



ILLUSTRATION / MICHAEL KIRKHAM

INSPECTING THE INSPECTOR GENERAL

SHOULD AUDITORS SET THE TERMS OF DEBATE ON FEDERAL EDUCATION POLICY?

AN ADULT UNDERGRADUATE STUDENT signs up for an online college class and uses federal grant dollars to pay his tuition. After a few months, his instructor certifies that he completed the course. Taxpayer dollars were exchanged. Was enough education received in return?

Enter the Office of Inspector General (OIG) from the U.S. Department of Education. An independent watchdog agency, OIG is charged with ferreting out waste and abuse of taxpayer dollars in both K–12 and postsecondary education. Some 230 employees, including agents who wear badges and carry guns, conduct forensic audits and shoe-leather investigations to ensure public funds and programs are efficient and effective. OIG is funded by and reports directly to Congress, recovers \$2 for every \$1 spent on its efforts, and has proven a powerful arm to find and end fraud.

OIG has investigated plenty of scenarios like the example above in recent years, as distance learning has upended traditional norms and opened access to higher education for a wide variety of non-traditional students. The technology driving online course work makes it flexible—and vulnerable to abuse.

Consider Trenda Lynn Halton. The Arizona community-college instructor paid at least 64 co-conspirators for their Social Security numbers and addresses, which she used to apply for federal financial aid and enroll them in low-cost online classes they never attended. She kept more than a half million Pell Grant and loan dollars for herself, an OIG investigation found, and was later prosecuted in federal court, sentenced to 41 months in prison, and ordered to pay \$581,000 in restitution.

Now consider OIG's review of federal-aid dollars at Western Governors University (WGU), which offers online degree programs using an innovative, competency-based model. OIG's adherence to legacy rules about student seat time led it to conclude in a 2017 audit that the university ran afoul of the same higher-education law that snared Halton, and it suggested that WGU, which has strong outcomes and was lauded by the Obama administration for its performance, return more than \$700 million to taxpayers. Going a step further, OIG then cautioned Congress against a proposed update to federal higher-education law that would ensure schools like WGU have full access to student aid dollars.

by JASON DELISLE and NAT MALKUS

Is that the right finding for WGU? And should OIG encourage lawmakers to consider that finding as they work to update federal higher-education law? OIG is critical to protecting students and taxpayers from waste, fraud, and abuse, and its effectiveness and political independence give its recommendations a lot of influence in federal education-policy debates. If OIG backs a controversial policy or set of actions, supporters in the education community will inevitably hold up its supposedly impartial stance as evidence that its position is in the best interests of taxpayers and students.

But OIG is not a neutral entity. By design, it prioritizes financial propriety above all else. While that is an important consideration, it is just one of many interests at play. Anyone reading OIG's reports and recommendations would do well to keep the country's broader educational interests and goals in mind.

An Independent In-House Investigator

Throughout the 1970s, Americans weathered corruption scandals and saw their president impeached and then resign office. In a step to restore trust in government, Congress passed the Inspector General Act of 1978, which created an independent investigative office in all 12 major federal agencies, including the U.S. Department of Education. These new offices, funded by Congress and led by presidential appointees who are confirmed by the Senate, would also help Congress reclaim some of its authority over what it saw as an overactive and scandal-plagued executive branch.

OIG's official mission is to "promote the efficiency, effectiveness, and integrity of the [Education] Department's programs and operations." It primarily fulfills that mission as an investigative

However, the inspector may choose audit or investigation subjects in response to requests from lawmakers or the Department of Education, as well as tips from whistleblowers.

Not every investigation leads to criminal charges; many OIG reviews are focused on ensuring accurate data reporting and efficient fidelity to the goals of federal programs. OIG often investigates shoddy accounting and sloppy bookkeeping, for example, either at the federal education department or by a third-party entity that implements federal policy, like an accrediting agency or state education department. In many reviews, the accounting and reporting errors may not rise to the level of fraud, but OIG calls out such practices as posing risks that can undermine policy goals with erroneous or incomplete information. Mitigating such risks is well within its purview, and when such risks are identified, OIG sometimes recommends that government agencies take action to safeguard against future abuse. Since OIG cannot compel action, it's up to policymakers and lawmakers to determine how agencies must officially respond to its recommendations.

