Unlike other administrative or civil/criminal investigations, the NSF’s RM regulation—consistent with the OSTP policy—specifies that RM investigations are principally the responsibility of the subject’s employing institution. Therefore, we refer the matter to the institution for investigation and defer conducting our own investigation until the institution has completed its efforts. Institutions typically have detailed policies in place that describe their investigative process. The institution’s policy identifies an institutional official who is responsible for managing the process. That individual usually convenes a committee of peer experts to gather and evaluate evidence, and interview witnesses and the subject, to determine if the subject or other individuals committed RM.¹⁹

As specified in the NSF’s regulation,²⁰ we typically allow institutions about 180 days to complete their investigation, although the complexity of some investigations may require more time. Our office maintains regular contact with institutional officials to answer questions about process and to assist in gathering information. At the conclusion of its investigation, the institution provides our office with an investigation report that summarizes the committee’s conclusion and contains the evidence gathered during the investigation. It also contains the determination of the institution’s adjudicator.

Once our office receives the institution’s investigation report, we initiate our investigation. Our office reviews the report to assess whether it is accurate and complete and that the institution followed reasonable procedures. If the report is insufficient, we may ask the institution for additional informa-

¹⁷ 5 U.S.C. § 552a(e)(2).

¹⁸ Our criminal investigative files are exempt from 5 U.S.C. § 552a(e)(2) because, as authorized by 5 U.S.C. § 552a(j)(2), we (like virtually all OIGs) have published a rule exempting them, 45 C.F.R. § 613.5(b).

¹⁹ Nothing in the OSTP policy or NSF’s regulation requires institutions to use committees to conduct their investigations rather than individuals, but the vast majority of institutions do use committees.

²⁰ 45 C.F.R. § 689.4(b)(4).

tion or we may seek additional evidence independently. If the evidence proves an act of RM occurred, we will write a Report of Investigation (ROI) for adjudication by NSF management. For the NSF to make a finding of RM, a preponderance of the evidence must establish that:

- The act meets the definition of RM;²¹
- The identified individual committed the act;
- The act was a substantial departure from accepted practices; and
- The act was committed with at least gross negligence (acts committed carelessly or negligently are not considered to be RM).

As a part of our ROI, our office provides an assessment of whether the actions taken by the institution are sufficient to protect the Federal interest, or whether we believe that NSF should take additional actions to do so. We provide a draft ROI to the subject and request any comments, corrections, or additional evidence. The subject's comments are included in the final report and may cause us to alter the conclusions our office makes in the final report. Our office then provides the final ROI to the NSF's adjudicator, the Deputy Director.

Adjudication and Appeal

The Deputy Director, with the assistance of NSF's Office of General Counsel, independently assesses whether the evidence supports the recommended findings in our ROI and, if so, determines what actions, if any, the agency will take. The subject is notified of the Deputy Director's decision and has the right to appeal that decision to the NSF Director. Upon appeal, the NSF Director's decision is final.

In making a decision on what action to take, the agency considers:

- How serious the RM is;
- The degree to which the RM was knowing, intentional, or reckless;

- Whether it was an isolated event or part of a pattern; and
- Other relevant circumstances.²²

Our investigation officially closes when the agency's decision is final.

Fraud in Research Misconduct Cases

We are progressively moving from handling cases as either "administrative" or "civil/criminal" to parallel processing of allegations of wrongdoing. That is, we consider an investigation successful if it results in adequate administrative, civil, or criminal actions. Actions in one area do not preclude actions in another. For example, in several cases resulting in civil settlements, the subjects also stipulated that their actions violated NSF's RM regulation and agreed to administrative voluntary exclusion. We recently closed a case that began as a misconduct investigation and was resolved criminally under 18 U.S.C. § 1001, with significant monetary recovery, a suspended sentence, and an administrative voluntary exclusion.

Research Misconduct is defined in the NSF's regulation,²³ consistent with the OSTP policy, as:

fabrication,²⁴ falsification,²⁵ or plagiarism²⁶ in proposing or performing research²⁷ funded by NSF, reviewing research proposals

²² 45 C.F.R. § 689.3(b).

²³ 45 C.F.R. § 689.1(a).

²⁴ *Id.*, -(a)(1): "Fabrication means making up data or results and recording or reporting them."