One recent example is OIG's 2017 audit of high-school graduation rates in California, which raised serious questions about the accuracy of the reported statewide figures. Graduation rates are an important accountability metric, and federal policies require states to calculate and report them. There are, however, a number of ways to calculate a graduation rate—they can vary by which students are to be included in the graduating cohort, or how schools are to count students who graduate in the summer or transfer late in the year, for example—so a federal standard is important to ensure the figures are comparable between states and over time. When OIG examined California's reported rates, it found that local school districts had overstated them and that

neither the districts nor the state had sufficient procedures in place to ensure reporting was accurate. OIG recommended a number of corrective actions for both state and federal policymakers. State officials did not require specific actions by districts in response but said they would work with them to ensure counts were accurate.

OIG has also reprimanded its parent agency, the U.S. Department of Education, for opaque bookkeeping. In a 2018 review, OIG faulted

the agency for how it tracks and reports the costs of income-based repayment and forgiveness programs in the federal student-loan program. While the costs of these programs increased more than eightfold from 2011 to 2015, to \$11.5 billion from \$1.4 billion, OIG found that information is not clearly published anywhere. Rather, it is buried in multiple budget documents and requires merging statistics from separate tables to arrive at the correct



OIG IS NOT A NEUTRAL ENTITY. BY DESIGN, IT PRIORITIZES FINANCIAL PROPRIETY ABOVE ALL ELSE.

body, and completes about 25 audits and 250–300 investigations each year. Its budget has nearly doubled since 1980 (see Figure 1).

The Department of Education's current inspector general, Kathleen Tighe, was appointed in 2010 by President Obama. She has the discretion to set her office's initiatives and priorities, which are outlined each year in a report to Congress, and she cannot be fired or directed to act by the secretary of education.

figure. In short, the department does not clearly state the annual and historic costs of these programs, even as they have grown exponentially and are now some of the agency's most costly. OIG recommended the department publish more transparent cost estimates to ensure full information is available to decisionmakers and the public.

More Than an Auditor

Standing up for accuracy and transparency has helped craft OIG's reputation as an unassailable "good guy." As these examples illustrate, OIG conducts the important work of making government agencies more accountable while protecting taxpayer dollars from improprieties and fraud—exactly the trust-restoring role that lawmakers had in mind when they created the inspectors general. It is also reassuring that the inspectors are politically independent, since partisan spin often accompanies the information that government agencies and lawmakers disseminate. When partisan battles raged in 2010 over bank bailouts, economic stimulus programs, and health-care reforms, for example, National Public Radio aired a segment that held up the inspectors as one part of the government everyone can trust. The wholly laudatory segment closes with an inspector declaring that OIGs do not "have a dog in any fight except to figure out what the truth is."

It is tempting to draw this sort of conclusion given the origin, mission, and independence of OIG. Holding it up as the guardian of truth, however, can do a disservice in policy debates in which two sides can reasonably disagree. When policymakers, the press, and the broader education community interpret OIG reviews as conclusive truth telling from a neutral "watchdog," they leave little room for others to question those reports. But OIG routinely wades past straightforward accounting and dives directly into policy debates.

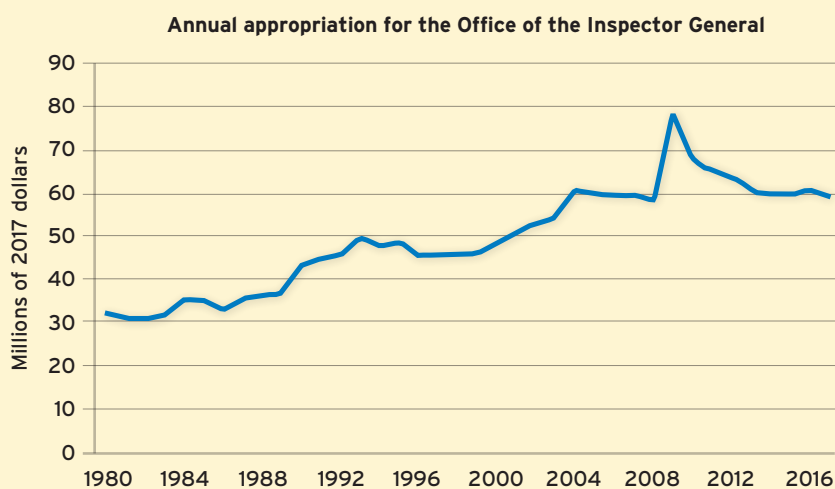
OIG audits and investigations are often accompanied by forward-looking recommendations regarding policies or regulations that it believes will improve the integrity of federal programs. Inspectors testify before congressional committees, weigh in on proposed legislation, release broad guidance for best practices based on patterns of fraud or weak controls across multiple investigations, and publish analyses of regulations under development at the education department and legislation working its way through Congress. Through its "perspective papers," OIG shares its opinions of on-the-ground challenges in specific

areas that its audits have reviewed, and communicates those insights to inform policy changes.

To be sure, OIG's recommendations are a logical extension of its responsibilities to remedy waste and fraud. The inspector does not have the means to investigate, nor does the govern-

OIG's Growing Budget (Figure 1)

After adjusting for inflation, the annual budget for the U.S. Department of Education's Office of the Inspector General has doubled since 1980.



NOTE: The spike in the budget in 2009 includes funding from the American Recovery and Reinvestment Act.

SOURCE: U.S. Department of Education

ment have the means to prosecute, every instance of criminal wrongdoing. And OIG cannot audit every grant expenditure or every report issued by a regional accrediting agency. Instead, OIG draws on its reviews to recommend policies to the broader education community.

While such reviews and recommendations may present a public-relations challenge to education providers, the office has no authority to compel a policy response. In fact, OIG's recommendations can easily put it in conflict with policymakers. Its mission is to protect taxpayers from waste and fraud, and it does not have to weigh policies against any standard except how they might impact the integrity of a federal program and legal use of taxpayer dollars. Policymakers, by contrast, consider a range of effects, such as educational quality, access, innovation, and advancement toward long-term goals. The risk that a policy may unintentionally expose the government to fraud or lead to waste is just one of many factors. Policymakers may value flexibility, innovation,

simplicity, administrative feasibility, or cost savings more than the risks that concern OIG.

This distinction is often lost in how the media and the education community interpret OIG reports. And its reputation as the guardian of the truth implies that OIG has weighed the pros and cons of a policy, when it has examined only the cons.

The Case of Western Governors University

The 2017 OIG audit and report on Western Governors University (WGU) is a good case study of how OIG can stubbornly reject innovation and flexibility to guard against fraud. This large, nonprofit, online university has been hailed as an innovator by many in the education community, including the Obama administration. WGU uses a “competency-based education” model that allows students to progress through courses at their own pace, advancing as they master the material. The innovation is not so much that the courses are online—although that makes the model possible—but that students are not bound by the credit-hour model, in which they rack up the requisite amount of seat time in a classroom to earn credits and ultimately a degree.

WGU’s online courses also break with traditional teaching in another key way. Instead of a professor lecturing students and leading classroom activities, students are assigned mentors, who are not subject-matter experts, who work with them as they

that it can pass on to its students. In short, WGU students can pursue a degree online at their own pace with a flexible schedule and at lower prices than traditional degree programs offer. Observers are quick to note that student outcomes are above average with respect to earnings and loan repayment, and that WGU is in good standing with its accreditor.

The problem is that WGU’s innovation is way ahead of the federal financial-aid programs its students rely on. Decades ago, Congress put a provision in the Higher Education Act that requires colleges to provide “regular and substantive” interaction between instructors and students. It was an effort to prevent fly-by-night correspondence schools from ripping off students (and the taxpayers who pay for their publicly subsidized grants and loans). Distance-education programs like those offered online by WGU can qualify for full access to federal student-aid programs, but only if they meet the standard. Those that don’t meet the standard may qualify for some federal aid, but it is limited.

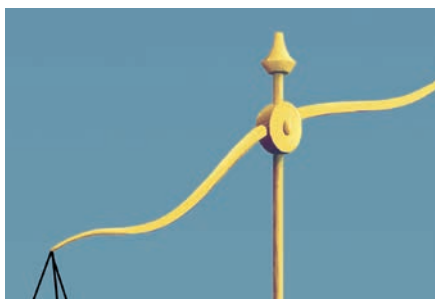
OIG investigated WGU in 2017 to determine if it actually met the “regular and substantive” interaction standard, which would distinguish it as a distance-education program and not a correspondence school. OIG describes its audit methods largely as having “reviewed ‘Western Governors University Institutional Catalog’ and the outline, pacing guide, and calendar of live events for each course.”