²⁵ *Id.*, -(a)(2): "Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record."

²⁶ *Id.*, -(a)(3): "Plagiarism means the appropriation of another person's ideas, processes, results or words without giving appropriate credit."

²⁷ *Id.*, -(a)(4): "Research, for the purposes of [this definition], includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals."

²¹ The definition is set out below.

submitted to NSF, or in reporting research results funded by NSF. . . . Research misconduct does not include honest error or differences of opinion.²⁸

By comparison, according to Black's law dictionary, the definition of fraud is:

A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.²⁹

Fabrication, falsification, and plagiarism are all misrepresentations. It is therefore apparent an RM case that involves *knowing* and *material* fabrication, falsification, or plagiarism, with detrimental reliance, constitutes fraud.

The case studies below highlight the possibilities for the more effective resolution when the research misconduct regulation is used in conjunction with other statutes and regulations including the False Claims Act and the Program Fraud Civil Remedies Act.

■ **Fraudulent data and time-card falsification.** An undergraduate student, employed as a technician on a Federal research grant, fabricated data and time sheets. The student rationalized her conduct by claiming she was underpaid. The student was arrested and charged with fraud, and she entered a plea of guilty to a lesser-included misdemeanor offense. The student was ordered to pay approximately \$9,000 in restitution and fines. The student was also expelled from the university and no longer pursued a career in science. The NSF also made an administrative finding of research misconduct and concluded it did not need to debar the student from receiving Federal funds

because of the criminal and administrative actions already taken.

■ **Data Fabrication.** The principal investigators (PIs) on numerous Small Business Innovation Research (SBIR) grants falsely claimed data as generated during performance of their SBIR awards. In actuality the data had been gathered by a graduate student in connection with his thesis prior to the funding of the SBIR awards. The case was initially processed as an administrative investigation focusing on research misconduct, but when the extent of the misrepresentations and amount of money involved became clear, the case became a criminal case. Ultimately the PIs repaid approximately \$300,000 to the Federal Government and pled guilty to violating 18 U.S.C. § 1001. In separate negotiations with NSF, the PIs agreed to a voluntary exclusion receiving Federal funds for 3 years.

■ **Data Falsification and Fabrication.** A PI and associated researchers falsified and fabricated data to support proposals submitted to, and two awards made by, a Federal agency. The investigation resulted in a civil settlement. Under the terms of the agreement, the institution employing the researchers paid the Federal Government \$2.6 million, instituted a 3-year institutional integrity agreement to ensure compliance with all Federal laws and regulations pertaining to Federal grants, arranged for the publication of corrections in scientific journals, and implemented corrective actions in the institution's administrative and grants management systems and practices.

■ **Data Falsification and Fabrication.** An investigation into allegations of research misconduct concluded that a scientist published both fabricated and falsified data in a publication. His research had been supported by Federal grants totaling \$3.3 million. The scientist agreed to a voluntary exclusion

²⁸ 45 C.F.R. § 689.1(a) & -(b).

²⁹ *Black's Law Dictionary*, Seventh Edition, 2000.

from the receipt of Federal funds for 3 years, but neither admitted nor denied any wrongdoing. The Department of Justice (DOJ) subsequently initiated efforts to recover at least part of these funds from the institution employing the scientist.

- **Plagiarism and False Statements.** An investigation in three separate administrative cases focusing on research misconduct allegations determined that PIs submitted multiple SBIR proposals that contained plagiarized material and misrepresented scientific credentials. The PIs received SBIR awards from several Federal agencies for projects that were duplicative of each other. The PIs agreed to a governmentwide voluntary exclusion for 3 years and paid approximately \$500,000 to the Federal Government under the False Claims Act. In

the settlement agreement the researchers stipulated that their conduct violated NSF's research misconduct regulation.

Conclusion

We encourage the OIGs to either investigate RM cases under their broad charge to address fraud, waste, and abuse or to closely monitor research misconduct cases handled by their agencies. The OIGs that adopt the technique of parallel processing RM allegations can ensure recovery of agency funds, restitution, debarments of individuals or institutions, suspension or termination of awards, and, in rare instances, incarceration or probation. Alternatively, careful monitoring will ensure adequate resolutions, and ensure that DOJ is informed of those cases containing the elements of criminal or civil violations. 🏠

RENN C. FOWLER, ESQ.

Executive Director of the Federal Training Foundation

**Harold J. Ashner, *Winning at the Merit Systems Protection Board* (Dewey Publications, Inc., 2002), 900 pages, \$125.00.
Reviewed by Renn C. Fowler.**

In 1998, I reviewed in this Journal, *Representing the Agency Before the Merit Systems Protection Board: A Handbook on MSPB Practice and Procedure*, by Harold Ashner, Esq. That book was an ambitious revision and extensive update of much earlier efforts by Ashner to make simple the complexities of the Civil Service Reform Act and the nuances of Merit Systems Protection Board (MSPB) practice. I heralded that update and revision as invaluable for all practitioners and as a much-needed tool for anyone called upon to conduct an administrative investigation into employee misconduct.

Now, Ashner is back with an impressive update and revision, titled *Winning at the Merit Systems Protection Board*. “Winning” is not a repackaging of “Representing,” but it is quite simply Ashner’s most significant and ambitious undertaking yet.

“Winning,” as its name implies, is a step-by-step guide on how to put one’s best foot forward in contested personnel disputes. What is immediately appealing is that “Winning” divides into three useful sections: Introduction to MSPB, Building a Winning Case, and Winning on Appeal. While its predecessor had one chapter on MSPB jurisdiction, etc., “Winning” has six “jurisdictional” chapters, including the latest on collective-bargaining agreements, Uniformed Services Employment and Reemployment Rights Act (USERRA), Veterans Employment Opportunities Act (VEOP), Office of Special Counsel prosecutions, etc. In addition, “Winning” adds another five information-filled chapters on discrete components of an adverse action (e.g., penalty, affirmative defenses, etc.). And “Winning” distills the MSPB appeal process into its incremental steps (e.g., responding to the appeal, pre-hearing practice, etc.).

“Winning” will become a must-have desktop reference for those responsible for fact gathering for administrative investigation into employee misconduct. Ashner has made an obvious effort to make “Winning” friendly

to lay readers and, in so doing, he has succeeded in bridging the chasms between investigators, managers, personnelists, and practitioners.

Of particular value is the new and expanded chapter on administrative investigations, i.e., building the case or "Getting the Facts." As Ashner points out, thorough front-end fact gathering is the key to it all, and Ashner's treatment brings it all together in one place, starting with witness rapport and interviewing techniques.

To be sure, managers, personnelists, and practitioners often look to investigators not only to find the facts but also to prepare the case, i.e., to submit a report of investigation suitable for filing at the MSPB. Left to their own devices, too many personnelists and practitioners simply charge first and investigate later. In other words, agencies often find the charge and then, generally on discovery at MSPB, go in search of facts to fit the charge.

Ashner then provides an extensive treatment of the law of investigation, commenting on the duty of a Federal employee to cooperate as well as the applicable rights, union, and otherwise. He also makes easily understandable the law of warnings, e.g., *Garrity*, *Kalkines*, *Weston*, etc., and the fine line between an employee's various entitlements.

Ashner includes an extensive treatment of the United States Court of Appeals for the Federal Circuit's recent decision in *Modrowski v. Department of Veterans Affairs*, 252 F.3d 1344 (Fed. Cir. 2001), wherein the court overturned an agency charge of failure to cooperate in an agency investigation. In *Modrowski*, the agency investigated a realty specialist for possible misconduct relating to the sale of Department of Veterans Affairs (VA)-owned properties and the authorization of brokerage fees for those sales. The employee, accompanied by his union representative, refused to answer questions based on his right against self-incrimination under the Fifth Amendment to the U. S. Constitution.

Agency investigators thereupon informed him that the U.S. Attorney had declined prosecution. The agency gave the employee a letter, stating that

the U.S. Attorney had declined prosecution and ordering the employee to respond to the investigator's questions. After more wrangling, the agency removed the employee for, among other things, failure to cooperate.