In a nearly 100-page report, OIG explained that WGU did not meet the standard and recommended that the secretary

of education require the university to return some \$700 million in federal student aid to the U.S. government. (The secretary is free to ignore this recommendation without consequence and has so far.) The crux of the finding was also WGU’s primary innovation: its unbundled approach to faculty interaction with students. Because mentors, not subject-matter experts, were students’ primary source of interaction in their courses, OIG argued that their interaction could not meet the “substantive” part of the distance-education

standard. While the interaction is *regular* (that is the mentor’s role), because the mentor is not a subject-matter expert it is not *substantive*, and WGU is therefore a correspondence school.

Observers in the education community realized quickly what had happened. The law was outdated. It was meant to prevent fraud in a different era, but was now ensnaring an innovative online-education model with above-average student outcomes. The solution seemed simple to practitioners and policymakers



**OIG’S CHARTER SCHOOL
AUDIT PUTS ITS THUMB
ON THE SCALE TO
PUSH POLICY CHANGES
THAT COULD SACRIFICE
THE BROADER GOALS
OF FEDERAL
CHARTER GRANTS.**

complete their online course work at their own pace. Different groups of faculty who are subject-matter experts either oversee the program and curriculum, evaluate student work, or serve as tutors when students have trouble with the material. But students’ main interaction is with their mentors. These mentors also specialize in assessing student progress toward course and degree completion. This “unbundled” approach allows WGU to achieve greater scale, drive efficiency, and reduce costs—savings

across the ideological spectrum: Congress should change the law. OIG's complaints would then be moot, or so one might assume.

But it turns out OIG did not have a neutral position on the law. When the House Committee on Education and the Workforce took up a bill to reform federal student-aid programs that included changes to the definition of distance-education and correspondence programs, OIG weighed in with its opinions. The PROSPER Act changes the definition of distance education so that universities like WGU clearly qualify for full federal student-aid benefits, which OIG opposed in a letter to the committee:

The amendment in the PROSPER Act as proposed would allow schools that provide routine email contact with any member of the “faculty” without subject matter expertise to avoid the limits placed on correspondence schools. We believe Congress should retain the definition of distance education and not replace [the word] instructor with [the word] faculty [in the statute]. The requirement should remain that a school that offers education programs, which will not qualify as correspondence education, should provide education by an instructor with subject-matter expertise.

In other words, OIG not only views WGU as ineligible for full federal student-aid benefits under current law, it believes that Congress should not change the law so that WGU would become eligible. OIG is worried that without the existing requirement for regular and substantive interaction—which in its view means subject-matter experts interacting with students—the federal aid programs lack sufficient “safeguards to mitigate the risks of fraud, waste and abuse.”

Weighing the Value of CMOs

Compared to postsecondary education, K–12 systems and policies garner less attention from OIG, particularly with respect to policy recommendations. This is likely because local and state governments provide the bulk of K–12 education funding. OIG may perceive less risk of waste and fraud in programs carried out by state and local governments, which have their own accountability and oversight systems. Nonetheless, on occasion OIG's tendency to advocate for increased federal controls to prevent fraud with little regard for flexibility is evident.

For example, in a 2016 report titled “Nationwide Assessment of Charter and Education Management Organizations,” OIG “judgmentally selected” 33 charter schools that contract with charter management organizations (CMOs). It reviewed the extent

to which the rules and regulations of federal Charter Schools Program Grants—which Congress intended to encourage the growth of quality charter schools in the states—mitigated the risks of mismanagement and fraud. In accordance with its mission, OIG focused its audit on charter schools with preexisting indicators of conflicting interests, double-dealing, and fraud, identified in part by existing state and local audits and news article searches. Unsurprisingly, the audit identified issues in two thirds of the 33 cases reviewed, and in some instances, egregious wrongdoing.



The Department of Education's current inspector general, Kathleen Tighe, was appointed in 2010 by President Obama.

Colorful examples include the conspicuous conflict of interest in a CMO contract with a Pennsylvania charter school whose board included two of the CMO's board members (including its chair), as well as the CMO's president and chief financial officer. Another was the case of a CMO chief executive who had the authority to write checks without the local charter school board's approval and funneled \$11 million of the school's funds to himself. Another CMO was contractually given substantial authority over four charter schools' operations and expenditures, along with the right to retain any unspent charter funds at the year's end.