The court found that the employee's "legal rights in this case were far from clear cut." The letter given the employee was written on VA letterhead and only referenced the U.S. Attorney's declination; the letter did not actually set out a grant of immunity. The court found it entirely understandable that the employee would question the scope and grant of immunity. Thus, the court found that the agency erred by not allowing the employee to consult an attorney. In reaching its decision, the court gave particular weight to the following factors: (1) the agency was admittedly investigating for criminal violations; (2) the purported grant of immunity was ambiguous as to scope; (3) statements elicited under the supposed grant of immunity could possibly be used against the employee in a criminal prosecution; (4) the absence of a formal assurance that criminal investigations had, in fact, terminated; (5) the employee was faced with the penalty of removal for failure to cooperate; (6) the employee had arranged to meet with counsel; and (7) there was no allegation that the employee's request to meet with counsel was unreasonable. Had the agency come up with a charge other than failure to cooperate, its actions might have been vindicated, at least partially.

A significant contribution of "Winning" is that it highlights and underscores the complexity of charging at MSPB. As Ashner points out, due to a certain amount of confusion and over-reading, the rule of thumb has been for years that there are no lesser-included offenses at MSPB. In other words, if an agency charges insubordination and fails to prove intent, an essential element, the entire charge falls. The agency cannot impose a penalty on the employee's failure to follow instructions.

For further example, assume the following scenario. Late one evening, X removes, without

authorization, from the agency's office, a computer and takes it to his residence. X's supervisor notices the missing equipment. The building logs and the building guard identify X. The Federal Protective Officers go to X's residence, and he turns over the computer. The agency removes X on the charge of stealing the computer.

At trial, X testifies that he was only borrowing the computer, and points to official work in the computer when he had previously removed it, as confirmed by the building logs. The result is that X wins, the agency being unable to prove the essential element of intent to permanently deprive. Of course the record shows misconduct, e.g., misuse, unauthorized removal, failure to get a property pass, conversion, and much more.

"Winning" addresses such problems by pointing out that the Board and the Federal Circuit have affirmed the validity of narrative charges and alternative pleading. Narrative charging is simply the practice of writing in a succinct and focused way a factual statement of what the employee did. In narrative charging, there is usually no characterization of the misconduct. In fact, the Civil Service Reform Act never mentions charges but speaks instead of reasons, and the only reason really given in statute is that the employee engaged in conduct that damaged service efficiency.

Had the agency in our hypothetical above just set out the facts without characterization, without a label of "stealing," the employee who took the computer home would be facing discipline. The problem with narrative charging is that too often the "narrative charge" lacks focus and is unclear as to how service efficiency was damaged.

Similarly, the Federal Circuit, in *Lachance, OPM v. MSPB*, 147 F.3d 1367 (Fed. Cir. 1998), authorized alternative pleading or lesser-included offenses, when clearly noticed. The agency had charged a guard at the Old Mint in San Francisco with "unacceptable and inappropriate behavior by

a supervisor," a meaningless charge. That charge was supported by a detailed description of the employee's misconduct, which the agency characterized as obstructing an investigation.

The court noted that the specific charge was meaningless and interpreted the descriptive narrative. It found that the narrative could be read as characterized by the agency. But the court also said that the narrative could easily and fairly be read in a more expansive way to include lesser misconduct, for example, poor judgment, etc. Given the court's reading, the guard could not escape discipline. Thus, said the court, the description included several potential charges. In so holding, the court put to rest an old civil service law shibboleth that the charge must be a function of the penalty, that is, the charge reviewed must be the charge upon which the penalty was predicated. The way to handle that, according to the court, is to adjust the penalty.

Ashner also provides some insight into what has seemingly developed as a newfound agency practice of "charging up and proving down." "Winning" notes that the MSPB has relaxed its penalty approach so that an agency can successfully charge a lesser offense of more serious misconduct, such as failure to follow instructions, instead of insubordination. The former is "proof-friendly but penalty-friendly too," that is, unlikely to support a stiff sanction. On the other hand, insubordination is hard to prove but delivers a more powerful penalty, if proven. In recent years, the Board has allowed agencies to bring such non-intent charges as "failure to follow" and still prove intent in the penalty phrase so as to obtain the more stringent penalty. This allows a good investigator to build a solid case on a more easily provable charge, giving the agency a softer path to a tougher, but more appropriate penalty.

"Winning" has all of this and more. Hats off to Ashner. 🐘