In light of these problems, OIG concluded that “charter school relationships with CMOs posed a significant risk to Department program objectives.” To mitigate these risks, it suggested that the education department convene an oversight group to provide additional guidance, adjust program monitoring, and improve internal controls at the state and local level.

However, its suggestion to Congress revealed how this narrow focus on preventing fraud is at odds with broader considerations around charter policy:

We also suggest that the Department propose legislation for Congress to consider that would clearly identify

the governance responsibility of authorizing entities with respect to the roles and responsibilities for the approval, renewal, and revocation of charters at a nationwide level and ensure that either SEAs [state education agencies] or the Department adequately oversee authorizing entities.

This narrow view of the department’s “program objectives” focuses on constraining resource use and ignores the importance of decentralization in charter school policy. Charter schools are state affairs, established by state laws under a variety of manage-

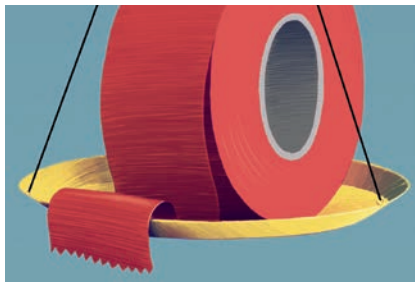
Putting OIG in Context

OIG audits and investigations are effective and result in a high return on taxpayers’ investment. But it does not follow that adopting OIG’s policy recommendations would produce the same type of benefits.

Inspectors define the taxpayers’ interest narrowly when it comes to policy recommendations and, unlike Congress or other policymakers, they do not have to weigh preventing fraud and lax oversight against other competing policy goals like innovation, costs, administrative burden, or educational access.

OIG measures the value of all policies using a one-sided balance sheet where investments are without costs and the payoff is always positive. It is incumbent on those who consume its reports to consider its recommendations in this context.

The specific examples we’ve explored in this essay make this distinction clear. Locking down the definition of distance education may reduce fraud, but that may not be worth the resulting constraints on innovation. Rigid regulations imposed on charter schools by federal legislation



OIG’S NARROW FOCUS LEADS IT TO RECOMMEND CENTRALIZED SOLUTIONS, PRESCRIPTIVE RULES, AND ADMINISTRATIVE MACHINERY THAT MAY NOT BE WORTH THE COSTS, FINANCIAL OR OTHERWISE.

ment arrangements, and are primarily funded by local and state dollars. Federal Charter School Program Grants are intended to encourage the development of high-quality charter schools in the states, not serve as bureaucratic checks on their bookkeeping practices. Pushing Congress to centralize governance over charters demonstrates how OIG’s priority is to protect federal seed money, even at the cost of reshaping the charter sector the program seeks to expand. Well aware that charter school growth is decelerating, and cognizant of concerns that increased regulation and paperwork burdens can raise barriers for potential charter operators, policymakers have had to balance the overarching promise of federal grants for charter schools with the concerns about fraud and mismanagement.

As the report specifies, OIG’s findings are not generalizable and do not apply to the entire charter sector. But its recommendations do. And its focus on the potential downsides of CMOs ignores evidence that their support can help charter schools produce positive results for students (see “Unlocking the Secrets of High-Performing Charters,” *features*, Fall 2011). Isolated from other pertinent sources of information, the charter school audit can be weaponized in the media and puts OIG’s thumb on the scale to push policy changes that could sacrifice the broader goals of federal charter grants.

could prevent the misuse of taxpayer funds, but they may also undermine the very flexibility that makes charter schools unique and successful.

To be sure, OIG’s insights can provide helpful information for policymakers and the public. OIG has a unique and valuable perspective, and the education community should pay attention to its investigations. But we must also bear in mind that OIG’s narrow focus leads it to recommend centralized solutions, prescriptive rules, and administrative machinery that may not be worth the costs, financial or otherwise. In other words, OIG provides one perspective, and a narrow one at that.

Policymakers who are directly accountable to taxpayers must take a broad range of interests into consideration—a holistic view in which OIG’s perspective is one of several, and its interest in preventing fraud is one of many public goods. These broad considerations remind us why they should have the final say on what policies are best for students and taxpayers.

Jason Delisle is a resident fellow focusing on higher-education funding at the American Enterprise Institute, where Nat Malkus is a resident scholar and deputy director of Education Policy Studies.